



July 2015

Submission to the PCCC review of the Crime and Corruption Commission

Our vision:

That the CCC make a unique contribution to protecting Queenslanders from crime and corruption

Our purpose:

To combat major crime and serious corruption

What we value:

- Integrity
- Accountability
- Respect
- Excellence and innovation
- Collaboration

Contents

Purpose and structure of this submission	6
Purpose of this submission	6
Structure of this report	6
Abbreviations	7
Executive summary	9
Overview	9
Changes to operations	9
Our powers and governance	10
Recommendations	11
Conclusion	14
Chapter 1: History and recent legislative change	15
Overview of the Crime and Corruption Commission’s functions, structure and objectives	16
Governing legislation	16
Our structure and staff	16
Strategic objectives and services	17
Legislative and other changes	18
Changes to our Act	18
Outcome of recent external reviews	18
Other changes to structure and appointments	19
Amendments to respond to Outlaw Motor Cycle Gangs	19
Comment on the current legislation	20
Chapter 2: Corporate governance and independence	21
The CCC’s corporate governance and independence	22
Overview	22
Changes to the Commission’s structure	22
The Commission	22
The composition of the Commission	22
Proposed areas for further examination	24
Research function	25
Chapter 3: Functions, powers, performance and challenges	27
Major crime	28
Our functions and powers	28
Referral process	28
Key areas of activity	29
Organised crime	29

Serious crime	29
Intelligence hearings	30
Paedophilia	30
Terrorism	30
Proceeds of crime	30
Intelligence	31
Operations support	31
Research	32
Major crime prevention	32
Performance	32
Organised crime	32
Criminal paedophilia	33
Crime and intelligence hearings	33
Proceeds of crime	34
Strategic intelligence	35
Crime research	36
Discussion on legislation and challenges	37
Reconsideration of the ongoing need for both specific and general referrals	37
Change definition of criminal organisation	38
Review categories of CEM files	39
Money laundering – remove need for Attorney-General’s consent to commence proceedings	40
Single confiscation agency	41
Develop uniform powers and hearing provisions in Chapters 3 and 4 and eliminate duplication	42
Corruption	46
Our functions and powers	46
Key areas of activity	46
Receipt and assessment of complaints	46
Oversight role	47
Corruption investigations	48
Prevention	48
Intelligence	49
Research	49
Performance	49
Complaints assessment	49
Oversight role	54
Corruption investigations	59
Prevention	63
Intelligence	64
Research	64
Discussion on legislation and challenges	67
The changed definition of corrupt conduct – section 15	67
New requirement of a statutory declaration – section 36	68
Corruption prevention function	68
Amendment to existing search warrant and surveillance warrant powers	69
Clarification of the CCC’s monitoring role	69
Alignment of QPS use of information with use of information for purposes of CC Act	70

Alignment of other public sector use of information with the use of information for the purposes of the CCC	70
Section 50 CC Act – Commission may prosecute corrupt conduct	71
Proceedings before Queensland Civil and Administrative Tribunal (QCAT)	71
Clarification of CCC role in investigating conduct that may be protected by parliamentary privilege	74
Witness protection	76
Our functions and powers	76
Performance	76
Appendix 1: Accountability and corporate governance	77
External accountability	77
External reporting	77
Internal accountability	79
The Commission	79
Internal governance	80
Internal audit	80
Records management	81
Financial management and performance management	81
Legislative compliance	81
Our workforce	82
Strategy, structure and resource allocations project	82
Workforce management issues	82
CMG staffing	83
eLearning management system	83
Reporting improper conduct of our staff	83
Appendix 2: QCAT Matters	84
References	91
Legislation cited in this report	91

Purpose and structure of this submission

Purpose of this submission

Section 292(f) of the *Crime and Corruption Act 2001* (CC Act) provides the Parliamentary Crime and Corruption Committee (PCCC) with the responsibility to:

review the activities of the commission by 30 June 2016, and by the end of each five-year period following that day, and, for each review, to table in the Legislative Assembly a report about any further action that should be taken in relation to this Act or the functions, powers and operations of the commission.

The committee tabled its last report on the review of the then Crime and Misconduct Commission (CMC) in May 2012. Since then, substantial changes have been made to the organisation, including a name change to the Crime and Corruption Commission (CCC).

This submission has been prepared to assist the PCCC in its forthcoming review of the CCC. It includes a summary of the CCC's activities and achievements for the past three years, including two years when it operated as the CMC, as well as an outlook on its future directions and challenges. This submission should be read in conjunction with other documents, including our annual reports, public reports and confidential briefing papers provided to the PCCC, as these provide detailed information regarding the CCC's activities.

Structure of this report

The report is structured as follows:

Executive summary including recommendations

Chapter 1: History and recent legislative change

Chapter 2: Corporate governance and independence

Chapter 3: Functions, powers, performance and challenges

Abbreviations

ACC	Australian Crime Commission
ACDP	Administrative Consensual Disciplinary Process
ACP	Achievement and Capability Planning
AFP	Australian Federal Police
ANVIL	Australian National Victim Image Library
BIP	Building Integrity Program
CC Act	<i>Crime and Corruption Act 2001</i>
CCC	Crime and Corruption Commission
CEM	child exploitation material
CEO	Chief Executive Officer
CM Act	<i>Crime and Misconduct Act 2001</i>
CMC	Crime and Misconduct Commission
COAG	Council of Australian Governments
CPCA	<i>Criminal Proceeds Confiscation Act 2002</i>
CRC	Crime Reference Committee
DJAG	Department of Justice and Attorney-General
DTMR	Department of Transport and Main Roads
FATF	The Financial Action Taskforce
FBI	Federal Bureau of Investigation
FTE	full time equivalent
FYC	First Year Constable
HSO	Human Services Officer
ICAC	Independent Commission Against Corruption
IDT	Intelligence Development Team
IPA	<i>Information Privacy Act 2009</i>
IPP	Information Privacy Principles
ODPP	Office of the Director of Public Prosecutions
OMCGs	Outlaw motorcycle gangs (also includes reference to CMGs, criminal motorcycle gangs)
PCCC	Parliamentary Crime and Corruption Committee
PCMC	Parliamentary Crime and Misconduct Committee
PCYC	Police Citizens Youth Clubs
PIED	performance and image enhancing drugs
PSAA	<i>Police Service Administrative Act 1990</i>
PSDR	<i>Police Service (Disciplinary) Regulation 1990</i>
PPRA	<i>Police Powers and Responsibilities Act 2000</i>
QAO	Queensland Audit Office
QCA	Queensland Court of Appeal
QCAT	Queensland Civil Administrative Tribunal
QCATA	Queensland Civil Administrative Tribunal Appeals
QPS	Queensland Police Service

RTI	Right to Information
SCEPM	Standing Council for Police and Emergency Management
SDOCO	serious drug offender confiscation scheme
SDS	Service Delivery Statements
SIU	Strategic Intelligence Unit (now IDT)
UPA	Unit of Public Administration

Executive summary

Overview

This submission explains how the Crime and Corruption Commission (CCC) has met its responsibilities to investigate crime and corruption and fulfil its supporting activities, including those to protect witnesses, undertake research, pursue the confiscation of the proceeds of crime, advise on issues of public policy as requested and to collect and disseminate intelligence information. The document contains performance information covering the period from 1 July 2012 to 30 June 2015, including two years in which the organisation operated as the Crime and Misconduct Commission (CMC), and contains suggestions to further improve agency outcomes.

The submission also discusses the various external reviews of the organisation in the past three years which resulted in significant changes to *Crime and Corruption Act 2001* (the CC Act) and operations. The CC Act came into effect on 1 July 2014, to reflect government-supported outcomes from the Callinan and Aroney review of April 2013, the Keelty review of November 2013 and the Parliamentary Committee report no. 90 of April 2013.

Changes to operations

The CC Act introduced significant changes to our structure, complaints management responsibilities and governance, and a name change to the Crime and Corruption Commission. Jurisdiction in the area of public sector integrity moved from official misconduct and its prevention to a focus on serious and/or systemic corruption, a ministerially approved research program and the cessation of corruption prevention activities.

A number of the implemented changes have delivered an enhanced focus on serious corruption. Lower level complaints not meeting the new threshold have been significantly reduced (for example, complaints related to demeanour, attitude and conduct). By contrast, Callinan and Aroney's recommended merger of the Confiscation Division of the Office of the Director of Public Prosecution and the CCC's Proceeds of Crime Division of the CCC, has not yet occurred despite its apparent value.

The consequence of some of the implemented changes may require further analysis, as only 12 months of data exists on which to base an assessment of effectiveness. For example, while complaints of corrupt conduct have significantly reduced, the reduction is across the board with the number of complaints about lesser matters and higher order matters both being down. Further analysis is considered necessary to understand why there has also been a reduction in some more serious complaints (see Chapter 3 discussion on Corruption).

Based on our experience over the last 12 months there are some changes that are not achieving their policy intent nor best practice. The need to lodge complaints of corrupt conduct by way of a statutory declaration and the requirement for ministerial approval of the CCC's research program are two such changes.

Outside of the legislative changes, police discipline remains an issue. In particular, QCAT decisions from disputed disciplinary results have produced outcomes that may be considered to be at odds with community expectations.

In September 2013, the *Criminal Proceeds Confiscation Act 2002* (CPCA) was amended to expand the Commission's responsibilities by including provisions for unexplained wealth orders and the serious drug

offender confiscation order scheme. The new provisions have contributed to the increasing number of referrals for confiscation assistance (predominantly from QPS) received each year.

In response to ongoing community concern about incidents of violence, intimidation and criminal behaviour by members and participants of criminal organisations — particularly outlaw motorcycle gangs (OMCGs) — further changes to our governing legislation were made in October 2013. It was in this context that the government provided for the CCC to conduct coercive hearings for intelligence purposes in regard to criminal organisations. In January 2014, additional funding of \$3.616 million was provided for a 12-month period to allow the CCC to increase its focus on organised crime/OMCG-related activity. In addition, we received further funding of \$3.063 million over three years for associated proceeds of crime work.

Aspects of this temporarily funded work, especially that related to the intelligence hearings, has been able to be continued after the dedicated funding ceased. This has been made possible by the redirection of our internal resources but the sustainability of this arrangement is uncertain.

Our crime matters come through the statutory Crime Reference Committee (CRC). The CRC considers both specific and general referrals, the targets identified from our intelligence work or nominated by other law enforcement agencies. General referrals are required to be reviewed after five years, with such a review occurring in 2015 and resulting in the referrals being updated and reduced. General referrals have proved invaluable and have the added advantage of allowing us to respond with agility to emergent situations, sometimes to situations that could otherwise expose the public to serious crime risks.

Our powers and governance

In this submission we have identified a number of areas where it is considered that legislation unnecessarily constrains or limits our capacity to act to protect the public. There are also instances where legislative change could promote efficiency, achieve consistency in the exercise of our powers and be helpful in improving the prospects of bringing to account those engaging in corrupt or criminal conduct. We acknowledge that this submission sometimes makes recommendations on provisions that may also be subject to examination by other parties specifically charged by the government to do so, the Commission of Inquiry into Organised Crime being one such example.

Our analysis of the governance arrangements of the Commission, as in place on 30 June 2015, is based on the principles of independence, robust checks and balances and best practice. We have concluded that there is value in reconsidering the arrangements in place concerning the structure of the Commission, its powers and its relationship with the CEO. We have requested that this topic and CRC-related issues be the subjects of a separate submission to be presented prior to the Committee's public hearings to occur as part of this review. This is proposed as the current Commissioners are temporary and are not those likely to be responsible for implementing any changes adopted. Matters concerning the Commission are addressed in a separate chapter that also discusses the independence of the CCC's research function.

Recommendations

There are two important matters that are not addressed in the following recommendations.

These are:

- The governance of the Commission, in particular:
 - the appropriate composition and skills of Commissioners
 - the nature of the appointment of the CEO, including whether the CEO should be a Commissioner
 - the need for the Chairman and the CEO to be subject to the direction of the Commission
 - the appropriate level of Commission engagement in the appointment of senior officers
 - the process for the appointment of an Acting Chairman
 - the need for Acting Ordinary Commissioners.
- The CRC and its referrals.

As these matters would benefit from consideration when the substantive appointments to the positions of Chairman, CEO and Commissioners are made, we request an opportunity to make a supplementary submission on these matters by 30 October 2015, prior to the commencement of the Committee's public hearing.

Recommendation 1:

The CCC's Research function – amendments to s. 52 of the CC Act

Page 26

It is recommended that the government amend section 52 of the CC Act 2001 so as to:

- broaden the scope of the research function to give the CCC the explicit responsibility and ability to undertake research into police
- reinstate the independence of the CCC research function
- eliminate unnecessary delays.

Recommendation 2:

Continued resourcing for the additional Proceeds of Crime Team

Page 31

That the Committee support the continued resourcing of the additional team to manage the increased work associated with the new provisions under the CPCA.

Recommendation 3:

Change the definition of criminal organisation

Page 39

That a review of the definition of criminal organisation be undertaken to ensure the CCC is not unduly constrained in the exercise of its intelligence functions and can respond more effectively to address Queensland law enforcement's intelligence priorities in respect of organised crime.

Recommendation 4:

Introduce a streamlined system for the classification of CEM

Page 40

That alternative strategies to ANVIL categorisation should be considered to reduce the workload and the risks to psychological health associated with image categorisation and to allow more appropriate prioritisation of policing work.

Recommendation 5:

Money Laundering – remove the need for the Attorney-General’s consent to commence proceedings

Page 41

That the requirement for the Attorney-General’s consent before money laundering proceedings commence be removed.

Recommendation 6:

Proceeds of Crime function

Page 42

It is recommended that the Committee support the Callinan and Aroney recommendation 7: *The powers of the Director of Public Prosecution under the Criminal Proceeds Confiscation Act for the criminal proceeds confiscation regime ought, vest in the CMC (CCC), subject to resources being made available to the CCC to provide for its implementation.*

Recommendation 7:

Investigative powers and hearings

Page 43

That there be an immediate review of Chapters 3 and 4 of the CC Act

- a) to develop uniform provisions with generic application to CCC functions where appropriate
- b) to clarify what specific privileges are abrogated or unaffected by the provisions of the CC Act.

Recommendation 8:

Investigative powers and hearings

Page 44

That the current discussions between the CCC, DJAG and other stakeholders to clarify and address the implications of *Lee v R* [2014] HCA20 be progressed expeditiously.

Recommendation 9:

Investigative powers and hearings

Page 45

That a review be conducted of the power provisions in the PPRA and CCC to ensure

- a) that they are consistent where appropriate
- b) that as between the various functions in the CC Act, the powers are consistent where appropriate
- c) that the CCC obtain new powers which are considered necessary for its operations including:
 - i. an enhanced s. 154 PPRA-type power to require information necessary to access information stored electronically
 - ii. an increased power to search a person.

Recommendation 10:

Review of the police discipline system

Page 56

That consideration be given to a comprehensive review of the use of suspended sanctions within the police discipline system.

A review of the Police Disciplinary System is part of an ongoing process.

Recommendation 11:

Change the section 15 definition of corrupt conduct

Page 67

That the section 15 definition (of corrupt conduct) be amended to remove the requirement in s. 15(1) (c) to show a benefit or cause a detriment.

Recommendation 12:

Remove the requirement for a statutory declaration in section 36 Page 68

That the CC Act be amended to remove the requirement in s. 36(3) that a complaint must be made by way of a statutory declaration.

Recommendation 13:

A CCC Corruption prevention function Page 69

It is recommended the government amend s. 23 of the CC Act to introduce a corruption prevention function.

Recommendation 14:

Clarify the CCC's Corruption monitoring powers Page 70

That the CCC's corruption powers (ss. 73 and 75) be amended to apply to the performance of the CCC's monitoring role under ss. 47 and 48.

Recommendation 15:

Public officials' use of information for purposes consistent with the CC Act Page 71

That amendments be made to ss. 42 and 44 of the CC Act to ensure that information provided by the CCC to the Commissioner of Police and other public officials respectively may be used and dealt with for the purpose of dealing with a complaint, including the taking of disciplinary action.

Recommendation 16:

Have public sector agencies prescribed for prosecutions for corrupt conduct in QCAT Page 71

The CCC recommends that s. 50 of the CC Act be amended to deem units of public administration and appointments therein to be within the jurisdiction of QCAT for the purpose of making findings of corrupt conduct.

Recommendation 17:

Proceedings before the Queensland Civil and Administrative Tribunal (QCAT) Page 72

That section 219G of the CC Act be amended to lengthen the period to 28 days within which a review application must be made to QCAT (so that it is consistent with the 28 day period specified in section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*.)

Recommendation 18:

Proceedings before Queensland Civil and Administrative Tribunal (QCAT) Page 73

That section 50 be amended to allow the CCC to prosecute in QCAT both proceedings for corrupt conduct (previously referred to as "official misconduct") and police misconduct.

Recommendation 19:

Proceedings before the Queensland Civil and Administrative Tribunal (QCAT) Page 73

That the definition of "reviewable decision" in section 219BA be amended to also include a decision not to commence disciplinary proceedings.

Recommendation 20:

Proceedings before the Queensland Civil and Administrative Tribunal (QCAT) Page 74

That the privilege against self-incrimination be abrogated in disciplinary investigations or disciplinary proceedings, including disciplinary proceedings brought in the original jurisdiction of QCAT and that the use immunity in s. 197 of the Act be specified to not extend to disciplinary proceedings in QCAT.

Recommendation 21:

Clarification of the CCC's role in investigating conduct that may be protected by parliamentary privilege

Page 75

That consideration be given to amending the CC Act or developing a procedure with parliament to allow access to protected information and documents in defined circumstances.

Conclusion

The CCC continues to play a unique and important role protecting Queenslanders from crime and corruption but recognises the challenging environment in which it operates and the significant obligation it has to maintain the public's confidence. The opportunity to demonstrate to the parliament the value of our activities and to propose areas for improvement is welcomed.

Chapter 1: History and recent legislative change

Overview of the Crime and Corruption Commission's functions, structure and objectives

Governing legislation

The Crime and Corruption Commission (CCC) is an independent specialist agency established under the *Crime and Corruption Act 2001* (CC Act). The CC Act came into effect from 1 July 2014 following extensive external reviews. The CCC's predecessor agency, the Crime and Misconduct Commission, was established in January 2002.

The main functions of the agency, as defined in section 4 of the CC Act, are:

- a. to combat and reduce the incidence of major crime
- b. to reduce the incidence of corruption in the public sector.

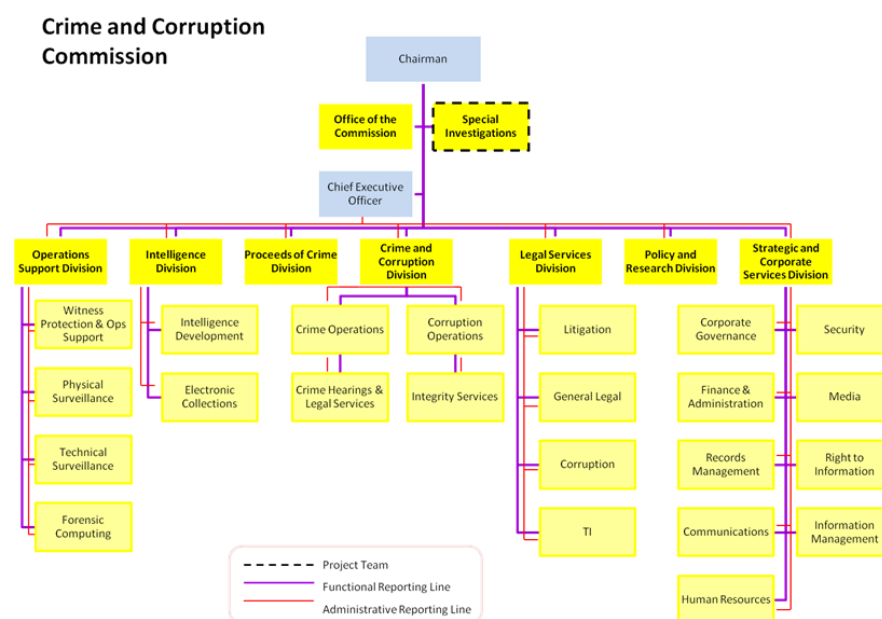
The CC Act also facilitates the CCC's involvement in confiscation-related investigation.

Our structure and staff

The CCC is led by a five-member Commission. The Commission is responsible for providing strategic leadership and direction for the performance of the agency's functions, and the exercise of its powers by the Chairman, CEO and other staff.

Although independent of the government of the day, the CCC is fully accountable to the people of Queensland through the Parliamentary Crime and Corruption Committee (PCCC).

Figure 1.1: CCC organisational chart



As at 30 June 2015, the CCC had 336.6 permanent, temporary and casual FTE staff. This is 11.4 FTEs less than at 30 June 2014.

A detailed discussion of the changes to our corporate structure is contained in Chapter 2.

Strategic objectives and services

Our objectives, as detailed in the agency's current strategic plan (2015–19), are as follows:

- to reduce the impact of major crime
- to reduce the incidence of serious corruption in the public sector
- to provide an effective witness protection service.

Performance is also measured against the service delivery targets published in the State Budget Service Delivery Statements (SDS). The following services are provided.

Crime fighting and prevention

We investigate serious and organised crime such as drug trafficking, fraud, money laundering and networked paedophilia. We conduct coercive hearings and use lawful covert instruments to investigate crime, disrupt criminal syndicates and confiscate the proceeds of crime.

Public sector integrity

We receive and investigate allegations of serious corruption to ensure that Queensland's public institutions, including the Queensland Police Service (QPS), are accountable for their conduct. We also monitor and audit the work of public institutions to ensure that allegations of corrupt conduct are managed appropriately.

Witness protection

We provide protection for eligible people who are in danger as a result of helping a Queensland law enforcement agency. In our fight against crime and corruption, it is imperative that we keep witnesses and informants safe as their evidence is vital for successful prosecutions and the suppression of major crime.

Legislative and other changes

Changes to our Act

Since the beginning of 2012, the *Crime and Misconduct Act 2001*, now the *Crime and Corruption Act 2001* (CC Act), has been the subject of 13 amending acts. Most of these have involved minor changes consequential to other legislation. However some have been significant, arising from external reviews of the CCC and the Queensland Government's response to the illegal activities of criminal organisations, particularly outlaw motor cycle gangs.

Outcome of recent external reviews

In October 2012, the Attorney-General announced the appointment of an Independent Advisory Panel (the Callinan and Aroney review panel) to review the *Crime and Misconduct Act 2001*. In April 2013, the panel released its conclusions and recommendations.

Also in April 2013, the PCMC tabled its report, (No. 90), *Inquiry into the Crime and Misconduct Commission's release and destruction of Fitzgerald Inquiry documents*. The report contained recommendations aimed at improving the management of confidential historical information and also addressed broader organisational issues within the CMC.

In July 2013, the government released its response to matters raised in the Independent Advisory Panel's review and the PCMC Inquiry. An Implementation Panel was asked to oversee the actioning of recommendations the organisational and administrative review of the CMC, which included an organisational review undertaken by the Public Service Commission (with expert external assistance as required). A report on the organisational review was submitted to the chair of the Implementation Panel in November 2013.

In May 2014 the Queensland Parliament passed the *Crime and Misconduct and Other Legislation Amendment Act 2014* to restructure and refocus the agency.

As an outcome of the legislative and administrative reviews, significant changes were made to the agency, which took effect from 1 July 2014. These included:

- Changing the agency's governing legislation from the *Crime and Misconduct Act 2001* to the *Crime and Corruption Act 2001*.
- Renaming the agency the Crime and Corruption Commission (CCC).
- Revising the upper governance structure with the Commission to consist of a full-time Chairman, full-time Chief Executive Officer, a part-time Deputy Chairman and two part-time Ordinary Commissioners.
- Establishing Senior Executive Officer positions to replace Assistant Commissioner positions (previously Governor-in-Council appointments), and removing the requirement that the positions be occupied by persons eligible for appointment as a judge.
- A provision for Sessional Commissioners to be appointed to assist with operations.
- The removal of a misconduct prevention function.
- A narrower research function with the requirement of prior Ministerial approval of a three-year research plan.
- Establishing a corruption function to receive and assess complaints of corrupt conduct instead of official misconduct. Section 15 of the *Crime and Corruption Act 2001* outlines the new definition of corrupt conduct.

- A higher reporting threshold for public sector agencies who are now only required to notify the CCC when they reasonably suspect that a matter involves or may involve corrupt conduct. This differs from the previous threshold where public officials notified the CMC when they had a mere suspicion of official misconduct.
- A requirement for complaints to the CCC to be made by way of a statutory declaration. The CCC can apply an exemption in exceptional circumstances.
- A requirement for public officials to prepare (and to consult with the Chairman of the CCC on) a policy about how to deal with complaints about themselves.
- A requirement for the CCC to focus its corruption function on more serious cases of serious conduct and cases of systemic corrupt conduct within a unit of public administration.
- The re-instatement of the requirement for the Minister to consult with the Parliamentary Crime and Corruption Committee (PCCC) before nominating a person for a role on the Commission. The PCCC may veto appointments.
- A provision for the Parliamentary Crime and Corruption Commissioner to commence own-motion investigations into the CCC.
- Legislative provision for disciplinary action against CCC officers.
- A broader and lower threshold for notifying the PCCC of improper conduct by CCC officers.

Other changes to structure and appointments

In August 2014, amendments were made to the appointment process for Commissioners, to require bipartisan support of the parliamentary committee for nomination to the position of a Commissioner, other than the Chief Executive Officer. Further, as a result of the amendments, only the Chief Executive Officer's appointment is subject to veto by the parliamentary committee. Amendments to the CC Act in May 2015 introduced an entitlement for the CCC Chairman to a judicial pension similar to pensions paid to judges under the *Judges (Pensions and Long Leave) Act 1957*.

Amendments to respond to Outlaw Motor Cycle Gangs

In September 2013, an incident of violence involving outlaw motor cycle gangs (OMCGs) occurred on the Gold Coast, resulting in a broad law enforcement and government response. Amendments to the CCC's legislation were enacted in October 2013 to increase its powers in the context of OMCG activity. These included:

- Providing for the CCC to hold private hearings to gather intelligence regarding criminal activity by criminal organisations or associated misconduct by public officials (specific intelligence operations hearings under s. 55A are discussed in more detail at p. 33).
- Providing for the CCC to have an immediate response function relating to a criminal organisation engaging in an incident that threatened public safety or an anticipated incident that may threaten public safety through the issue of notices requiring witnesses to attend immediately at a private hearing.
- Removing the ability of criminal organisation participants to claim a reasonable excuse to refuse to be sworn or to answer a question on the basis of a fear of retribution to themselves or others.
- Increasing penalties for contempt at a hearing by refusing to answer a question. For a first offence the witness must be imprisoned for the term decided by the courts. However, for a second offence witnesses must serve a minimum two years and six months' imprisonment and, for a third or subsequent offence, a minimum of five years' imprisonment.
- Under this legislation persons served with a notice to attend a criminal intelligence hearing are not eligible to seek financial assistance from the Attorney-General for legal representation.

In November 2013, further amendments were made to the CM Act to enhance the CMC's ability to effectively deal with criminal organisations. These included:

- Providing that a "participant" in a criminal organisation includes a person who was a participant at any time in the previous two years.
- Clarifying an existing legislative provision that the CMC may continue to investigate the affairs of a person, including by calling the person to a hearing, when that person has been charged with a criminal offence.
- Increasing statutory penalties for non-compliance by witnesses at hearings with requirements to attend, take an oath, produce documents or give answers.
- Maintaining confidentiality of material filed in the Supreme Court in contempt and other hearings-related proceedings.

All amendments undertaken in response to OMCG's are currently the subject of review by the Queensland Organised Crime Commission of inquiry.

Comment on the current legislation

As a result of our changing operations, and our experience over the last year in observing the impacts of the legislative reforms referred above, we have identified some challenges which impact on our corporate governance model and crime, corruption and research functions. These challenges are addressed in the following chapters.

Chapter 2: Corporate governance and independence

The CCC's corporate governance and independence

Overview

In reviewing our corporate governance arrangements, three principles guided our work. These are that the organisation must:

- be independent
- be subject to strong checks and balances given its coercive and wide powers
- ensure it operates to best practice, a responsibility placed on its minister by section 260(1) of the CC Act.

These principles, properly applied, will give the community confidence that the necessary arrangements are in place for the CCC to fulfil its purpose.

While recognising that strong internal governance is vital to the effective independent functioning of our agency, we are also aware that it needs to be subject to robust and effective parliamentary committee oversight. Without a strong functioning committee all other governance is at risk.

Changes to the Commission's structure

Under the CM Act, the Commission formerly comprised five Governor-in-Council appointed Commissioners,¹ all of whom required bipartisan support. The Chairperson, who was both a Commissioner (analogous to the Chairperson of the Board) and the CEO, was responsible for the operation of the CMC. That authority was "subject to ... the commission".²

The PCMC in Report 90 recommended a strengthening of this check on the power of the Chairperson within the existing governance framework by separating out the role of the CEO from that of the Chairperson of the Commission.³ This reflects best-practice corporate governance.

The 2014 amendments to the CC Act introduced changes that separated out the two roles of Chairman and CEO, with both being statutory appointments, and both being Commissioners, with only the appointment of the Chairman requiring bipartisan support.⁴

The Commission

The composition of the Commission

Best-practice standards of governance include having a balance of appropriate skills in the membership of the Commission. Under the CM Act, the four part-time members were intended to be community members. Three were to possess relevant social science or community service backgrounds⁵ and the other a practicing lawyer with a demonstrated interest in civil liberties.⁶

1 One full-time (the Chairperson who was also the CEO) and four part-time from a variety of backgrounds

2 Section 251(2) CM Act

3 See recommendation 19 and also the discussion at pp. 78–80

4 Section 223 a) and c) CC Act

5 Section 225 CM Act

6 Sections 225 and 227(3) CM Act

In the CC Act the Chairman and Deputy Chairman need to be lawyers eligible for appointment⁷ and the two Ordinary Commissioners need to have qualifications, experience or standing appropriate to assist the Commission to perform its functions.⁸

This results in the five-person Commission being comprised of two lawyers, the CEO and two others.

It is submitted that Commissioners derived from a broader background, including those with management expertise, would allow the Commission to operate more effectively in overseeing the performance of the CCC's functions.

Chairman

In the CC Act the Chairman is not subject to the direction of the Commission⁹ which is in direct contrast to the position that applied under the CM Act.

There may be value in this situation being revisited as the status quo could permit the unilateral exercise of powers by the chairman in operational matters without reference to the Commission.¹⁰ It has the potential to result in arbitrary operational and strategic decisions being taken without the appropriate level of independent scrutiny of the other Commissioners (the Board).

CEO

The CEO is a statutory appointment and is not subject to bipartisan approval, although the PCCC does have a power of veto.¹¹ By virtue of the statutory delegations,¹² the CEO is responsible for all administrative and some operational matters. This includes the power to appoint all senior officers including the roles of senior executives of both the Crime and Corruption functions, which previously were statutory appointments.

The CEO's powers are substantial and give rise to two potential issues:

- The CEO is subject to the direction of¹³ and is to report to the Commission.¹⁴ However, because the Commission does not enjoy the usual board power to hire and dismiss a CEO, the check on executive power envisaged by those sections of the CC Act is greatly weakened.
- The CEO is also a Commissioner.¹⁵ When taken with the extensive executive authority of both the chairman and the CEO, it is doubtful that the Commission has the capacity to hold either role to account, even though everything done by the Chairman¹⁶ and the CEO¹⁷ is done in the name of the Commission.

Having a CEO subordinate to the Commission would be consistent with best practice and introduce direct accountability. Given the Commission's broad responsibility for the organisation it would be valuable for the Commission to be involved in all senior officer appointments.

7 Section 224

8 Section 225

9 But if asked by the Chairperson, the Commission may assist the Chairperson. See ss. 251(3) and 252(3).

10 Section 269(1)

11 Section 228(3)

12 Section 269(1)a)

13 Section 253(3)

14 Section 253(4)

15 Section 223 c)

16 Section 252 (4)

17 Section 253 (5)

Acting Commissioners

The amendments now permit the appointment of Acting Commissioners during a vacancy in the Commission. Such direct executive appointments do not require bipartisan support of the PCCC, and can be for lengthy periods – of up to 12 months¹⁸ – before a formal appointment is required.

Recent experience has demonstrated that acting appointments without bipartisan support can result in a perception that the acting appointments lack independence. To avoid this, it might be helpful if acting appointments of Commissioners be limited to three months – which should provide sufficient time to obtain bipartisanship support for an appointee.

Proposed areas for further examination

Having in place the correct governance arrangements at the top of the organisation is an important first step. It is intended to give consideration to the following matters in a supplementary submission to the Committee:

1. The Commission (sections 224 and 264)

Whether the Chairman should be subject to the direction of the Commission [s. 252(3)]

2. The membership of the Commission (sections 224 and 264)

The merits of the CEO not being a Commissioner [s. 223 (c) refers]

The value in having three Ordinary Commissioners in a Commission of five members [s. 223 d refers]

3. The skills of Commissioners (sections 224 and 264)

The value in, when appointing an Ordinary Commissioner, the Minister consulting with the Chairman to identify:

- a) the existing skill sets and experience of the part time Commissioners and
- b) the skills the Commission needs to meet its current and forthcoming obligations [amendment to s. 225 would be required.]

4. The CEO

Whether, to ensure that sufficient checks and balances on the power of the CEO are in place, that the position not be a statutory appointment. [Section 228 (3) and (4) refer]

5. The appointment of CEO and senior officers

Whether the CEO and senior officers should be appointed by, and answerable to, the Commission. [Sections 269, 245 and s. 260 (1) refer].

6. Appointment of Acting Chairman

Whether the acting appointment of any person as the Chairman for more than three months should receive bipartisan approval.

7. Acting Ordinary Commissioners

Whether it is necessary for there to be Acting Ordinary Commissioners. [Section 237 refers]

¹⁸ Section 237 CC Act and s. 24B(5) *Acts Interpretation Act 1954*

These are important matters that would benefit from consideration when the substantive appointments to the positions of Chairman, CEO and Commissioners are made. The Commission requests an opportunity to make a supplementary submission on the following governance matters by 30 October 2015, prior to the commencement of the Committee's public hearing:

- the appropriate composition and skills of Commissioners
- the nature of the appointment of the CEO, including whether the CEO should be a Commissioner
- the need for the Chairman and the CEO to be subject to the direction of the Commission
- the appropriate level of Commission engagement in the appointment of senior officers
- the process for the appointment of an Acting Chairman
- the need for Acting Ordinary Commissioners.

Research function

The 2014 amendments changed our research function in a substantial way. Prior to the amendments, the agency had the functions of undertaking research:

- to support the proper performance of its functions
- into the incidents and prevention of criminal activity
- into any other matter relating to the administration of criminal justice or misconduct referred to the Commission by the Minister
- into any other matter relevant to any of its functions (s. 52(1)(a)-(d)).

The CMC was given an explicit ability to undertake research into:

- police service methods of operations
- police powers and the use of police powers
- law enforcement by police
- the continuous improvement of the police service (s. 52(2)(a)-(d)).

Police research

The July 2014 amendments removed explicit reference to the ability to undertake research into police. The research function is expressed to be a function to undertake the following research "in accordance with a research plan approved by the Minister".

Now, the following research may be undertaken, with approval:

- research to support the proper performance of the Commission's functions
- research required to be undertaken by the Commission under another Act
- research into any other matter referred to the Commission by the Minister.

We are presently unable to conduct research into police, unless there is a link with corruption. This prevents us from conducting research and review activities that form the basis of evidence-based legislative and policy development in relation to police powers. Important policing reforms that have been driven by the CCC, such as use of force (e.g. Taser and police pursuit reforms) and policing vulnerable groups (e.g. policing in Indigenous communities, move on powers, public order policing) would not be possible under the current legislation.

There is no clearly identifiable link to corruption at the outset of these projects. However, targeted research and evaluation has the potential to identify systemic misuse of police power or poor policing

practice and, in so doing, assist to reduce potential harm to the community. Tabling CCC reports in parliament also holds the QPS accountable for the implementation of accepted recommendations. It should also be noted that the QPS has significantly reduced its research capability.

Independence of our research function

The CCC is now required, as soon as practicable at the end of each financial year, to submit to the Minister a research plan for approval (ss. 52(1), 52(2)). The Minister may approve research into an emergent issue as it arises, as long as the issue is relevant to one of the organisation's functions (s. 52(4)). Before approving a research plan or an amendment the Minister must consult with the parliamentary committee (s. 52(5) refers).

The requirement for the CCC's research program to be approved by the Minister undermines the independence of the CCC and its research. While requiring that the Minister consults with the parliamentary committee was envisaged to prevent a partisan position being taken on the CCC's agenda, arguably, the CCC's research should be determined by it alone.

Issues around the preparation of the research plan

In preparing a research plan for approval, the CCC must identify priorities for the research it proposes to undertake (s. 52(3)), having regard to its strategic and business plans and in consultation with units of public administration. Before approving a research plan or an amendment to it the Minister must consult with the parliamentary committee (s. 52(5)).

In accordance with this requirement, the CCC's 2014–2016 Research Plan was submitted to the former Minister on 19 November 2014 but it was not approved before the State election was called. Given emerging priorities and the passage of time since the plan was first drafted, a revised plan was submitted to the incoming Minister on 20 April 2015. It occurred that, as the CCC did not have a research plan approved in the 2014–15 financial year, there was, in that year, no substantive progress on research projects outlined in either of the two submitted plans.

A further updated Research Plan (2015–2016 to 2017–18) was submitted to the Minister's office on 3 July 2015 but at the time this submission was lodged it had not been approved.

Compliance with the legislative requirement for ministerial approval has resulted in significant delays in attempts to institute a research program. The demonstrated delay means the CCC cannot be as responsive as it needs to be to support the functions of the Commission. Removing the requirement for the Minister to approve the plan should eliminate these delays. The CCC will continue to prepare rolling three-year plans. It is suggested, however, that their approval and amendment should rest with the CCC Chairman, seeking advice from the CCC Research Committee.

Recommendation 1: CCC's Research function – amendments to s. 52 of the CC Act

It is recommended that the government amend section 52 of the CC Act 2001 with so as to:

- broaden the scope of the research function to give the CCC the explicit responsibility and ability to undertake research into police
- reinstate the independence of the CCC research function
- eliminate unnecessary delays.

Chapter 3: Functions, powers, performance and challenges

Major crime

Our functions and powers

One of our primary functions is to combat and reduce the incidence of major crime. Major crime, as described in Schedule 2 of the CC Act, is defined as:

- (a) criminal activity that involves an indictable offence punishable on conviction by a term of imprisonment not less than 14 years; or
- (b) criminal paedophilia; or
- (c) organised crime; or
- (d) terrorism; or
- (e) something that is—
 - (i) preparatory to the Commission of criminal paedophilia, organised crime or terrorism; or
 - (ii) undertaken to avoid detection of, or prosecution for, criminal paedophilia, organised crime or terrorism.

The CCC also has a prevention function of helping to prevent major crime (section 23).

The CC Act gives the CCC investigative powers, primarily coercive hearings powers, that are not available to the QPS. The scope of our activities is limited to referred major crime.¹⁹ As the agency is not funded or resourced as a police service, our effectiveness depends on its partnerships with the QPS and other law enforcement agencies, its specialist multidisciplinary approach to investigations, and the focused use of its special powers.

Referral process

How crime matters are referred to us

A statutory committee, as the Crime Reference Committee (CRC), considers all referrals of work to us and provides independent oversight of our use of powers and crime operations.

The referral process involves specific referrals of particular incidents of major crime and a system of general referrals that enables us to investigate general areas of major crime. The referral system allows us to both investigate matters identified through our own intelligence target development, or support major crime investigations undertaken by other law enforcement agencies, particularly the QPS.

Section 30A of the CC Act requires the CRC to review each general referral within five years of it being made or last confirmed. The CRC has reviewed and or reconsidered all of the CCC's general referrals in 2015. As a consequence of this review the CRC has reduced the number of general referrals from eight to five²⁰. The CRC has made the following general referrals to the CCC.

- Terrorism
- Organised crime

¹⁹ Major crime refers to criminal activity involving an indictable offence punishable by a term of imprisonment of not less than 14 years, or criminal paedophilia, organised crime or terrorism and referred major crime means major crime referred by the Crime Reference Committee to the CCC for investigation.

²⁰ The CCC's previous general referral scheme was made up of 8 general referrals covering; terrorism, organised crime, weapons, OMCG's, vulnerable victims, money laundering and two criminal paedophilia referrals.

- Organised crime (facilitators)
- Criminal paedophilia
- Serious crime (vulnerable victims)

It is proposed that the CRC consider a new general referral into serious crime (serial and significant sexual offending) at its next meeting.

Key areas of activity

Our major crime function covers the following areas of activity:

- Organised crime
- Serious crime
- Paedophilia
- Terrorism
- Proceeds of crime
- Intelligence
- Operations support
- Research
- Major crime prevention

Organised crime

In combating organised crime, we focus on investigations calculated to dismantle or disrupt the activities of criminal identities and networks engaged in the criminal markets of greatest harm to Queenslanders.

Our strategies include the use of multi-disciplinary teams comprising police officers, financial investigators, legal officers, intelligence analysts and administrative staff. Investigations are also supported by our staff with specialist capability in relation to coercive hearings, physical surveillance, covert surveillance, witness protection, computer forensic analysis, strategic intelligence and the confiscation of proceeds of crime.

Most of our organised crime investigations are conducted in partnership with other State and Commonwealth law enforcement agencies, and, on occasion, with international agencies.

Our objective is to dismantle or disrupt organised-crime networks and prevent crime, using traditional investigative and proceeds of crime approaches or lateral disruption strategies where appropriate.

Serious crime

A substantial portion of our work is conducted in support of investigations referred from partner agencies. Predominantly this work arises from requests from the QPS.

We receive requests for assistance through the use of our coercive hearings powers, and in particular our coercive hearings power. The investigations can relate to any category of major crime, but are most often employed for serious crime such as murder, drug trafficking and weapons offences. These externally requested investigations necessarily entail the engagement of our legal and administrative staff, with some intelligence support, but do not typically involve other disciplines.

Intelligence hearings

Following legislative changes that were enacted in October 2013, we also conduct intelligence hearings. Since the introduction of the power, we have undertaken extensive intelligence hearings to build a comprehensive picture of OMCG activity in Queensland.

The intelligence hearings power is currently limited to “criminal organisations” as defined in the CC Act (s. 55A–C CC Act). The CCC recommends that the government give consideration to broadening the definition of criminal organisations to allow the gathering of a more comprehensive understanding of organised crime in Queensland beyond OMCGs.

Paedophilia

Criminal paedophilia is a diverse and target-rich environment. Our Cerberus unit comprises experienced police investigators, forensic computing experts and an intelligence analyst. The unit targets high-level child exploitation material offences such as those that involve sophisticated encryption or methodology and child exploitation matters where children are at risk of contact offending. The unit works closely with QPS’s Task Force Argos and its regional Child Protection Investigation Units, the Offices of the Commonwealth and Queensland Office of the Director of Public Prosecutions (ODPP), and interstate and international law enforcement agencies. It disseminates information uncovered by our investigations to other jurisdictions worldwide to identify child victims as well as identify offenders in advance of any contact offending with children.

To protect children from harm by paedophiles, our efforts are directed to:

- proactively examining various platforms and software
- prioritising investigations and taking action in cases that involve a risk of contact offending
- using covert investigative strategies where appropriate to build strong briefs of evidence
- using its coercive hearings powers either to progress its own investigations or to support QPS investigations.

We focus wherever possible on offenders based in Queensland who are engaging in aggravated networking offences (a Commonwealth offence). This offence attracts a higher penalty (25 years’ imprisonment under Commonwealth legislation introduced in 2010) and is significantly more resource-intensive, requiring a substantial degree of forensic analysis from the beginning of the investigation.

Terrorism

Our role in terrorism investigation is one of rapid response capability, primarily in the form of hearings support.

It remains the case that any CCC investigation of terrorism, acts preparatory to the commission of terrorism or acts undertaken to avoid detection of or prosecution for terrorism, occur on receipt of a request from the QPS.

Proceeds of crime

Our proceeds of crime activity enables the recovery of illegal gains and other property from criminals for the benefit of the people of Queensland.

The CC Act provides that the CCC has a confiscation function that facilitates our investigation of confiscation-related activity for the enforcement of the *Criminal Proceeds Confiscation Act 2002* (CPCA).

Under the CPCA the CCC has responsibility for the non-conviction based scheme (Chapter 2) and the Serious Drug Offender Confiscation Order scheme (Chapter 2A), which is a conviction-based scheme.

The ODPP is responsible for the conviction-based scheme contained in Chapter 3. The ODPP also acts as solicitor on the record for all matters brought by the CCC on behalf of the State under Chapters 2 and 2A.

We work in partnership with the QPS and the ODPP in identifying and litigating proceeds of crime matters. We also deal extensively with the Public Trustee of Queensland, which is responsible for managing restrained property.

Amendments to the CPCA (effective from 6 September 2013) to incorporate the unexplained wealth and the serious drug offender confiscation order (SDOCO) provisions coupled with the QPS's increased focus on OMCGs, have resulted in an increase in referrals for confiscation assistance (predominantly from the QPS) each year. For example, we received 66 referrals in 2012–13 compared with 122 referrals in 2014–15.

The proceeds of crime team was granted three-year funding from January 2014 to December 2016 for an additional team to implement the new provisions in the CPCA and to manage the increased focus on criminal motorcycle gangs. Other internal redeployments also occurred for this purpose.

The SDOCO provisions are based upon a respondent being convicted of a serious drug offence. Matters commenced under this scheme can be in process for a number of years as the confiscation proceedings are unable to proceed to trial until a respondent has been convicted. Unexplained wealth investigations by their nature are resource intensive and slow. As such it is important that the staffing levels in the team are maintained to ensure current matters are staffed to sufficiently litigate to finality.

Our POC area is staffed by financial investigators and support staff. Proceeds of crime recovery is a discrete and highly specialised area of law enforcement requiring financial investigators to not only have a high-skill level in accounting and financial investigations but to also have a sound knowledge of investigative methodology, legislation and the body of case law on the subject.

The CCC seeks the Committee's support for continued resourcing of the additional team to manage the increased work associated with the new provisions under the CPCA.

Recommendation 2: *Continued resourcing for the additional Proceeds of Crime Team*

That the Committee support the continued resourcing of the additional team to manage the increased work associated with the new provisions under the CPCA.

Intelligence

Our intelligence capability informs our understanding of organised crime markets and trends. This work includes strategic assessment and reporting, target development, intelligence-related operational support, and human source management.

We use a wide variety of sources to identify and assess potential strategic opportunities to ensure our organised crime resources are focused in the most appropriate areas. Our extensive liaison with government agencies and LEAs also enables frequent exchange of information for law enforcement purposes.

Operations support

Operations support incorporates three specialist areas of physical surveillance, technical surveillance and forensic computing. All three areas support our operations and investigations.

Research

The CC Act requires the CCC to provide the Minister with a research plan comprising the research it proposes to undertake in the current financial year and the following two financial years. The first of these research plans was submitted to the Minister in 2014 and proposed the CCC undertake research projects in priority areas of crime and corruption. As at 30 June 2015, Ministerial approval for the plan had not been received.

Major crime prevention

We work to prevent major crime in five ways. We use our:

1. **proceeds of crime capability** to attack the profit motive behind major crime, particularly those involved in Queensland's illicit drug markets. Proceeds of crime seized also prevents those funds being reinvested in crime.
2. **strategic intelligence capability** to identify, understand and monitor Queensland's high-threat organised crime networks, illicit drug markets and, to a lesser extent, major crime activities. Strategic intelligence also identifies new and emerging issues in illicit commodity markets that may require public alerts.
3. access to **coercive hearing capabilities** to achieve investigative/intelligence outcomes and major crime prevention outcomes wherever possible.
4. **research capability** to better understand key areas of major crime and assess the effectiveness of policy responses to major crime.
5. **investigative capability** as a deterrent and in so far as our investigations relate to criminal paedophilia to protect Queensland children who are at risk.

Performance

Organised crime

Our performance in organised crime is summarised in Table 3.1 below. It shows that as a result of our organised crime operations, 201 persons were charged with 1877 offences. Drugs were seized to an estimated street value of \$12.789 million and assets were restrained; these are reported on separately. Investigative hearings in support of our organised crime operations were conducted over 55 days with 51 witnesses being called to give evidence in relation to six organised crime investigations.

Table 3.1: Results of organised crime internal investigations, 2012–13 to 2014–15

Description	2012–13	2013–14	2014–15	Total
Number of arrests*	56	79	66	201
Charges laid	968	403	506	1877
Drugs seized – estimated street value (\$ million)**	\$4.559m	\$3.768m	\$4.462m	\$12.789m
Hearing days	19	12	24	55
Witnesses attending on summons	17	10	24	51

*A small number of people have been charged with multiple offences.

**This includes the estimated street value of drugs produced from precursors.

Criminal paedophilia

Over the reporting period we commenced five operations and completed six operations in the area of criminal paedophilia.

Our performance in criminal paedophilia is summarised in Table 3.2 below, which reveals that our criminal paedophilia operations resulted in 33 persons being charged with 1013 offences, including Criminal Code offences of rape, sodomy, indecent dealing with a child, production, distribution and manufacture of child exploitation material and Commonwealth offences relating to aggravated networking and accessing child exploitation material. Investigative hearings were conducted over five days with three witnesses being called to give evidence in relation to three criminal paedophilia investigations.

Table 3.2: Results of criminal paedophilia investigations, 2012–13 to 2014–15.

Description	2012–13	2013–14	2014–15	Total
Persons charged	11	12	11	34
Charges laid*	721	148	151	1020
Investigative hearing days	2	2	1	5
Witnesses attending on summons	1	1	1	3

*In the 2012–13 financial year, two offenders were charged with Commonwealth offences of aggravated networking on multiple platforms resulting in a high number of individual charges.

Crime and intelligence hearings

In the past three years the CCC conducted investigative hearings over 811 days throughout Queensland. The CCC called 809 witnesses to give evidence in relation to 93 serious crime investigations including murders, drug trafficking, arson, kidnapping, torture, extortion, rape, and money laundering. There were 617 witnesses called to hearings in support of QPS organised crime investigations and 156 witnesses called to intelligence function hearings pursuant to seven specific intelligence operations.

Table 3.3 documents our performance in relation to hearings days and witnesses attending hearings.

Table 3.3: Hearing days and witnesses attending, 2012–2013 to 2014–15

Description	2012–13	2013–14	2014–15	Totals
Hearing days	180	334*	297	811
Witnesses attending on summons	164	352	293	809

*2013–14 increases relate to the introduction of intelligence hearings.

Proceeds of crime

Our achievements over the previous three years are detailed in Table 3.4.

Table 3.4: Civil confiscations: restraints and settlements, 2012–13 to 2014–15.

Year	Restraining orders		Forfeitures	
	Number	Value (\$ million)	Number	Value (\$ million)
2012–13	48	\$17.091m	28	\$16.983m*
2013–14	65	\$13.799m	30	\$7.654m
2014–15 (16/6)	63	\$18.316m	36	\$8.375m
Totals	173	\$49.206m	94	\$33.012m

*In 2012–13 the Barlow matter was finalised which resulted in property valued at \$11.88 million being forfeited to the State. This is an extraordinary proceeds of crime matter.

As at 30 June 2015, the Proceeds of Crime team was managing 133 matters to a value of \$52.203 million through the courts. Forty-two matters involving property valued at about \$10.213 million are under investigation preparatory to restraint.

Performance against targets is depicted in Figures 3.1 and 3.2.

Figure 3.1: Value of restraints

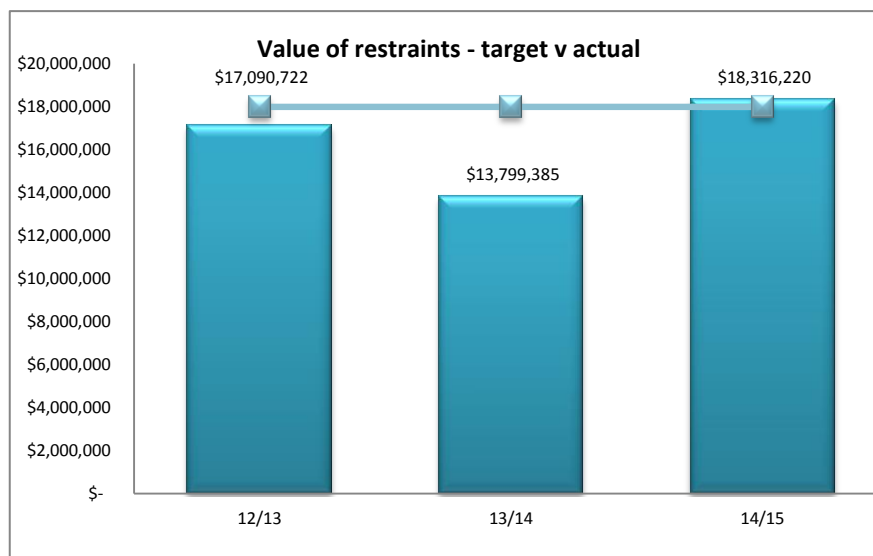
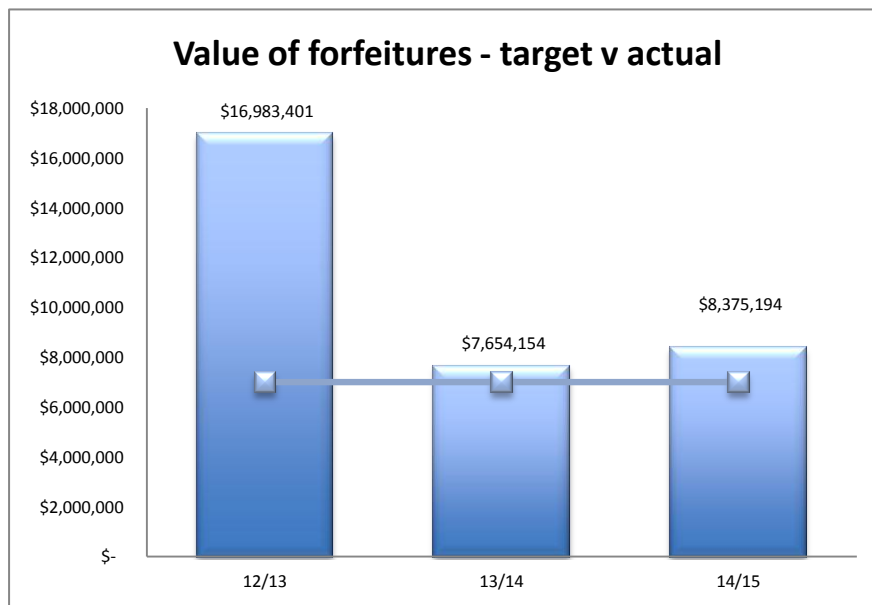


Figure 3.2: Value of forfeitures

Since the Criminal Proceeds Confiscation Act came into operation in 2003, we have:

- restrained \$195.049m in assets
- forfeited \$71.548m in assets.

Since the commencement of the unexplained wealth order provisions and the serious drug offender confiscation scheme on 6 September 2013:

- six unexplained wealth order applications have been filed
- three unexplained wealth orders have been granted totalling \$354,448
- 20 restraining orders totalling \$4.548 million have been granted under the serious drug offender confiscation order scheme
- one serious drug offender confiscation order was granted over property valued at \$139,673.

Strategic intelligence

Since the last review the CMC/CCC finalised a number of major intelligence projects.

In 2012 we completed the fourth Organised Crime Markets Assessment. Several major strategic intelligence reports were produced from the findings of this assessment and these reports were tailored for law enforcement, government and the public:

- Crime Markets Assessment, “Organised Property Crime in Queensland” (produced for law enforcement, government advice and the public, November 2012)
- Joint CMC/ACC intelligence assessment, “Fentanyl Assessment” (produced for law enforcement, November 2012, government advice, January 2013)
- Crime Markets Assessment, “Illicit drug markets in Queensland” (produced for law enforcement, December 2012)
- Drug profiles, “Illicit drug markets in Queensland” (produced for the public, December 2012).

Also as a result of the Organised Crime Market Assessment the CMC identified several intelligence gaps and developed a set of intelligence collection priorities for organised crime trends. A series of strategic intelligence reports based on these intelligence priorities were completed and disseminated only to law enforcement agencies:

- Current and emerging issues report, “Technology trends affecting organised crime” (April 2013)
- Drug and Commodities Prices Guide (May 2013)
- Current and emerging issues report, “Trends in the Queensland precursor market” (July 2013)
- Current and emerging issues report, “Use of wastewater analysis for drug use monitoring: its potential value to law enforcement” (March 2014)
- Current and emerging issues report, “Changes in an identified organised crime group in Queensland: assessment” (June 2014)
- Current and emerging issues report, “New and emerging psychoactive substances market in Queensland” (August 2014)
- Drug and Commodities Guide (November 2014).

In addition, in January 2015 a public report, “New synthetic drugs - deceptive and dangerous Queensland”, was released to inform about harms associated with this illicit drug market).

One of the key findings from the 2012 Organised Crime Market Assessment was an increase in outlaw motorcycle gang (OMCG) involvement in illicit drug markets in Queensland and a general concern from law enforcement about the criminal behaviour of OMCGs. A series of strategic intelligence reports focusing on these issues has since been completed and disseminated to law enforcement and government.

They include:

- Current and emerging issues report, “Changes in OMCG culture in Queensland and the implication for law enforcement” (produced for law enforcement, September 2013)
- Current and emerging issues report, “Changes in CMG culture in Queensland and the implications for law enforcement” (produced for government advice, October 2013)
- Intelligence bulletin, “CMG Intelligence gathering hearings” (produced for government advice, February 2014)
- Current and emerging issues report, “CMG infiltration into the Queensland tattoo industry” (produced for law enforcement, March 2014 and government advice, April 2014)
- Current and emerging issues report, “CMG infiltration into the Queensland tattoo industry”, CCC Intelligence bulletin, “OMCG Feeder Groups” (produced for law enforcement, July 2014)
- Current and emerging issues report, “Use of violence and extortion by CMGs” (produced for law enforcement, February 2015)
- Current and emerging issues report, “OMCGs and the PIEDs market in Queensland – issues for law enforcement” (produced for law enforcement, June 2015).

Crime research

Our significant crime research since the last review focused on:

- sex offenders (*Review of the Child Protection (Offender Prohibition Order) Act 2008*)
- internet-enabled crime (darknets and virtual currencies)
- investigations involving vulnerable victims.

Sex offenders: *Review of the Child Protection (Offender Prohibition Order) Act 2008*

In December 2014, we published a report on our review of the *Child Protection (Offender Prohibition Order) Act 2008*. The report made 17 recommendations aimed at improving the way offender prohibition orders are used to protect children from people who have been convicted of sexual or other serious crimes against children and are living in the community.

The recommendations detailed in the final report are being considered by the Queensland Police Service, in consultation with Queensland Corrective Services and the Public Safety Business Agency. A formal response to the recommendations will be tabled in parliament.

Internet-enabled crime: darknets and virtual currencies

In 2012, we conducted research into the “new generation” of Internet technologies that enable serious criminal activity. The project aimed to raise awareness of the growing threat posed by serious crimes enabled by and embedded in highly sophisticated Internet technologies and to inform the development of new and innovative law enforcement, prevention and investigation methods.

At the time, the law enforcement-only paper, entitled “Hidden in Plain Sight: darknets and virtual currencies – the challenge for law enforcement”, was one of the first of its kind, and was disseminated in Australia and internationally. In addition, numerous briefings on the topic were delivered to key government and law enforcement agencies, including the Australian Crime Commission (ACC), Australian Federal Police (AFP) and the US Federal Bureau of Investigation (FBI).

The former Queensland Premier noted the CMC paper at the July 2012 meeting of the Council of Australian Governments (COAG). At the request of the Queensland Premier, the Queensland Minister for Police and Community Safety tabled the paper at the Standing Council for Police and Emergency Management (SCPEM) Ministers’ meeting on 23 November 2012. SCPEM endorsed the CMC’s proposal that SCPEM refer the paper to the National Cybercrime Working Group. It is requested that the group develop proposals for coordinated policy and law enforcement responses to the darknets threat, and report back to both SCPEM and the Council of Attorneys-General.

Research to support the investigation of cases involving vulnerable victims

In support of the major crime general referral made in 2013, targeting the victimisation of vulnerable people, research was conducted to support this new capability. Two research and issues papers have been produced: one on homicide of older people and one on infanticide.

Discussion on legislation and challenges

There are a number of potential changes that would enable us to better fulfil our responsibilities within the Crime function. We seek the Committee’s support for these, which are as follows.

Reconsideration of the ongoing need for both specific and general referrals

As discussed on page 28, the CRC is responsible for referring particular incidents of major crime (referred to as “specific referrals”) and major crime identified by reference to the type of criminal activity or the persons suspected of being involved in it (referred to as “general referrals”). Particular incidents of major crime that fall within the ambit of one of the general referrals may be commenced as particular investigations under that general referral. Once a general referral is in existence, particular investigations under such a referral may be approved more quickly. The matter is assessed by a separate committee (the Crime and Intelligence Research and Review Committee), which makes

a recommendation to the Senior Executive Officer (Crime), who then decides whether to authorise a particular investigation under that general referral, based on that recommendation. The process for approval of a particular investigation under a general referral allows for a more timely response to requests for investigation. A particular crime investigation commenced under a general referral nevertheless remains subject to significant oversight (see s. 29 CC Act) as the CRC can direct the investigation be limited or ended in certain circumstances, including when the investigation is not in the public interest.

It is timely, therefore, to review the CCC's current referral process by reference to similar functions in other jurisdictions. For example, the ACC has a slightly more refined system for the criminal activity it investigates. The ACC operates within a series of "Determinations", which reflect the work priorities for the ACC as determined by the ACC board. The current Determinations reflect a broad range of criminal conduct, and are comparable to the CCC's general referrals. The ACC has no specific referrals.

In addition to the above changes to rely on general referrals alone, the CCC recommends that consideration be given to providing for the Chairman of the CCC to be the Chair of the CRC, but with the ability to delegate Chairmanship of the CRC to the Senior Executive Officer, Crime as and when required – similar to the procedure which operates in other statutory bodies such as the Prostitution Licensing Authority.

The CRC and its referrals are important matters that would benefit from consideration when the substantive appointments to the positions of Commission Chairman, CEO and Commissioner are made. The Commission requests, an opportunity to make a supplementary submission on these matters by 30 October 2015, prior to the commencement of the Committee's public hearings.

Change definition of criminal organisation

As discussed on pages 19 and 30, in response to the OMCG issue the CCC was given the power to conduct specific intelligence operations including holding hearings (s. 55A-C). The authorised intelligence operations must be tied to a particular "criminal organisation". However, the current definition is limited and cannot be applied with ease to any criminal organisation other than OMCGs.

Under the CC Act, there are three ways to identify a criminal organisation (s. 12, Schedule 2). Firstly, an organisation may be declared a criminal organisation (at this stage, only "outlaw" motorcycle clubs) under a regulation. Secondly, an organisation may be declared a criminal organisation under the *Criminal Organisations Act 2009* (of which there are none currently) and, finally, a criminal organisation may otherwise meet the criteria in paragraph (a) of the Schedule 2 definition. This defines a criminal organisation as "an organisation of three or more persons who have as one or more of their purposes engaging in certain kinds of specified criminal activity and who, by their association, represent a serious risk to the safety and welfare of the public".

It is this third category of criminal organisation that poses problems:

- The evolution of organised crime into dynamic groups with flat hierarchies, makes identification of an "organisation" rather than a "network" problematical.
- Tying the intelligence function to criminal organisations so defined means that intelligence operations cannot be authorised in respect of "themes" or topics of intelligence value to the CCC or law enforcement more generally.

Intelligence is of most value when it can be gathered as issues emerge. In particular, coercive intelligence hearings can be of great benefit if employed for the timely examination of "themes" or "trends" rather than the activities of particular individuals. In such circumstances, the need to articulate an identified criminal organisation can impede the gathering of the best intelligence.

The CCC submits that intelligence collection capability should be broad enough to allow intelligence to be collected on:

- A specified network/type of organised crime (e.g. OMCGs)
- A commodity-based approach to intelligence collection (e.g. a priority drug market)
- An offence-based approach (e.g. intelligence collection into a high-risk type of fraud activity)
- An industry-based approach (e.g. organised crime infiltration of the transport sector).

Constrained by the requirement for an identified “criminal organisation”, intelligence hearings cannot be held to explore these emerging threats.

The CCC is of the view that a preferable approach would be the ability to identify and examine organised crime threats, markets and issues as they emerge. As mentioned previously, the ACC’s standing Determinations are an example of a mechanism which would permit an “area” or “theme” of organised criminal activity to be examined in a timely way. Importantly, this reform would more effectively allow the CCC to fill current intelligence gaps in criminal organisations active in Queensland, other than OMCGs.

Recommendation 3: *Change the definition of criminal organisation*

That a review of the definition of criminal organisation be undertaken to ensure the CCC is not unduly constrained in the exercise of its intelligence functions and can respond more effectively to address Queensland law enforcement’s intelligence priorities in respect of organised crime.

Review categories of CEM files

Currently all child exploitation material (CEM) obtained by investigators within our Criminal Paedophilia Unit (Cerberus) are categorised on the Australian National Victim Image Library (ANVIL) scale, consisting of nine categories (five CEM categories and four related categories). Although there is no legislative requirement, in Queensland it is accepted practice that CEM material will be categorised according to the ANVIL scale to assist the courts in determining sentences based on the severity of the images and the extent of the offending.

The process of categorisation is very lengthy and is estimated to take about 90% of the total time of an investigation. It also has the potential to cause psychological injury to the investigating or forensic officer. Once an exhibit has been seized, a forensic image of the original material is produced and then uploaded to forensic software to be categorised. These files are then run through a database in an attempt to exclude common files that are known to our system. Then, every single file on the computer is examined to determine if it is a child exploitation material image, movie or text file (story). At the conclusion of this process, the evidence is then exported into tables to be produced to a court.

The amount of time required to categorise evidence means there is little time to spend on victim identification from new or unknown images that are found on the files. Victim identification work has the potential to rescue a child or victim from harm or abuse. If categorisation did not exist or was minimised then a significant amount of time could be saved and dedicated to either victim identification or at the very least give police the opportunity to target and arrest more offenders by moving more quickly through the investigation and court preparation process. Further, there is some question as to whether the benefit to the trial or sentencing process outweighs the use of resources, particularly in the case of very large CEM collections. The issue has been the subject of review and change in other jurisdictions.

It is noted that in the UK, since April 2014, indecent photographs of children have been reduced to three categories – Category A covers penetrative sexual activity and sexual activity with an animal or sadism, Category B covers non-penetrative sexual activity, and Category C covers other indecent images not falling within categories A or B.

An alternative approach recently introduced by the legislature in New South Wales allows for a report to be produced for the court based on random sampling of CEM. Section 289B of the *Criminal Procedure Act 1986* (NSW) allows a court to find the proportion of the type of CEM found in the random sample is present in the same proportion in the material from which the random sample was taken.

It is submitted that alternative strategies to ANVIL categorisation should be considered to reduce the workload and the risks to psychological health associated with image categorisation and to allow more appropriate prioritisation of policing work. The CCC and other stakeholders are currently contributing to the review of CEM categorisation as part of the Commission of Inquiry into Organised Crime. The CCC seeks the PCCC's support to continue this discussion to find a solution.

Recommendation 4: *Introduce a streamlined system for the classification of CEM*

That alternative strategies to ANVIL categorisation should be considered to reduce the workload and the risks to psychological health associated with image categorisation and to allow more appropriate prioritisation of policing work.

Money laundering – remove need for Attorney-General's consent to commence proceedings

Section 250 of the CPCA contains the money laundering offences. Pursuant to section 251(2), the Attorney-General's written consent must be obtained before a proceeding is started by complaint under the *Justices Act 1886*. Section 251(3) states if a proceeding is not started by complaint under the *Justices Act 1886*, the Attorney-General's written consent must be obtained before the proceedings progress to a hearing and decision. The need for the Attorney-General's consent is unique to Queensland.

In practice, the investigation of predicate offences, such as drug offences, are pursued rather than the money laundering offences. However, by investigating and ultimately prosecuting the predicate offences the money laundering activity is disrupted. Money laundering investigations tend to be complex and resource-intensive, also lending weight to the alternative avenue of investigating and prosecuting predicate offences rather than money laundering.

The effect of the money laundering offence provisions under the CPCA is that, in practice, a full criminal brief in support of the money laundering offences is prepared and provided to the Attorney-General to enable consent to be obtained. This involves a considerable amount of work and resources with no guarantee that consent will be granted. There does not seem to be any demonstrated rationale for this requirement.

The Financial Action Taskforce (FATF) released its Mutual Evaluation Report on Australia's Anti-Money Laundering and Counter-Terrorist Financing Measures on 21 April 2015, (www.fatfafi.org/topics/mutualevaluations). The evaluation assesses Australia's money laundering investigation and prosecution effectiveness as moderate and notes (at both the Commonwealth and State/Territory level) that: "the focus remains on predicate offences, recovery of the proceeds of crime and disruption of criminal activity rather than the pursuit of convictions for money laundering offences or disruption of money laundering networks".

The CCC seeks the removal of the requirement for the Attorney-General's consent before money laundering proceedings commence. It is anticipated that this would make progressing money laundering offences easier and may assist to address FATF's concerns.

The CCC previously sought this change in its submission to the 2011 PCMC review. In response, the Committee recommended that the government consider removing the requirement in the *Criminal Proceeds Confiscation Act 2001* that the Attorney-General be briefed before proceedings in relation to money laundering can be commenced.

Recommendation 5: Money Laundering – remove the need for the Attorney-General's consent to commence proceedings

That the requirement for the Attorney-General's consent before money laundering proceedings commence be removed.

Single confiscation agency

The following criminal confiscation schemes exist in Queensland:

- the civil confiscation scheme contained within Chapter 2 of the CPCA, administered by the CCC
- the serious drug offender confiscation scheme within Chapter 2A of the CPCA, a conviction-based scheme administered by the CCC
- the conviction-based confiscation scheme contained within Chapter 3 of the CPCA, administered by the ODPP
- the scheme enabling the confiscation of superannuation benefits from public servants convicted of corruption offences contained within the *Public Officers Superannuation Benefits Recovery Act 1988*, administered by the Minister (through Crown Law).

The Callinan and Aroney Review of 2013 contemplated the administration of the non-conviction and conviction-based confiscation schemes in Queensland being administered by the CCC. This model is encapsulated in recommendation 7 of their report (page 216). To date, this recommendation has not been implemented and was to be considered in the next review of the CPCA, which is yet to commence.

There is some merit in this proposal, including:

- the CCC is the only agency with the investigative powers (contained within the *Crime and Corruption Act 2001* and the CPCA, as well as ordinary police powers) to achieve optimal results under all proceeds of crime recovery schemes
- efficiencies would be gained with the solicitor on the record being in-house at the CCC
- the Queensland confiscation regime is the only one in Australia where the agency responsible for the administration of the scheme(s) and the solicitor on the record are in different agencies.

The statutory scheme regulating conduct of litigation for the state is a policy matter for government.

The CCC supports the adoption of recommendation 7 of the Callinan and Aroney review, provided it is supported by a budget re-allocation to fund this additional activity.

Recommendation 6: Proceeds of Crime function

It is recommended that the Committee support the Callinan and Aroney recommendation 7: *The powers of the Director of Public Prosecution under the Criminal Proceeds Confiscation Act for the criminal proceeds confiscation regime ought, vest in the CMC (CCC), subject to resources being made available to the CCC to provide for its implementation.*

Develop uniform powers and hearing provisions in Chapters 3 and 4 and eliminate duplication

Chapters 3 and 4 of the CC Act contain separate provisions for compulsory powers, hearings and privilege claims relating to crime, witness protection, corruption and confiscation investigations.

For example, different provisions apply in relation to:

- notices to Produce and Notices to Discover: ss. 74, 74A, 75
- procedures on claim of privilege for documents produced: Division 3, Subdivision 1, 1A and 2
- general power to seize evidence: ss. 110, 110A and 111
- refusal to answer questions at a hearing: ss. 190 and 192
- deciding claims of privilege at a hearing: Division 4 Subdivision 1, 1A and 2
- legal costs of appeal to court on privilege claim at hearing: ss. 205, 196(7).

The differences in most cases are not able to be justified and have the potential to cause confusion for CCC officers working across the various functions in the CCC and third parties, such as legal representatives of witnesses who advise or appear in regards to matters across the CCC's functional areas.

A detailed submission on rationalising Chapter 3 and 4 provisions was provided to the Attorney-General on 23 July 2010 and a copy was attached to the CCC's 2011 submission. The 8th PCMC recommended "the Government gives a high priority to completing the review of Chapters 3 and 4 of the *Crime and Misconduct Act 2001* as previously recommended by the CMC and the previous PCMC and supported by the Government in 2009 – in order to develop uniform provisions with generic application to CMC functions where appropriate."²¹

The then government acknowledged that there was some ambiguity in Chapters 3 and 4. They were of the view that a review should also involve a review of the provisions in the CM Act that set out whether a privilege is abrogated or unaffected (as discussed below).

The CCC requests that the Committee urge government as a priority to re-enliven this important work on reviewing Chapters 3 and 4.

Ambiguity of privileges

Intrinsically linked to the above issue is the question of which privileges are available in response to the exercise of various coercive powers, which ones have been abrogated and what, if any, use of immunity applies. Again, there seems little justification for many differences, such as:

- the different definition of privilege for crime investigations, intelligence or witness protection functions compared to corruption investigations and confiscation related investigations
- reasonable excuse being claimable in crime hearings for answers but not available in corruption hearings

²¹ Parliamentary Crime and Misconduct Committee, Report No. 86, May 2012: *Three Year Review of the Crime and Misconduct Commission* at p. 100.

- in some cases a privilege is expressly abrogated such as in s. 192(2) for the privilege against self-incrimination for answers in corruption investigation hearings, while in others it requires a reading of exclusionary provisions together with the definition of privilege, which has been described as “obscure” and “confusing”,²² (for example, see s. 190(2) for the abrogation of a range of privileges other than legal professional privilege).

There is also inconsistency and confusion about the terms “reasonable excuse” and “privilege”, which in some sections are treated as mutually exclusive, such as ss. 74(5) and 74(7). In other cases, privilege appears to be treated as a ground for reasonable excuse, such s. 185(2), which allows the claim of legal professional privilege as a reasonable excuse in certain cases.

The 8th PCMC recommended²³ that the government give a “high priority” to completing the review, commenting that:

...the clear determination of what specific privileges are abrogated or unaffected by the provisions of the C&M Act has now dragged on for a number of years without any firm direction. As subsequent reviews have commenced, the scope of matters to be considered has grown; however no substantive results have been achieved. The Committee considers that the government should take immediate and decisive action on this matter ... to ensure that the provisions are clear in what privileges apply, and in what circumstances to allow the CMC to function effectively.

Recommendation 7: Investigative powers and hearings

That there be an immediate review of Chapters 3 and 4 of the CC Act

- a) to develop uniform provisions with generic application to CCC functions where appropriate
- b) to clarify what specific privileges are abrogated or unaffected by the provisions of the CC Act.

Legislative clarification for questions posed in *Lee v R*

In *Lee v R* [2014] HCA20, the High Court considered a matter in which the transcripts of the evidence of two witnesses given in coercive hearings of the NSW Crime Commission were unlawfully published to a prosecutor in advance of those persons’ joint trial, contrary to the terms of a non-publication order made by the Crime Commission. The unanimous judgement of the court was that what had occurred affected the criminal trial in a fundamental respect, because it altered the position of the prosecution *vis-a-vis* the accused.

For the CCC, many of the safeguards by which the party exercising the coercive power can ensure the fairness of a subsequent trial already exist in the CC Act as it applies to hearings, such as non-publication orders (s. 180) and directions as to who may be present at a hearing (s. 179). In other cases, the CCC has been required to modify its existing practices to ensure that evidence given by a witness at a CCC hearing (of any kind) must be strictly quarantined and not provided to any prosecutor with carriage of or involvement in any prosecution of that witness.

The CCC has met with officers of the DJAG to discuss the need for, and manner of, amendment to deal with the issue on a number of occasions. The CCC considers the resolution of these issues to be critical and seeks a recommendation from the PCCC that the Attorney-General continues to review this matter in conjunction with the CCC and other stakeholders in an expeditious manner.

²² See *Callanan v B* [2004] QCA 478 at para 15 per McPherson JA

²³ Parliamentary Crime and Misconduct Committee, Report No. 86, May 2012: *Three Year Review of the Crime and Misconduct Commission* at p.111

Recommendation 8: Investigative powers and hearings

That the current discussions between the CCC, DJAG and other stakeholders to clarify and address the implications of *Lee v R* [2014] HCA20 be progressed expeditiously.

Powers to be consistent with PPRA provisions

There are a number of powers in the PPRA that are not consistent with the CCC's powers or do not exist for the CCC. These therefore impede the CCC's operations, because non-police CCC officers cannot lawfully exercise those powers and the power is considered necessary to efficiently and effectively perform the function.

The CCC seeks a new power to search persons generally as in sections 29, 30 of PPRA – that is, provide power to search persons where it is necessary to secure the safety of any person at a place where the CCC is carrying out its functions under the CC Act. Currently, the only power the CCC has to search a person is when the person is at the place and subject of a search warrant (s. 92(2) CC Act) or by way of a post-search approval order (s. 97 CC Act).

There is a significant difference in the scope of surveillance device powers between the crime and corruption functions. The Crime power is now found in the PPRA and allows application to be made for an extensive range of surveillance devices, from listening devices through to data surveillance devices. By contrast, for corruption investigations, only a listening device is available. For major crime investigations only, the warrant will also apply outside Queensland. Similar discrepancies apply to the powers for the crime and corruption functions in respect of assumed identities and controlled operations.

The overt search warrant powers and immediate search powers in Parts 2 and 3 of Chapter 3 need to be amended so as to be comparable with the equivalent powers in Parts 1 and 2 of Chapter 7 of the PPRA. In particular, these parts should include a power modelled on section 154 of the PPRA (order in search warrant about information necessary to access information stored electronically).

The wording in section 154 (inserted into the PPRA nearly 10 years ago) will need some enhancements to reflect new developments in technology. Importantly, the power to require a person to provide passwords to “unlock” encrypted data should be available to CCC officers in four situations:

- an officer applying for a search warrant under Part 2 should be able to ask for such a power to be included in the warrant
- an officer exercising immediate search powers under Part 3 should be able to ask a person at the premises for passwords at the time property is being seized – and the post-search approval order should reflect this
- an officer who has already seized property pursuant to a search warrant that did not include a power to require passwords should be able to apply for an order requiring passwords to be provided
- an officer who has seized property under Part 3 should be able to apply for an order requiring passwords to be provided.

(See, for example, s. 3LA of *Crimes Act 1914* (Cth) and s. 465AA of the *Crimes Act 1958* (Vic)).

Other enhancements the CCC would consider necessary for a section 154-type provision are:

- The power to require a person to provide police with passwords to “unlock” encrypted data should be available to CCC officers exercising powers under both Parts 2 and 3. It should not be restricted to the situation where a search warrant has been obtained – see s. 3LA of *Crimes Act 1914* (Cth) and s. 465AA of the *Crimes Act 1958* (Vic).

- To ensure the provision applies to cloud storage devices, the wording will need to refer to data *accessible from* a computer as well as data held in a computer – see the Commonwealth and Victorian provisions referred to above, including the definitions of “data held in a computer” (s. 3C Cth, s. 247A Vic) and “data storage device” (s. 247A Vic).
- The power to require passwords to be provided should be able to be used against a range of people and not just the person suspected of committing the offence. For example, a CCC officer should be able to direct a system administrator for a computer network to provide relevant passwords – see the Commonwealth and Victorian provisions referred to above.
- The new provision should include an offence for failing to cooperate with a direction to provide a password. The penalty should be sufficiently high to avoid the situation where suspects opt to be charged with a failure to cooperate offence rather than risk being detected for the substantive offence being investigated. Because there is no offence provision in section 154, police currently have to lay charges under section 205 of the Criminal Code, the maximum penalty for which is only 12 months. For examples of relevant offence provisions see the Commonwealth (two year maximum) and Victorian (five year maximum) provisions referred to above as well as section 53 of the *Regulation of Investigatory Powers Act 2000* (UK), where the maximum penalty is either two or five years, depending on the seriousness of the offence being prevented or detected.

Recommendation 9: Investigative powers and hearings

That a review be conducted of the power provisions in the PPRA and CC Act to ensure

- a) that they are consistent where appropriate
- b) that as between the various functions in the CC Act, the powers are consistent where appropriate
- c) that the CCC obtain new powers which are considered necessary for its operations including:
 - i. an enhanced s. 154 PPRA-type power to require information necessary to access information stored electronically
 - ii. an increased power to search a person.

Corruption

Our functions and powers

One of our primary functions is to reduce the incidence of corruption in the public sector. Under the CC Act, the CCC must ensure that complaints about corruption, or information or matters involving corrupt conduct, are dealt with in an appropriate way.

Units of Public Administration (UPA) within the CCC's jurisdiction include:

- departments and statutory bodies
- the Queensland Police Service (QPS)
- universities
- local governments
- courts, tribunals and boards (including jurisdiction over judicial officers acting as members of decision-making bodies in UPAs)
- prisons
- state and local politicians (only where the corrupt conduct would, if proven, amount to a criminal offence).

As well as receiving complaints, we investigate allegations of serious and/or systemic corruption. We can also investigate any person whose conduct adversely affects the performance of a public agency or public official and satisfies the definition of corrupt conduct. Where appropriate, our investigations utilise the CCC's coercive hearings powers to secure evidence and intelligence.

Recent significant changes to our functions are also detailed in Chapter 1.

Key areas of activity

Our Corruption function covers the following areas of activity:

- receipt and assessment of complaints
- oversight role (monitoring reviews, audit program and police disciplinary review)
- corruption investigations
- prevention
- intelligence
- research.

Receipt and assessment of complaints

In the main, we are made aware of suspected corruption through direct complaints or through mandatory notifications from a public official. We also receive information through routine agency audits, media articles or our own intelligence activities. A matter may also be received through court proceedings or referrals from the Coroner or a public inquiry.

In 2014–15, we introduced a complaint categorisation and prioritisation model designed to focus resources on more serious and/or systemic corruption.

During 2014–15 the CCC’s receipt and assessment of complaints about chief executive officers (public officials) was assisted by the introduction of section 48A of the Act, which requires public officials to develop, in consultation with the Chairman, a policy on how to deal with complaints about them (chief executive officers).

Oversight role

Monitoring

We monitor how agencies handle complaints by various mechanisms, including overseeing investigations, reviewing interim and finalised investigation reports and undertaking agency audits.

While the majority of the mechanisms continued across the review period, some were changed or discontinued following the amendments to the Act in 2014. For example, the assessment of the quality of an agency’s integrity framework is now undertaken through the audit program. The recording of outcome data for the less serious and/or systemic complaints of corruption has not continued.

Monitoring – reviews

Our reviews focus on complaints that are referred to agencies after having been identified at the assessment stage as involving allegations of serious and/or systemic corruption that require our close monitoring, for reasons that may include consideration of assuming responsibility for an investigation in order to maintain public confidence.

Since July 2014 we introduced changes to the way in which we review investigations of corrupt conduct undertaken by agencies. The changes introduced, which include more frequent and generally shorter reporting timeframes and a closer focus on the identification and investigations of serious and/or systemic corruption in reviews of agency investigations, are intended to ensure:

- the prompt identification of matters requiring CCC investigation or use of CCC resources or the application of coercive powers
- public and CCC confidence in an agency’s capacity and resources to undertake a timely investigation in compliance with necessary directions and investigative standards
- an agency’s capacity and resources are capable of managing complaints and investigations related to major corruption issues as identified by the CCC.

Corruption audit program

The complaints audit program promotes public confidence in our capacity to reduce corruption in the Queensland public sector (including the QPS). We conduct audits to assess the appropriateness of an agency’s complaints framework and how an agency has dealt with a complaint about corruption.

We took the opportunity created by the changes to the Act to undertake an evaluation of the existing complaints audit program. This resulted in the design and introduction of an audit framework (including a protocol) to ensure that audits were of high quality, efficient, and with a high-risk focus, of value and with a robust methodology.

Police discipline matters – reviewable decisions and appeals

Under Chapter 5, Part 2 of the Act, the CCC may apply to QCAT for a review of a “reviewable decision” (which includes decisions relating to police misconduct made by the QPS against police officers). Once QCAT decides a matter, it is open to the CCC or the other parties involved (that is, the QPS decision maker and the officer who is the subject of the disciplinary matter) to appeal the matter to QCAT in its appellate jurisdiction.

A further right of appeal lies from the QCAT appeal jurisdiction to the Queensland Court of Appeal.

The CCC seeks an expansion of our police discipline jurisdiction in QCAT, discussed later in this chapter.

Police-related deaths and other significant police incidents (QPS)

We provide independent oversight of the QPS response to, and investigation of police-related deaths and other significant events involving police officers.

Where there is a likelihood of corrupt conduct or police misconduct, concerning a police-related death, the CCC and the State Coroner determine if further CCC involvement is required, including assuming control of the investigation. In relation to other significant events, the CCC may determine if it is necessary to assume control of an investigation.

Where the CCC has deemed further investigation is warranted, these matters are referred or managed accordingly.

Corruption investigations

Investigation strategies

We have maintained the strategy to conduct timely and effective investigations into the most serious and/or systemic corruption to promote a trustworthy public sector and to reduce the incidence of corruption in the public sector.

To achieve these goals, we conduct independent investigations in cooperation with the public sector, including police, to identify and respond appropriately to serious and/or systemic corruption. This model is designed to enable the CCC and the public sector to together develop and improve effective integrity systems, supported by objective independent inquiry, and to make use of operational knowledge and the experience of other experts in public administration. Ultimately, the public sector itself has primary responsibility for implementing and maintaining future integrity.

Our corruption investigations use a number of covert investigative strategies involving intelligence gathering, surveillance, telephone interception, listening and tracking devices, covert operatives and forensic financial examinations. We also use overt investigative strategies, including orthodox powers of search and seizure and special powers to compel persons to provide information, statements, documents, records or other things relevant to the investigation. The use of these special powers is often necessary to obtain important information in a timely way and by means that provide legal protections for witnesses and informants.

The CCC seeks a review of its investigative and hearings powers, discussed later in this chapter.

Prevention

From 1 July 2014 no corruption prevention function existed under the *Crime and Corruption Act 2001*. As a consequence of the legislative amendment at that time, prevention officer resources were withdrawn from investigation teams in particular, and from the corruption business unit in general.

When performing the corruption function the Commission could assess the appropriateness of systems and procedures adopted by a unit of public administration for dealing with complaints about corruption [s. 35(1) (i)], and provide advice and recommendations to a unit of public administration about dealing with complaints about corruption in an appropriate way [s. 35(1)(j)].

The CCC seeks the reinstatement of this function, which is explained later in this chapter.

Intelligence

Our Intelligence activities support corruption investigations by:

- undertaking target development activities to identify opportunities for Corruption investigation teams
- ensuring the sharing of relevant intelligence products within the CCC and between the CCC and external agencies
- conducting strategic assessments which identify and assess corruption risks.

Research

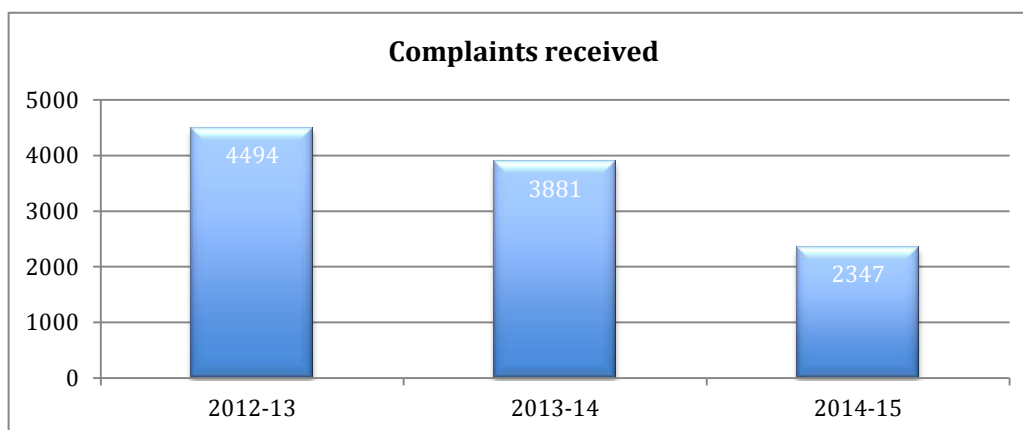
The CC Act requires the CCC to provide the Minister with a research plan comprising the research it proposes to undertake in the current financial year and the following two financial years. The first of these research plans was submitted to the Minister in 2014 and proposed the CCC undertake research projects in priority areas of crime and corruption. As at 30 June 2015, no Ministerial approval for the plan had been received.

Performance

Complaints assessment

In 2014–15, the CCC received 2,347 complaints, involving 5,326 separate allegations of corruption (one complaint may consist of a number of allegations). Of these, 66 per cent related to police, and 34 per cent related to public sector agencies (including local government). Figure 3.3 shows the number of complaints received by the CCC over the past three financial years.

Figure 3.3: Overall complaints numbers, 2012–13 to 2014–15



We experienced a significant decrease (40%) in complaints received in 2014–15 when compared to 2013–14. This followed on from a decrease of 14% in 2013–14 when compared to 2012–13.

Figure 3.4 shows the number of complaints received by the CCC in 2014–15 is at a level similar to 2001–02, the year after the Crime and Misconduct Commission came into being.

This decrease is consistent, in part, with the implementation of changes arising from the Callinan and Aroney review, the intention being to reduce the number of low level or inconsequential complaints received by the CCC. The outcome, however, is inconsistent with the reviewers' intention to the degree

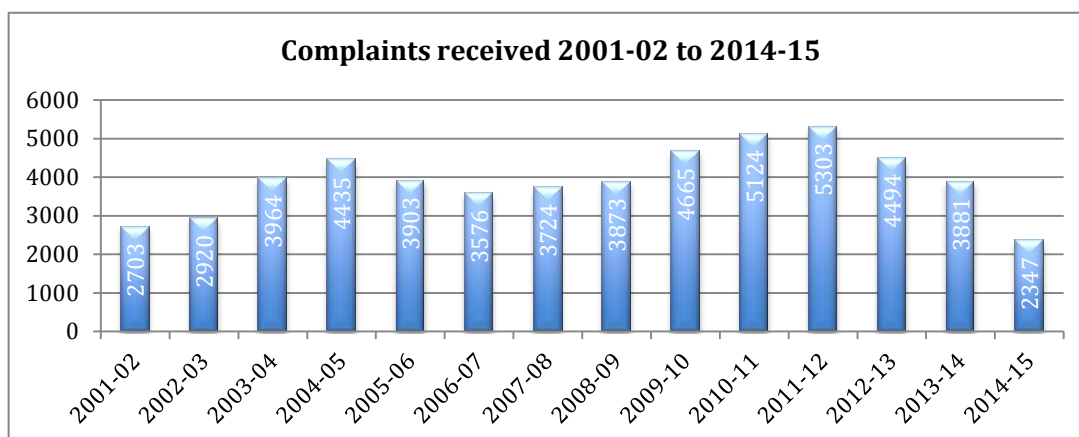
that the decrease relates to all complaints, whether they be low level or significant. The CCC intends to further examine, in particular, this reduction in serious complaints.

This decrease in complaint numbers does not in itself suggest that there has been an increase in integrity standards in Queensland.

The amendments to the jurisdiction in July 2014 is likely to be a primary cause of the continued decrease in complaints received in 2014–15 as the community and the public sector came to terms with the new, narrower definition of corrupt conduct (ss. 14 and 15), the requirement for complaints to be accompanied by a statutory declaration (s. 36) and the higher threshold for public sector agency reporting (s. 38).

It is also of note that allegations across the sectors had already fallen significantly (16%) in 2013–14 when compared to the previous year. The reasons for the continued decrease following 2012–13 were difficult to identify. In part, it may have been due to members of the public and agencies pre-emptively adopting the widely publicised higher threshold for reporting, which at that time had only the status of a recommendation from the Callinan and Aroney review of the Crime and Misconduct Act and other matters.

Figure 3.4: Overall complaint numbers 2001–02 to 2014–15.



It is the CCC's intention to test some of these hypotheses along with the application of the new definition generally, by way of a complaint audit that is in progress regarding the decreasing complaint numbers. We see value in dedicating resources to this work for a number of reasons.

Firstly, because the CC Act, specifically section 35, identifies that one way in which the CCC performs its corruption function is by assessing the appropriateness of systems and procedures adopted by units of public administration for dealing with complaints about corruption. This is important because the CCC needs to be satisfied it can promote public confidence in the way the public sector deals with corruption.

Secondly, section 35 of the CC Act identifies that the CCC can also perform its corruption function by itself investigating cases of corruption. The CCC needs to be confident that the number of complaints received by it has decreased for the "justifiable" reasons and to ensure that it continues to receive notifications, information and complaints about the serious and/or systemic corruption within its jurisdiction. It also needs to ensure matters notified are appropriate for CCC investigation and that, in particular, notifications are received in a timely way so as to ensure they are not negatively impacted or evidence lost.

If an audit finds that the decrease in complaints is exacerbated by any misunderstanding of the CCC's jurisdiction or from the misapplication of the amendments of 1 July 2014 appropriate remedial action

will need to be taken. Any action taken by way of recommendations for legislative change or the introduction of a communication strategy for the public sector and the community as a whole will be supported by a strong evidence base.

Complaints by sector

The total number of complaints against police received in 2014–15 was 1,506. These complaints contained 3,497 allegations. The most common allegation types were assault/excessive force, official conduct (such as misuse of police powers), victimisation or harassment, inappropriate demeanour or attitude and inappropriate access to and/or disclosure of confidential information, and accounted for 62 per cent of allegations made against police.

The total number of public sector (including local government) complaints received in 2014–15 was 942. These complaints contained 1,829 allegations. The most common allegation types were corruption and favouritism, inappropriate official conduct, assault, misappropriation and inappropriate access to and/or disclosure of confidential information, and accounted for 74 per cent of allegations made against officers of the public sector.

Due to the amendments to the definition of corrupt conduct, we were anticipating a reduction in allegations of the following types:

- victimisation/harassment
- demeanour/attitude
- inappropriate behaviour
- official conduct

Table 3.5 shows these allegation types have recorded significant reductions across both the QPS and the public sector which likely accounts for a portion of the decrease in complaints received.

Table 3.5: Decrease in particular types of allegations, 2013–14 to 2014–15.

Allegation Type	2013–14	2014–15	% decrease
Victimisation/Harassment	704	434	38%
Demeanour/Attitude	486	295	39%
Inappropriate behaviour	327	149	54%
Official conduct	1,700	867	49%

In comparison to 2012–13 and 2013–14 (see Figure 3.5 below) there is now a significant difference in allegations received by sector. Previously, there was relative consistency with allegations involving the QPS accounting for 13–14 per cent more of the total allegations received as compared to the public sector.

The reasons for the current proportion of complaints against QPS staff are not yet clear. However, traditionally a large proportion of complaints about the public sector (excluding police) were received by way of agency notification, and conversely a large proportion of complaints about the QPS were received from members of the public.

Figure 3.5: Allegations by sector, 2012–13 to 2014–15.

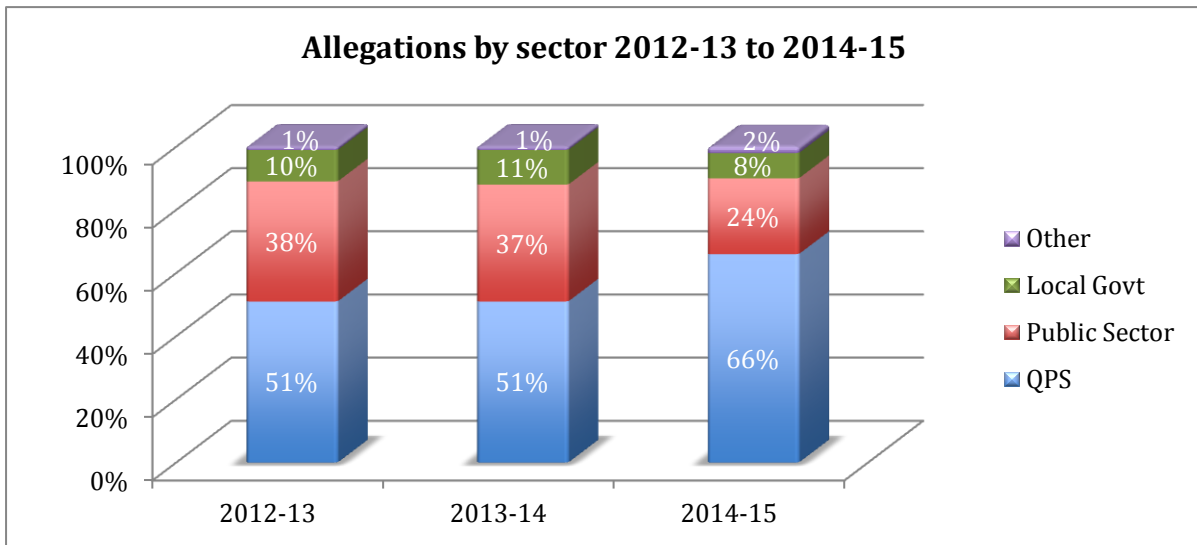
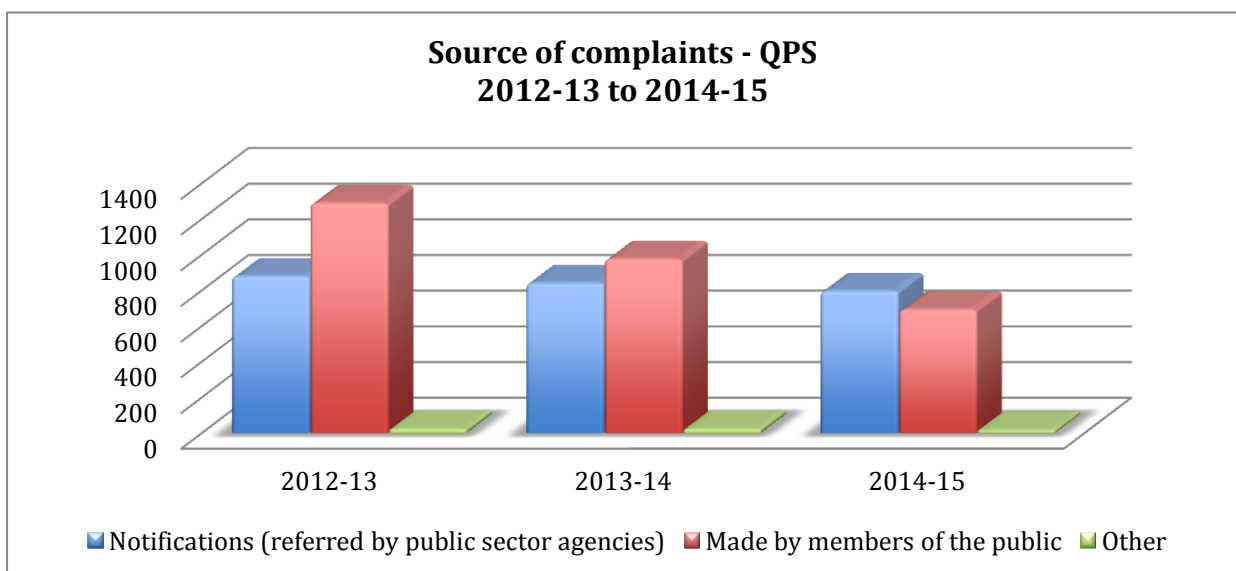


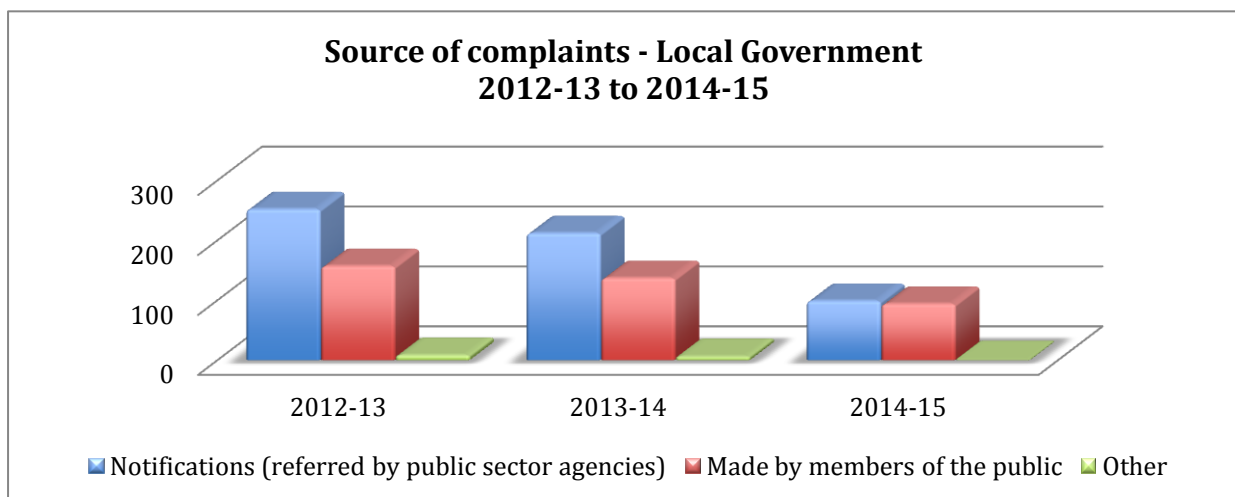
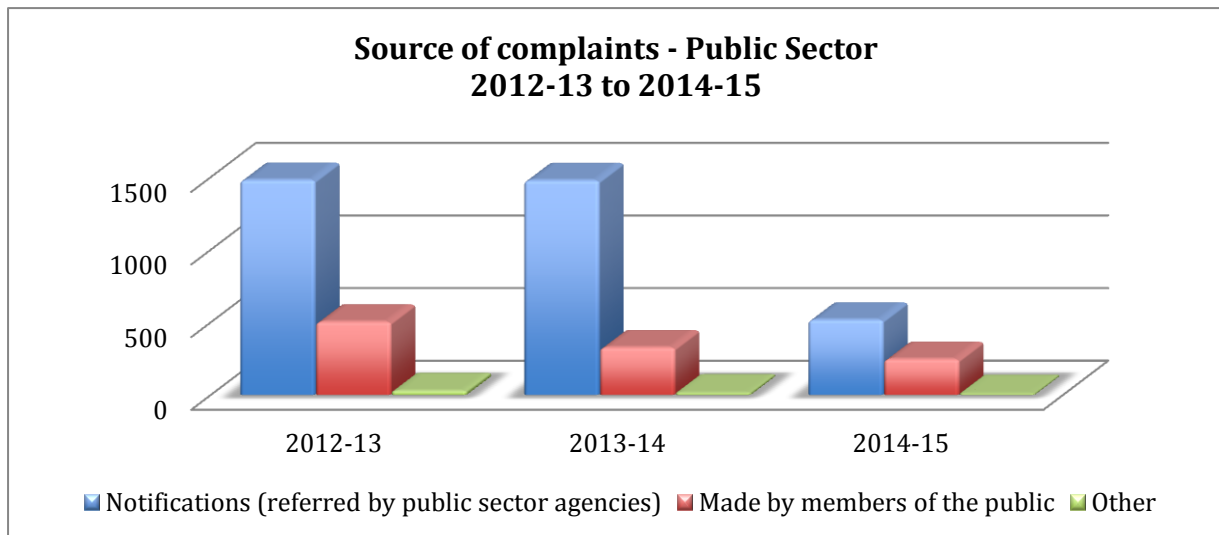
Figure 3.6 shows this is no longer the case with respect to complaints received about the public sector as agency notifications have continued to decrease by 65 per cent across the review period.

As previously discussed, the CCC is in the process of testing, by way of an audit, whether or not one of the likely causes we have identified – the raising of the threshold for referral by public officials, and its application by agencies (appropriately or otherwise) – is a primary source of the change.

The CCC has had open, robust and ongoing communication with the QPS about the threshold for reporting and the reporting obligation, which may have contributed to the QPS having a lesser reduction in the level of agency notifications.

Figure 3.6: Source of complaints by sector, 2012–13 to 2014–15.



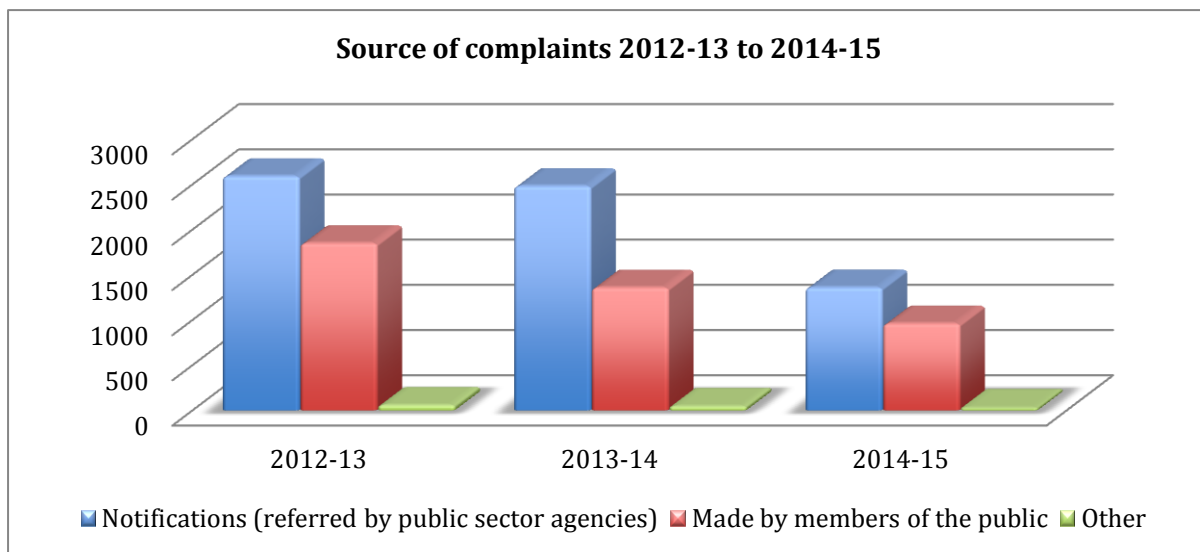


Another likely cause of the reduction of complaints to the CCC is the requirement for complaints to be made by way of statutory declaration, which has a particular impact on complaints received from members of the public. Figure 3.7 shows the reduction in complaints received from members of the public across the period of the review.

It is clear the legislative intention of the requirement for complaints to be made by way of statutory declaration was to deter mischievous, vexatious and/or false complaints. However, the significant reduction in complaints the CCC has received from members of the public is not comparable to our estimation of the number of mischievous, vexatious and/or false complaints previously received.

It may be the deterrent aspect of section 36 is disproportionate to the issue it was seeking to address.

The CCC's view that the requirement for a statutory declaration be removed is discussed later in this chapter.

Figure 3.7: Source of complaints, 2012–13 to 2014–15.

Dealing with complaints about public officials

In 2014–15 we made direct contact with about 170 agencies within our jurisdiction to notify of the addition to the CC Act (s. 48A) of a requirement for public officials to prepare (and consult with the Chairman of the CCC) on a policy about how to deal with complaints about themselves. We also prepared and distributed a guide about what such a policy might contain.

Overall, the rate of formal consultation with public officials about section 48A policies has been low. During the review period we received 64 policies on which we have provided feedback. Of those 64 policies, consultation has been completed on 50 (29% of all agencies contacted) with consultation ongoing for the remainder. While the take-up by public service departments has been good, the health, local government and other sectors have been slow to act.

A further 14 agencies have initiated contact with the CCC about the implementation of such a policy but have not progressed to consultation.

During the review period, specifically 2014–15, we continued to experience unnecessary delays to, and complexities in the assessment of, complaints about public officials due to an absence of a section 48A policy in the agency. Given the importance of policies in this section to transparently and effectively deal with matters of suspected corruption, we intend to proactively monitor compliance with this requirement. It is regrettable that public officials and the units of public administration for which they are responsible have not adopted this initiative.

Oversight role

Monitoring – reviews

In our regular reports to the Committee, we have addressed the numbers of matters reviewed during each reporting period for the police, public sector and local government.

Our reviews focus on complaints that are referred to agencies after having been identified at the assessment stage as involving allegations of serious and/or systemic corruption that require close monitoring by the CCC. The reasons for this close monitoring may include consideration of assuming responsibility for an investigation in order to maintain public confidence.

Table 3.6 shows the matters reviewed by the CCC during the reporting period.

The decrease in reviews in 2014–15 reflects the reduction in complaints assessed generally and also the renewed focus of CCC resources on dealing with serious and/or systemic corruption conduct.

Table 3.6: CCC reviews, 2012–13 to 2014–15.

	2012–13	2013–14	2014–15
Matters reviewed	349	308	180
Percentage satisfactory investigation	89%	91%	72%

With respect to public sector reviews (excluding the QPS) in 2014–15, the most common deficiency identified was the interviewing of witnesses and the undertaking of adequate inquiries to sufficiently ground the conclusions arising from investigations.

A number of agencies failed to interview relevant witnesses or failed to electronically record these interviews to allow the CCC to assess whether appropriate interview techniques were being used. Poor interviewing skills and a failure to appropriately test the evidence of certain witnesses were also practices identified in several of the matters dealt with by public sector agencies.

The form and the timeliness of reporting by public sector agencies remained a problem. In relation to most of the matters identified as having poor timeliness, there was no reasonable or apparent explanation for the delay in finalising inquiries and reporting the matter to the CCC.

For 2014–15 we also had similar concerns about the adequacy of QPS reviews, such as concerns about inadequate inquiries being undertaken, the quality of the reports provided, the evidence provided in support of conclusions reached and timeliness.

There were also a number of instances where the QPS had declined to undertake the inquiries as directed by the CCC and some where the CCC had cause to disagree with the QPS about the conclusions they reached as a result of evidence available to the CCC.

There were two additional aspects to our concern about timeliness in QPS reviews:

- non-compliance with timeframes for the provision of progress reports, which impacts on the CCC's ability to monitor matters and to make decisions about the CCC's ongoing role
- cases where officers suspected of being involved in summary offences (public nuisance / minor traffic infringements) were being subject to disciplinary hearings but were not being prosecuted. The delay in dealing with the disciplinary matter meant the limitation for commencing such prosecutions (12 months) had expired.

Police discipline matters – reviewable decisions

The CCC may apply to the Queensland Civil and Administration Tribunal (QCAT) for a legal review of certain decisions made by the QPS against its officers (where there is evidence of police misconduct). The purpose of these reviews is to ensure that the QPS decision maker's findings were justified and that the sanctions imposed (where relevant) were proportionate to the facts disclosed to the CCC. CCC reviews in QCAT can relate to findings on liability; the sanction; or both (if appropriate). Table 3.7 shows the number of QPS decisions reviewed and the number lodged with QCAT during the period.

Table 3.7: QPS decisions reviewed, 2012–13 to 2014–15.

	2012–13	2013–14	2014–15
Number of QPS decisions reviewed	102	46	77
Number lodged with QCAT for review	7	5	1
Number under review or appeal from previous reporting periods	10	14	8

We applied to review a number of reviewable decisions²⁴ in QCAT during the review period. Appendix 2 sets out a summary of the types of behaviours being exhibited by police and the outcomes following the CCC’s review of those matters in QCAT and higher courts.

The CCC remains concerned about a number of aspects of the police discipline system in Queensland. The information contained in the Appendix is provided to highlight the decisions of concern to the CCC to ensure QCAT decisions reflect:

- the public’s expectations
- the purpose of discipline
- fairness to officers as a result of delay in resolving discipline matters, particularly QCAT reviews.

In particular, we are concerned about the prevalence of the suspension of sanctions by the QPS, which has the potential to undermine public confidence in the QPS and the discipline system it administers.

We remain committed to devoting appropriate resources to reviewing discipline decisions where conduct is contrary to reasonable expectations of police behaviour.

Much work has been done in recent years to highlight how police discipline could be improved.²⁵ Unfortunately, little progress has been made in this important area. The CCC seeks the PCCC’s support in re-enlivening this vital reform.

Recommendation 10: *Review of the police discipline system*

That consideration be given to a comprehensive review of the use of suspended sanctions within the police discipline system.

A review of the Police Disciplinary System is part of an ongoing process.

Corruption audit program

Each of the audits undertaken during the reporting period were developed to inform our understanding of trends and/or issues the Corruption function had either observed through its ongoing monitoring of individual matters, or were high profile topics for the public sector.

We undertook a number of audits dealing with topics including:

- police discharge of firearms
- public sector and local government dealings with complaints – timeliness, integrity and appropriate outcomes
- incidents of excessive force in police watch-house and holding areas

²⁴ See s. 219G CC Act

²⁵ For example, *Setting the Standard*

- how agencies deal with complaints related to inappropriate associations between public service officers and criminal motorcycle gangs
- public sector investigations outsourced to external investigators.

Two notable audits were the discharge of firearms audit and the 2013–14 compliance and integrity audit of the way in which complaints relating to inappropriate associations between public service officers (including police) and outlaw motorcycle gangs (OMCGs) were dealt with by the QPS and other public sector agencies. While the integrity compliance audit findings indicated that public sector agencies adequately dealt with inappropriate association complaints, the police discharge of firearms’ audit was less satisfactory.

The police discharge of firearms’ audit, undertaken in 2012–13, and its recommendations, continues to have currency. We identified ongoing instances of police officers shooting at vehicles when it would appear the vehicle was no longer a threat, such as driving away or where the officer concerned had placed themselves in a position of danger.

This matter has been of ongoing concern across the period of the review as police firearms discharged in such circumstances create an increased risk of serious injury and/or death not only to the driver of the vehicle and passengers but also to innocent passers-by.

As part of our ongoing monitoring, in 2014, we again engaged with the QPS to ensure vigilance in this area of police operations, particularly as there had been further shootings during the period of the audit.

In regards to our original recommendations, the following outcomes have been achieved:

- The QPS has updated and changed its policy and procedures Traffic Manual – section 10.7.2 regarding the use of firearms during motor vehicle pursuits, and acknowledges the need to improve communication when providing information about roadblock locations. This latter aspect has been included in section 27 of the Operational Procedures Manual – Procedure for establishing roadblocks.
- Further, in December 2014 the QPS updated the policy and procedure, Use of Firearms – section 14.7 to reflect that:

where possible, an officer threatened by an oncoming vehicle should move from its path instead of discharging a firearm at the vehicle or at its occupant/s

The outcome from the follow-up review is that the Service has now implemented the following:

- The Ethical Standards Command (ESC) in conjunction with the QPS, Education and Training Command, monitor the progress of the training product for “High Risk Vehicle Intercept / Extraction”. This program has been developed for delivery to recruits during their initial firearms training.
- ESC training staff now engage with the Firearms Training section to provide input to firearms training, particularly in relation to critical incidents and the role the ESC will play at such an incident.

While these are positive steps by the QPS and are supported by the CCC, the changes in policy still do not fully address all the issues raised in the 2012–13 audit. Our review of police shootings was undertaken to ensure and encourage the QPS to strike a balance between their actions and the management of the obvious risks when considering lethal force options when engaging with suspects in public. The CCC continues to monitor these types of incidents and will work closely with the QPS to ensure the balance is maintained in the public interest.

Future audits

As previously stated, we took the opportunity created by the amendments to the CC Act in July 2014 to undertake an evaluation of the existing audit program, and to design and introduce an audit framework to ensure the CCC only undertakes audits of high value with a high risk focus.

In that regard we planned and commenced two audits:

- a review of agency responses to incidents involving inappropriate access to, and disclosure of, confidential information by officers in the public sector (including QPS)
- a review of public sector agency compliance with new requirements for dealing with corrupt conduct (sections 15(1), 38 and 40 of the Act).

The focus of the first audit is the way in which agencies deal with complaints and manage investigations about the inappropriate access to and disclosure of confidential information. Through our investigations, we identified unauthorised disclosure of information as one of the top five risks to the public sector in Queensland.

The second audit is designed to assess the appropriateness of key controls adopted by public sector agencies for dealing with complaints about corruption and to assess the operating effectiveness of those key controls.

It is anticipated this audit will also provide us with evidence to assist our understanding of the impacts of amendments to the Act, such as the changes to the definition and the referral threshold.

Police-related deaths and other significant police incidents (QPS)

During the period of the review a Memorandum of Understanding was put in place following agreement between the State Coroner, the Commissioner of Police and the CCC setting out the approach to be taken to the investigation of deaths in police custody. That Memorandum of Understanding was reviewed and amended in 2014–15.

Table 3.8 shows CCC attendance at police incidents²⁶ during the review period.

It is difficult to suggest any likely cause of differences in CCC attendance rates at police incidents across the review period, although it is noted that during 2014–15 there were a number of police shootings in a short period of time, which is reflected in the data.

The Chief Executive Officer of the CCC is a member of the Steering Committee established in December 2014 to review police involvement in high-risk incidents including shootings.

In May 2015 the State Coroner determined to conduct a joint inquest into the deaths of five people shot by Queensland Police officers between August 2013 and November 2014.

Table 3.8: CCC attendance at police incidents, 2012–13 to 2014–15.

Year	CCC attendance	Incident type
2012–13	11 police incidents	Incidents involving police watch-houses, car pursuits, suicides, a siege and police shootings
2013–14	6 police incidents	Traffic fatalities following police contact or police pursuits and self harm by citizens
2014–15	9 police incidents	Incidents involving police shootings, a car pursuit and self harm by a citizen.

²⁶ Police incidents is defined to include both police-related deaths as determined by the State Coroner and other significant events

Corruption investigations

Given that the number of complaints we receive exceeds our investigative capacity, we focus our resources on allegations of serious and/or systemic corrupt conduct.

Investigation themes

Following on from the significant investigations reported in the last review, such as Operation Capri and Operation Tesco, our investigations continue to focus on matters associated with individual and collective leadership as the key to creating a culture of ethical behaviour and fairness in organisations.²⁷ Cronyism, nepotism, fraud (including procurement and research fraud) and the non-disclosure of conflicts of interests and associations requiring resolution in favour of the public interest have been central to our work. However, our investigations have largely been in response to allegations of opportunistic corruption. These matters have shown a potential to evolve into entrenched corruption by exploiting systemic failures in internal controls, a lack of senior management engagement in corruption prevention and an overall lack of public sector awareness of corruption risks and their prevention.²⁸

These recurring investigation themes highlight the desirability of the reinstatement of the corruption prevention function, enhanced with an Intelligence function to proactively engage in systemic data analysis to develop models for predicting serious and/or systemic corruption risks. While data analytic models of this kind may require additional capital resourcing and the acquisition, development and maintenance of staff with new skill sets, recent experience with Project Dorsel (see below) has demonstrated the utility of Intelligence in identifying targeted corruption risks for specific investigations. The issue of an enhanced corruption prevention model is also discussed later in this chapter.

In 2014–15, we completed 45 investigations, 19 involving QPS officers, 12 involving local government and 14 involving the public sector.

Table 3.9 shows the number and percentage of investigations completed within our timeliness benchmark of 12 months. Table 3.10 shows the outcome of investigations.

Over the past three years, significant effort has been focused on finalising investigations within 12 months. As at 30 June 2015, the CCC had one investigation older than 12 months. This compares with two investigations older than 12 months as at 30 June 2014 and eight as at 30 June 2013.

Table 3.9: Investigations completed, 2012–13 to 2014–15.

	2012–13	2013–14	2014–15
Investigations completed:			
<ul style="list-style-type: none"> Number of investigations completed within 12 months (percentage). 	87 (78%)	61 (77%)	45 (91%)

²⁷ *An Examination of Suspected Official Misconduct at the University of Queensland*, p 40

²⁸ *Fraud, Financial Management and Accountability in the Queensland Public Sector*, Chapter 4.

Table 3.10: Outcomes of investigations, 2012–13 to 2014–15.

	2012–13	2013–14	2014–15
People charged (number)	7	8	55
Charges laid (number)	48	138	200
Recommendations to the ODPP	77	35	8
Recommendations for disciplinary action:			
• people (number)	37	28	4
• number of recommendations	128	122	6

Consistent with the investigation themes discussed earlier, our corruption prevention function focused on high-risk issues related to a range of integrity topics including conflict of interest in a range of decision-making contexts and internal controls for fraud/corruption prevention.

Table 3.11 sets out the number of prevention recommendations made arising from Misconduct/Corruption Investigations for those years shown:

Table 3.11: Prevention recommendations arising out of Corruption investigations, 2012–13 to 2014–15

	2012–13	2013–14	2014–15
Number of prevention recommendations	113	49	14

Set out below are significant examples of corruption investigations conducted or concluded since the last review that were undertaken to reduce the incidence of corruption in the public sector. The investigations focused on matters associated with leadership, personal and collective responsibility and accountability, they being key to creating a culture of ethical behaviour in organisations. They suggest ways for public sector agencies to reduce the incidence of corruption by the early identification of high-risk positions of influence and reducing opportunities for high-risk decision-making by individual staff.

Nepotism

An examination of suspected official misconduct at the University of Queensland

In September 2013 we furnished to parliament our report, *An examination of suspected official misconduct at the University of Queensland* (UQ).²⁹ The matter concerned allegations of suspected official misconduct about the forced offer of entry into the 2011 Bachelor of Medicine, Bachelor of Surgery (MMBS) program that had been made to the daughter of Professor Paul Greenfield, who was the Vice-Chancellor of UQ at the time. The report documented salient lessons to be learned for UQ and the broader public sector as the originating issue — a conflict of interest involving persons of considerable power in the institution — could arise in any unit of public administration. To ensure that conflicts of interest are dealt with transparently, the report identified that important principles or practices should be accepted and adopted by all publicly-funded entities.

Misuse of public funds

Operation Xenon is also an example of the potential for persons with considerable power within public institutions to misuse public office for private gain. In July 2012 the then CMC commenced an

²⁹ <http://www.ccc.qld.gov.au/research-and-publications/publications/misconduct/uq/an-examination-of-suspected-official-misconduct-at-the-university-of-queensland>

investigation into multiple complaints alleging a Director-General and a Regional Director within a State Government department had abused their authority to inappropriately employ relatives and family friends at a facility owned and operated by the department.

In November 2012 the Director-General resigned. Following media reporting, additional complaints were received alleging further instances of nepotism and cronyism within the department against the Director-General, the Regional Director or other senior departmental officers. At the conclusion of the investigation both the former Director-General and the former Regional Director were charged with the criminal offence of Misconduct in Relation to Public Office (s92A of the Criminal Code). Documentation was also provided to the new Director-General for use in relation to disciplinary action against the former Regional Director. The criminal prosecutions are ongoing.

Fraud

Fraud, Financial management and accountability in the Queensland public sector

In September 2013 we furnished to parliament our report, *Fraud, financial management and accountability in the Queensland public sector: An examination of how a \$16.69 million fraud was committed on Queensland Health (QHealth)*.³⁰

This report gave an account of the fraud by a Queensland Health employee, Hohepa Morehu-Barlow (Barlow) totalling \$16.69 million committed over a four-year period from October 2007. The circumstances of the fraud are notorious. The report highlighted the responsibilities and accountabilities of public sector employees as stewards of public money and raised awareness of the potential for fraud in the workplace and responsibilities to prevent it. Consistent with themes identified by the Queensland Audit Office, the report made several recommendations related to financial management; managerial responsibility and accountability; and fraud control and fraud awareness policy and procedures. Effective alignment between governance control frameworks and their actual implementation in practice was highlighted.

Fraud investigation involving a sitting MP

Operation Westward is an example of both the potential for persons with considerable power within public institutions to misuse public funds for private gain and the importance of protecting persons who report suspected corruption.

In April 2013 as a result of information received and numerous media reports, the CMC and QPS commenced a cooperative investigation into allegations that the then Member for Redcliffe unlawfully used his electoral office to run a commercial business; and whilst in charge of an industrial organisation, misappropriated \$600,000 from the sale of the business premises and \$110,000 in members funds.

On 19 November 2013 the Member for Redcliffe resigned from parliament.

In December 2013 QPS charged two persons with three counts of perjury and 12 counts of fraudulent falsification of records arising from the investigation. In October 2014 the CCC charged the former Member of Redcliffe with five counts of fraud, two counts of secret commissions and nine counts of fraudulent falsification of records. All matters have been committed for trial.

Drivers licence fraud

Operation Danish is an example of both the potential for links between public sector corruption and organised crime and the importance of cooperation between the CCC, police and the public sector agencies in reducing corruption.

In 2013, the QPS commenced Operation Kilo Zurich, to investigate a suspected vehicle re-birthing and drug trafficking syndicate on the Gold Coast, Queensland. During the course of the investigation it

³⁰ <http://www.ccc.qld.gov.au/research-and-publications/publications/misconduct/qhealth/qhealth>

was identified that an organised crime group paid a casual employee of the Queensland Department of Transport and Main Roads (DTMR) to legitimise stolen and re-birthed motor vehicles, caravans, vessels and trailers by issuing Queensland registration and compliance processes.

In February 2014, the CCC commenced Operation Danish to investigate allegations that the DTMR employee issued fraudulent drivers licences and fraudulent upgrades of licences to members of the organised crime group and their associates. The investigation established that 67 people fraudulently obtained driver licences or upgrades to driver licences through the DTMR officer. The DTMR officer was subsequently charged with 62 counts of official corruption.

The CCC has also charged three further persons with fraud and official corruption for their involvement in the driver licence “scheme”; and 45 other persons with fraud offences in relation to paying for and receiving the fraudulently issued licences and upgrades. Thirty-two offenders have so far been successfully prosecuted receiving sentences ranging from good behaviour bonds to imprisonment, with a majority of sentences being fines of between \$500 and \$1500 each. In relation to the re-birthing of vehicles, 12 offenders have been charged with 106 vehicle-related offences. In all, \$1.3 million of stolen vehicles (including motor vehicles, vessels, caravans and heavy machinery) were recovered and 36 offenders charged with 138 drug trafficking related offences.

The CCC has written to the Director-General, DTMR making a number of recommendations to improve the organisation’s fraud control framework regarding the issuance and upgrading of licences.

Unauthorised release of information

Release of confidential police information

In May 2011 the CCC received information in relation to alleged criminal activity by police. During the course of that investigation it was identified that one of the subject officers and his wife, also a Queensland police officer, were allegedly accessing and releasing confidential QPS information to a relative employed as a private investigator who used the information in the course of his business. A covert operation was subsequently commenced into these allegations.

In September 2012 the CCC referred a brief of evidence to the ODPP for consideration of possible prosecution proceedings. Following advice to the CCC from the ODPP in June 2013, the police officers and the private investigator were charged with a total of 42 offences. In May 2014 all parties pleaded guilty to the offence of computer hacking, receiving sentences ranging from 18 months’ probation to six months’ imprisonment, wholly suspended. During the course of proceedings, both police officers resigned from the QPS.

Control of information is a significant risk to public sector agencies. The investigation resulted in the removal of two officers from positions of trust because they failed to meet the high standards expected of them as public sector employees. A strong deterrent message was sent to all government employees, in particular police, that misuse of information is unacceptable and carries significant penalty. It also serves to highlight to public sector agencies the need for vigilance in regard to information security where the information is held on behalf of the people of Queensland.

Police and drugs

In January 2015 the CCC commenced a covert operation into allegations that a serving Queensland police officer had on a number of occasions purchased dangerous drugs from the target of a police drugs operation.

In February 2015 surveillance identified the officer purchasing drugs at a suspected drug transaction. The officer was detained and search warrants executed on the officer’s home residence. Vehicles and quantities of drugs and utensils were located and the officer was subsequently charged and convicted for offences of possession of dangerous or restricted drugs and a utensil.

The officer subsequently resigned from the QPS.

High-risk conduct

Proactive identification of high-risk members of the QPS and public sector

Project Dorsel commenced in January 2014 as one of several initiatives undertaken within the corruption investigations Criminal Motorcycle Gangs (CMG) team. The project focused on the proactive identification and targeting of high-risk members of the QPS and public sector.

Project Dorsel finalised 12 proactive investigations in a 12-month period. In three matters, persons of interest resigned as a result of the investigations, and in one instance the employing agency commenced “show cause” proceedings. Three matters were finalised on the basis that the suspected allegations could not be substantiated and in those instances relevant information was collected for intelligence purposes. A further four matters were referred back to the relevant agency for consideration of audit and monitoring of information access. The final matter resulted in the immediate issue of a Notice to Appear on three counts of possessing a schedule one dangerous drug. The police officer entered a plea of guilty and subsequently resigned. Other outcomes are yet to be finalised.

Project Dorsel also looked more broadly at trends and issues relating to proactive targeting of persons of interest identified as presenting a risk of corruption. Some key findings from an intelligence perspective are:

- Public sector agencies would benefit from a review of the prevention measures they have in place to decrease vulnerability to infiltration by CMGs/organised crime groups. Options to be explored might include staff vetting practices and a declarable associations policy.
- Proactive targeting can work in a QPS corruption investigation environment, however it is resource-intensive and performance needs to be measured not only in terms of successful operations but also to take into account the generation of intelligence holdings.
- The QPS Declarable Association policy has been very successful in increasing knowledge about inappropriate associations, however a number of loopholes are still able to be exploited.
- Proactive targeting is less successful for public sector employees due to the limited information available in the absence of recent information of wrongdoing.
- The introduction of new technologies is likely to impact on the success of future investigations into the unauthorised release of confidential information.

Prevention

Table 3.12 outlines the number of prevention recommendations made that were agreed to by the relevant public sector agencies.

Table 3.12: Status of prevention recommendations, 2012–13 to 2014–14.

Year	Number of recommendations responded to	Number of recommendations accepted/supported	% of recommendations accepted/supported
2012–13	621	591	95%
2013–14	245	239	98%
2014–15	71	68	96%

As discussed in our report for the last review, in July 2011 the then CMC attached prevention officers to misconduct investigation teams to ensure a true interdisciplinary approach to investigations.

This promoted timely information sharing and enhanced the provision of specialist advice directly to public sector agencies at the earliest time possible.

Prevention officer resources were linked to the general misconduct prevention function under the former *Crime and Misconduct Act 2001*. From July 2014 there no longer exists an equivalent general prevention function for the performance of the corruption function under the *Crime and Corruption Act 2001*. The CCC's view that the corruption prevention function should be restored with some additional powers is discussed later in this chapter on pp. 68–69.

Intelligence

Intelligence has undertaken 12 target development activities relating to corruption matters since the last review. Four of these matters were forwarded to Corruption investigative teams and three matters were sent to the Queensland Police Service (Ethical Standards Command) for information and consideration of investigation.

Since the last review, Intelligence has completed a strategic assessment focused on identifying corruption risks associated with local government in Queensland and another strategic assessment focused on corruption risks within policing, identified during the CMC's Operation Tesco. The Intelligence Development Team (IDT) is currently completing another two strategic assessments focusing on issues identified during recent corruption investigations.

Research

Improving our analytical capability

Since our last report and prior to the 2014 legislative change, the CMC/CCC conducted a number of research activities including the following.

CCC audit function

In 2014, our research unit conducted two projects aimed at improving the CCC's corruption monitoring role.

- Development of the CCC Audit Protocol – This audit protocol establishes the basis for the governance, management and performance of the audit program. The protocol enables the CCC to deliver high-quality and efficient audits.
- Assessment of the CCC's audit capacity – The project reviewed the capacity of the CCC to conduct high quality audits as part of the CCC's corruption monitoring role. The project identified options for the upgrading of the CCC's Integrity Services audit processes and systems (*Corruption Audit Program (CAP) capacity assessment* – internal report).

Review of the our corruption data framework

In 2015, the research unit developed an improved framework for the recording and coding of corruption allegations. From 1 July 2015 all corrupt conduct and police misconduct allegations received will be coded according to the new framework.

Police research

Since our last report, and prior to the 2014 legislative change, our police research focused on:

- police use of force (Taser use in the QPS)
- policing in Indigenous communities
- ethical and cultural issues within the QPS.

Police use of force – QPS use of Tasers

The CCC continued its active role in evaluating and reforming Taser use in the QPS.

An update on Taser use in Queensland

In 2012, the CMC examined Taser use by officers from the Queensland Police Service (QPS) during the period from 2010–2012 and compared it to data reported in our more comprehensive review in 2011 (*Evaluating Taser reforms: a review of Queensland Police Service policy and practice*). This research identified some signs of improvement (e.g., declines in the proportion of uses in probe and drive stun modes by a single police officer) but also identified a number of concerns, most significantly, that multiple and prolonged discharges remained high. To address this latter concern, the CMC commenced a research project to specifically examine multiple and prolonged Taser deployments.

Multiple and prolonged Taser deployments

In 2013 the CMC examined incidents involving multiple or prolonged Taser deployment by QPS officers, to better understand why they occur, whether they are appropriate and justified according to policy, and whether they are a good use of force option.

Our review of multiple and prolonged Taser deployments showed that:

- Most multiple or prolonged Taser deployments are at the lower end of the spectrum of exposure length — most multiple deployments are two cycles only, and about half of all prolonged deployments are between six and seven seconds (a standard Taser cycle is five-seconds).
- Most multiple and prolonged deployments appear appropriate in the circumstances. These incidents typically involve people who are displaying violent behaviour likely to cause serious injury, which is consistent with the current QPS Taser-use threshold.
- Multiple and prolonged deployments typically occur because the situation was not resolved during the initial five-second cycle, and the subject person’s behaviour continued.

We made three recommendations to further improve QPS Taser reporting, training and review practices.

Policing in Indigenous communities

In this period, the CCC finalised its program of work that arose out of our major inquiry into policing in Indigenous communities (*Restoring order: crime prevention, policing and local justice in Queensland’s Indigenous communities*), conducted between 2007 and 2009. The report identified 51 specific areas for action. The CMC was responsible for finalising two of these (Action 47 and Action 49).

Indigenous people in policing roles: A follow-up review to the Restoring order report

Action 47 of the *Restoring order* report required the CMC to review how the Queensland Police Service utilises, manages and supports Police Liaison Officers, Queensland Aboriginal and Torres Strait Island Police and Community Police Officers. Our follow-up consultation with 15 Aboriginal and Torres Strait Island communities revealed that, despite advances made, further improvement was needed. The report detailed the following findings to assist the QPS to support Indigenous people undertaking policing roles:

- play a more significant role in determining the local justice mechanisms and strategies in their community, particularly the nature and focus of the Indigenous policing roles
- more effectively support the delivery of core policing services
- facilitate communication between police and Indigenous people
- assist Liaison Officers to perform their role safely and better support them.

On 20 September 2012, the report was given to the Queensland Government and the Queensland Police Service for their consideration.

Community safety planning in Queensland's Indigenous communities

Action 49 of the *Restoring order* report required the CMC to audit the crime prevention and criminal justice (including policing) components of local community safety plans, with a focus on their potential to prevent crime and improve the relationship between police and the community.

We found that community safety planning in Indigenous communities had progressed more slowly than expected. A number of factors had influenced this lack of progress. The level of government intervention in Queensland's Indigenous communities had markedly increased since we published *Restoring order* in 2009. In some communities, multiple, complex reforms were operating, which made for a planning landscape that was "dense" and difficult for those engaged in the process to navigate. There was some confusion in the communities about which planning process was dealing with crime and safety issues. We also saw evidence of "planning fatigue" across the communities. Community safety was just one of many planning processes underway in communities, which affected the priority it was given.

No additional recommendations were made as a consequence of our study as this could have further complicated an already complex reform environment. Instead the CCC's observations were recorded to assist those people responsible for continuing work in the field.

Ethical and cultural issues within the QPS

Our long-running research program into ethical and cultural issues within the QPS was finalised as a consequence of the 2014 legislative change. Over the reporting period, the CCC conducted two research projects, as follows.

Improving misconduct reporting in the QPS: the importance of ethical culture

In June 2013, a research paper was provided to the QPS which showed the importance of officers' perceptions of the QPS's ethical culture as a predictor of their intention to report misconduct. This outcome revealed that the QPS can generate significant improvements in its ethical culture and improve misconduct reporting by ensuring that officers have a clear understanding about what is, and is not, acceptable behaviour, and that supervisors model ethical behaviour and communicate to officers the importance of doing "the right thing".

Monitoring police ethics: a 2013 survey of Queensland recruits and First Year Constables

We have conducted regular surveys to monitor the ethical attitudes of QPS recruits and First Year Constables (FYCs) since 1995. In 2012, in collaboration with the QPS, a major review was conducted of the police ethics survey in an effort to better understand:

- the professional values of respondents
- their perceptions and knowledge of the QPS ethical culture
- their perceptions and decision making about behaviours that violate QPS policy.

The 2013 police ethics survey was the first administration of the revised survey. The results of the 2013 police ethics survey indicated that the QPS can improve an intention to report misconduct by clearly communicating the organisation's expected standards of behaviour, and by addressing officers' concerns about the degree of protection and support they might expect from peers, supervisors and the organisation.

Public sector research

The regulation of political donations and gifts in Queensland: a comparative analysis

In 2012 the CMC completed a comparative review of Australian and international regulations relating to prohibitions and restrictions on donations, disclosure of political donations, and compliance and enforcement mechanisms.

Discussion on legislation and challenges

As outlined throughout this chapter, there are a number of limitations that prevent us from being able to best meet our responsibilities within the Corruption function. The CCC seeks support for the following changes.

The changed definition of corrupt conduct – section 15

As previously stated, the factors that are likely influencing the significant reduction in complaints received at the CCC are multiple and difficult to quantify. We hope the audit of agency compliance with the Act currently underway will provide some useful data in this regard.

However, in our experience in the application of the definition and from our interactions with agencies undertaking a similar corruption function, there are aspects of the definition of corrupt conduct that:

- are unnecessarily complex or confusing
- can work to delay and undermine the expeditious assessment of and dealing with complaints of serious and/or systemic corrupt conduct.

In particular, section 15(1)(c) could be removed without compromising the definition of corrupt conduct.

The requirement in s. 15 (1)(c) is that the conduct of a person:

“(c) is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person”.

In our view, this subparagraph adds an unnecessary layer of complexity to the definition of corrupt conduct. The purpose element introduced by this sub-paragraph that the conduct be engaged in to provide a benefit or to cause a detriment sits oddly with the definition of “conduct” in section 14 which includes “neglect, failure and inaction”. The concepts of “neglect, failure and inaction” are directly relevant to the elements of corrupt conduct relating to a *breach of the trust*, or a *misuse of information*, or *misuse of material acquired* found in subparagraphs (ii) and (iii) of section 15(b).

The introduction of a purpose element may delay and undermine the expeditious assessment and dealing with matters which might, if proved, involve corrupt conduct. Any such delay related to section 15(1)(c) is unnecessary and is particularly undesirable in cases where the conduct, if proved, may be serious and systemic.

The CCC recommends the removal of the requirement to show a benefit or cause a detriment in section 15(1)(c) of the definition of corrupt conduct.

Recommendation 11: *Change the section 15 definition of corrupt conduct*

That the section 15 definition (of corrupt conduct) be amended to remove the requirement in s. 15(1) (c) to show a benefit or cause a detriment.

New requirement of a statutory declaration – section 36

As discussed earlier, the 2014 amendments introduced a requirement for complaints to the CCC to be made by way of a statutory declaration, other than in exceptional circumstances. Across the review period, but particularly following the amendments on 1 July 2014, the CCC experienced a significant decrease in the number of complaints received. One of the factors that may have influenced this decrease is the requirement for statutory declarations to accompany complaints.

In our experience, complaints accompanied by a statutory declaration are not of any higher quality or value to the CCC. The assessment process is necessarily stalled in cases where we await receipt of the Statutory Declaration. When it is ultimately received, experience has shown it rarely adds anything further to the complaint received in the first instance, and often simply restates the complaint in a sworn format. The CCC's perception is that the complaints received have no greater probative value nor are they more reliable for the requirement.

The exceptions and exemptions to the requirement for a statutory declaration are of some assistance in managing the issues. Although the CCC is not advocating for the removal of the public interest disclosure exemption, we do note elected officials, as disclosers pursuant to the Public Interest Disclosure Act are exempt from the requirement. This result appears to be inconsistent with the intended purpose of the requiring complaints to be sworn.

The CCC has previously, and continues, to make public statements, such as the "Don't Risk Your Campaign" initiative about the public's right to expect integrity and transparency in election processes. This serves as a warning to candidates (some of whom are serving members of the legislative assembly or local government councillors) not to misuse the CCC's complaints process for political advantage. If the requirement for a statutory declaration was intended to further reinforce the CCC's warning, it is not currently achieving that outcome.

Further, although many of these complaints are about corruption, they were not "serious and/or systemic in nature" and were ultimately referred to the relevant agency to deal with or assessed as not requiring as any further action by any agency.

Recommendation 12: *Remove the requirement for a statutory declaration in section 36*

That the CC Act be amended to remove the requirement in s. 36(3) that a complaint must be made by way of a statutory declaration.

Corruption prevention function

As previously discussed, under the 2014 amendments our responsibilities for the prevention of corruption in UPAs were removed, including the responsibility to raise the standards of integrity and conduct within a UPA.

The CCC is of the view that there is a continuing role for the CCC in corruption prevention within the public sector and it should be reinstated. If the prevention function is restored, the CCC considers it would benefit from additional information and intelligence gathering powers. These could be developed in alignment with a whole-of-organisation strategic direction for prevention. The Queensland Audit Office (QAO) encourages all public sector agencies to implement fraud risk assessments and routine data analytics over areas inherently susceptible to fraud.³¹ The QAO considers these to be strong techniques that complement each other as part of an effective fraud control plan. These techniques may also be applied to other at risk areas of corruption. Other Queensland and inter-state integrity agencies

31 QAO Fraud Risk Management Report to Parliament 9: 2012–13 — <https://www.qao.qld.gov.au/report-9--:2012-13> and QAO Fraud Management in Local Government Report 19:2014–15 — <https://www.qao.qld.gov.au/report-19--:2014-15>

are drawing upon specific fields of academic and industry expertise to make appropriate recommendations for corruption/integrity reform. However, these recommendations rely upon reliable sources of data. The CCC does not have specific powers to compel public sector agencies to provide systems data for the purpose of making recommendations for systemic corruption prevention reforms. It is recommended that consideration be given to amending s. 55 (Sharing of Intelligence Information), s. 73 (Notice to enter and search official premises) and s. 75 (Notices to Discover Information) to expressly state they also apply to the performance of the CCC's corruption prevention function.³²

As there is a continuing role for the CCC in corruption prevention within the public sector, the CCC recommends that the corruption prevention function be reinstated.

If that function is returned, the CCC recommends that there be enhanced power for it to obtain information and intelligence from public sector agencies, including the ability to obtain reliable systems data, via an appropriate legislative amendment to existing powers.

Recommendation 13: A CCC Corruption prevention function

It is recommended the government amend s. 23 of the CC Act to introduce a corruption prevention function.

Amendment to existing search warrant and surveillance warrant powers

Police seconded to the CCC have, in the performance of corruption functions, additional powers under the PPRA that are not available to the CCC's civilian investigators performing similar roles. This has potential to undermine the efficient resourcing of CCC investigations into matters of serious corruption, particularly those involving allegations against police. In this chapter (p. 42), we have identified an urgent need for a review of CCC's investigative powers. For the corruption function, the most significant concerns relate to the need to have:

- search warrant powers in section 92 of the CC Act with powers similar to section 154 of the PPRA, enabling a magistrate or judge to order the person in possession of access information for a storage device in the person's possession, to give a CCC officer access to the device and access information necessary and to allow the CCC officer to use, examine and copy relevant information
- surveillance warrant powers for a CCC corruption investigation similar to those available for a CCC crime investigation under Chapter 13 of the PPRA
- certainty about the abrogation of the privilege against self-incrimination as it applies to section 75 Notices to Discover information, which until recently have been used as a timely, efficient and effective means of compelling witnesses to give important information relevant to corruption investigations but have been assessed as increasingly likely to become subject to legal challenge.

Clarification of the CCC's monitoring role

Historically, the CCC has adopted the practice that the monitoring role does not fall within the meaning of a corruption investigation. Accordingly, fulfilling the monitoring role involves reliance on leveraging our cooperative relationships with agencies rather than any compulsory power to require the provision of important information.

During the review period the CCC has identified a number of deficiencies in agency reviews or audits. Some of these may have been alleviated by the use of compulsory powers.

³² See section 35(1)(i) and (j)

This impediment could be removed in a number of ways, one being the inclusion of the CCC's monitoring role within the definition of a "corruption investigation" in the Dictionary to the Act. However, that may have unintended consequences. Another way would be to state that specific corruption powers apply to the performance of the CCC's monitoring role. It is recommended that the latter approach be given consideration and that section 73 (Notice to enter and search official premises) and section 75 (Notices to Discover Information) be expressly stated to also apply to the performance of the CCC's monitoring role under sections 47 and 48.

Recommendation 14: Clarify the CCC's Corruption monitoring powers

That the CCC's corruption powers (ss. 73 and 75) be amended to apply to the performance of the CCC's monitoring role under ss. 47 and 48.

Alignment of QPS use of information with use of information for purposes of CC Act

Following the decision in *Flori v Commissioner of Police & another* [2014] QSC 284 we recommend consideration be given to closer alignment with QPS uses of information in its possession with the use of information for purposes of the CC Act.

It is not apparent from the judgment in *Flori* whether there was any argument that general law principles limiting the use of information in the possession of the Police Service to the purpose for which the information was obtained may have been overridden by implication of Part 10 of the *Police Service Administration Act 1990* or that information could be provided to the CCC pursuant to Part 7 of the *Police Service Administration Act* and sections 37, 38, 39 and 343 of the CC Act.

The purpose of this recommendation is to ensure that information lawfully in the possession of the QPS, whether or not obtained by the QPS by means of compulsion under the *Police Powers and Responsibilities Act 2000* or any other Act or rule of law, may be given, and used, for the purposes of the functions of the Police Service subject to well-established grounds of privilege and may also be used for the performance of functions under the CC Act. This would include the use of any information relevant to the discipline of members of the QPS. It would also acknowledge the primacy of section 343 of the CC Act in allowing any information to be given to the CCC for the performance of its functions.

As an alternative to the suggested recommendation to amend the CC Act (ss. 42 and 44), Part 10 of the *Police Service Administration Act 1990* could be amended to include a provision similar in effect to sections 62 and 343 (appropriately adapted to protect privileged information and information confidential to the CCC) of the CC Act.

Alignment of other public sector use of information with the use of information for the purposes of the CCC

Further to the above there may also be a need for alignment of the use of information in the possession of other agencies with the use of information for purposes of the CC Act. Many public sector agencies, apart from the QPS, have statutory powers to obtain information or evidence for law enforcement purposes. In the event that the exercise of those powers revealed evidence of misconduct by the holder of an appointment in a public sector agency, it may be appropriate that this evidence be available for discipline purposes.

As a matter of principle, provisions of similar effect to that referred to in the preceding recommendation might also be included in the legislative framework for other public sector entities (UPAs) to ensure that

the CCC and/or public officials are provided with information relevant to the performance of their respective functions.

Recommendation 15: *Public officials' use of information for purposes consistent with the CC Act*

That amendments be made to ss. 42 and 44 of the CC Act to ensure that information provided by the CCC to the Commissioner of Police and other public officials respectively may be used and dealt with for the purpose of dealing with a complaint, including the taking of disciplinary action.

Section 50 CC Act – Commission may prosecute corrupt conduct

The CCC has observed that usually public servants who suspect they are liable to be pursued for corrupt conduct will elect to resign. There is the possibility those people will be re-employed in another department, unaware of the individual's history.

The commencement of any application to QCAT for a finding of corrupt conduct, including after the officer resigns, is possible but cumbersome and lengthy. Applications are hampered by the need to prescribe individual public sector officers in a regulation prior to the commencement of any application in QCAT. That can be a resource-intensive process and a disincentive to using QCAT's jurisdiction effectively.

In principle, the relevant UPA public official or the CCC are the appropriate persons to determine whether bringing disciplinary proceedings against a person for corrupt conduct is appropriate in the public interest. The involvement of Governor-in-Council on a case by case basis, in the administration of public sector discipline is unnecessary.

Again, in principle, the power to make post-separation disciplinary declarations by the relevant UPA or the QCAT should be consistent across the public sector.

The prescription of units of public administration and appointments therein for the purpose of making a finding (including post-separation disciplinary declarations) of corrupt conduct in the QCAT original jurisdiction would remove an unnecessary barrier to the CCC effectively utilising this power. As a matter of policy it would be expected that the CCC would only take such action where it is in the public interest.

Recommendation 16: *Have public sector agencies prescribed for prosecutions for corrupt conduct in QCAT*

The CCC recommends that s. 50 of the CC Act be amended to deem units of public administration and appointments therein to be within the jurisdiction of QCAT for the purpose of making findings of corrupt conduct.

Proceedings before Queensland Civil and Administrative Tribunal (QCAT)

Overview

In its submission to the 2012 Three Year Review, the CMC sought amendments to the CM Act (now CC Act) to address three issues with respect to QCAT proceedings. The 8th PCMC supported legislative amendments for each of these issues and the then government gave these proposals strong support,

to be implemented as part of the suite of changes arising out of the Independent Expert Panel's³³ May 2011 report entitled *Simple, Effective, Transparent, Strong – An Independent Review of the Queensland police complaints, discipline and misconduct system*, (SETS review). The CCC considers these amendments remain critical, and Most recently again raised these issues in our submission to the Review of The *Queensland Civil and Administrative Tribunal Act 2009*.

Time for commencement of a review application

The QCAT Act currently provides that the applicant seeking review of a decision must do so within 28 days of a decision being made, whereas the CC Act permits only 14 days. The CCC has previously recommended that section 219G of the CC Act be amended to lengthen the period within which a review application must be made to QCAT so that it is consistent with the 28-day period specified in section 33 of the *Queensland Civil and Administrative Tribunal Act 2009* (p. 7 CCC submission).

Such an amendment will provide the CCC with sufficient time to receive notification of the decision (which can take up to a week), obtain the material before the original decision maker and consider whether a review application should be sought.

The 8th PCMC recommended that:

... in developing the legislative changes required for implementation of the new Police Complaints, Discipline and Misconduct system, the Government reviews all relevant time periods to ensure there is consistency across legislation and the time periods provided are reasonable (recommendation 28, p. 85).

The Government supported this recommendation and noted that 14 days is not long enough:

...The Government considers it is important that before an application is lodged by the CMC under section 219G, that the CMC be given adequate time to consider whether they should review a decision and 14 days is not considered long enough. (p. 11)

Recommendation 17: Proceedings before the Queensland Civil and Administrative Tribunal (QCAT)

That section 219G of the CC Act be amended to lengthen the period to 28 days within which a review application must be made to QCAT (so that it is consistent with the 28-day period specified in section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*.)

Jurisdiction to initiate police misconduct proceedings in QCAT

If the QPS declines to initiate police misconduct disciplinary proceedings, the CCC has no power to seek a review of that decision (QCAT's appellate jurisdiction) or to initiate police misconduct proceedings in the original jurisdiction of QCAT.

The CCC has previously recommended that:

- section 50 be amended to allow the CCC to prosecute in QCAT both proceedings for corrupt conduct (previously referred to as "official misconduct") and police misconduct
- the definition of "reviewable decision" in section 219BA be amended to also include a decision not to commence disciplinary proceedings (p. 7 CCC submission).

³³ Simone Webbe, Hon. Glen Williams AO QC and Felix Grayson APM

The 8th PCMC fully supported the CCC's recommendations in relation to sections 50 and 219BA and noted that:

...this matter was also considered by the Independent Panel in its review of the Police Complaints, Discipline and Misconduct system. The Committee is pleased that this matter has been supported by the Government and will be implemented as part of the suite of changes arising out the Independent Panel's report... (pp. 84–5)

The CCC considers that changes to the review jurisdiction³⁴ of QCAT are still needed to address this significant flaw, first highlighted by the decision taken by Deputy Commissioner Rynders not to commence disciplinary proceedings against QPS officers involved in the investigation of the death of Mulrunji in 2004.

The then CMC considered that significant doubt surrounded the issue of whether or not Deputy Commissioner Rynders' decision was a "reviewable decision" within the meaning of that term as defined in the CM Act.³⁵ The CMC accordingly did not seek a review of the decision. However, the CMC did consider commencing proceedings in QCAT for official misconduct against the investigating officers, and sought further advice. That advice highlighted a major problem with the legislation.

The CCC can seek a review by QCAT of a decision to dismiss a disciplinary charge, or a decision in relation to a penalty imposed, but cannot seek a review of a decision **not** to commence disciplinary proceedings. It is difficult to imagine parliament intended this result and the effect of the current legislation seriously hinders the CCC's powers to effectively supervise the QPS in its performance of its disciplinary functions. The circumstances of the Palm Island matter and other more recent matters, demonstrate why it is important for there to be a mechanism for the external review of police disciplinary decisions in appropriate cases.

The legislation could easily be amended to include in the definition of "reviewable decision" a decision not to commence disciplinary proceedings. An important related amendment sought by the CCC is the amendment of section 50 of the CC Act to allow the CCC to prosecute in QCAT not only corruption by police officers, but police misconduct as defined. Such an outcome would be entirely consistent with the CCC's Corruption function.

Recommendation 18: Proceedings before the Queensland Civil and Administrative Tribunal (QCAT)

That section 50 be amended to allow the CCC to prosecute in QCAT both proceedings for corrupt conduct (previously referred to as "official misconduct") and police misconduct.

Recommendation 19: Proceedings before the Queensland Civil and Administrative Tribunal (QCAT)

That the definition of "reviewable decision" in section 219BA be amended to also include a decision not to commence disciplinary proceedings.

³⁴ As to which, see pp. 82–83 of the 8th PCMC Three Year Review for a general explanation

³⁵ See p.84

Evidence-related issues

There are evidence-related issues that concern claims of privilege before QCAT.

The CC Act presently provides in section 197 (3) that answers given in a hearing, or pursuant to a notice, cannot be used in any civil, criminal or administrative proceeding (including disciplinary proceedings), if a claim of self-incrimination privilege has been made by a witness.

In QCAT proceedings, critical witnesses to the act of misconduct are able to refuse to answer a question on the ground of self-incrimination privilege, meaning the previous statements they may have given to the CMC in an investigative hearing or pursuant to a notice cannot be used against them in a subsequent disciplinary proceeding.

The CCC has for some time sought amendment of the *Police Service Administration Act 1990*, the *Crime and Misconduct Act 2001*, and the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) to abrogate the privilege against self-incrimination in disciplinary investigations or disciplinary proceedings, including disciplinary proceedings brought in the original jurisdiction of QCAT (for example, CMC 2011 submission to the PCMC; letter dated 14 October 2008 to the Hon. Glen Williams AO QC, Chair of the Independent Expert Panel for the Tribunals Review Project; letter dated 17 June 2010 to the Hon. Cameron Dick MP, Attorney General and Minister for Industrial Relations.)

Recommendation 20: *Proceedings before the Queensland Civil and Administrative Tribunal (QCAT)*

That the privilege against self-incrimination be abrogated in disciplinary investigations or disciplinary proceedings, including disciplinary proceedings brought in the original jurisdiction of QCAT and that the use immunity in s. 197 of the Act be specified to not extend to disciplinary proceedings in QCAT.

Clarification of CCC role in investigating conduct that may be protected by parliamentary privilege

The CCC has recently had to manage complexity associated with the various ways that parliamentary privilege might affect corruption investigations. For example, the investigations concerning the former Member for Sandgate, Mr Gordon Nuttall; Operation Westward, concerning the former Member for Redcliffe and which is currently the subject of criminal proceedings; and the matter of parliamentary privilege identified by The Honourable Margaret White AO in the report of the Queensland Racing Commission of Inquiry and seen as being appropriate for the parliament and not the Commission.³⁶

Parliamentary privilege may limit the effective performance of the corruption function. A valid claim of parliamentary privilege prevents corruption investigations from obtaining protected information and documents. A corruption investigation may also be a contempt of parliament. In Queensland the procedures for clarifying the boundaries of parliamentary privilege relevant to corruption investigations depend upon several factors. These include the nature of the relevant conduct or offence; the relevant procedures of the Legislative Assembly of Queensland (or a committee thereof) to sanction, authorise or control a relevant investigation and the authority of both the Legislative Assembly and the Supreme Court to protect individuals from impermissible executive action. These processes often involve issues of complexity which may result in delay to timely investigations.

We would welcome consideration of a statutory process to authorise corruption investigations that might otherwise offend against parliamentary privilege. Our research of the legislation for other state

³⁶ See 6.9.68 — 6.9.76 at <<http://www.racinginquiry.qld.gov.au>>

integrity agencies has only identified one example of this within the *Corruption and Crime Commission Act 2003 (WA)*.³⁷

The CC Act could be amended to:

- Expressly state that parliamentary privilege is abrogated with respect to the performance of the corruption function (subject to a protection akin to section 197 of the CC Act appropriately adjusted to refer to parliamentary privilege and preventing use of the information in civil, criminal or administrative proceedings). This would be subject to the caveat that the Legislative Assembly or an authorised committee thereof may resolve that the relevant evidence be admissible in any civil, criminal or administrative proceeding, or
- include a procedure similar to that found in the *Corruption and Crime Commission Act 2003 (WA)*. That procedure enables that Commission to refer allegations of misconduct, not being serious misconduct, to the presiding officer of the relevant chamber of the House, for determination as to whether a committee of the House is to inquire into the matter or the Commission is to inquire into the matter. In circumstances where the Privileges Committee is to inquire into the matter it must do so by directing the Commission to act on its behalf. An inquiry cannot be discontinued by the direction of the presiding officer or the Privileges Committee unless the Commission consents.

In relation to this last dot point, the relevant statutory procedure could require the CCC to report confidentially to the Legislative Assembly and obtain direction from the Legislative Assembly (or an authorised committee thereof) that:

- in relation to alleged serious or systemic corruption, the CCC itself must investigate. The procedure might provide that for the purpose of the investigation and any prosecution proceedings considered appropriate, parliamentary privilege would be abrogated and the CCC would have responsibility for determining to which entity a report on the investigation would be given (the Legislative Assembly, the Attorney-General or the Director of Public Prosecutions)
- in relation to alleged corruption that is not serious or systemic, the CCC itself would only investigate if requested by the Legislative Assembly (or its authorised committee) for the purpose of providing a report to parliament (or its authorised committee). Any report on the investigation would only be given to the Legislative Assembly (or its authorised committee) unless otherwise directed.

Recommendation 21: *Clarification of the CCC's role in investigating conduct that may be protected by parliamentary privilege*

That consideration be given to amending the CC Act, or developing a procedure with parliament, to allow access to protected information and documents in defined circumstances.

³⁷ See 27A and 27B of Corruption and Crime Commission Act 2003 (WA) at <<http://www.slp.wa.gov.au>>

Witness protection

Our functions and powers

Witness protection is an essential component of the Queensland criminal justice system because it provides an environment that assists and protects people in danger from giving evidence to law enforcement agencies and the courts. Witness protection may involve providing court security or close personal protection, and securing witnesses in a safe location on a temporary or permanent basis.

The CCC is the only independent commission in Australasia with the responsibility for protecting witnesses. Elsewhere in Australia and New Zealand, witness protection programs are managed by state and territory police forces.

Performance

With respect to maintaining the safety of protected persons, the CCC has maintained a 100 per cent success rate in keeping witnesses safe. We also commit to providing interim protection within 48 hours to any eligible applicant wherever their location in Australia, ensuring a rapid and effective response. Our results against this target are detailed in Table 3.13 below.

Table 3.13: Median time to provide protection, 2012–13 to 2014–15

	2012–13	2013–14	2014–15
Median time to conduct initial witness protection program (target 48 hours)	n/a*	18 hours	23 hours

*Before 2013–14, this service standard was worded as “Percentage of eligible persons offered interim protection within two days”.

Appendix 1: Accountability and corporate governance

Our corporate governance framework is underpinned by the organisational vision, mission and values established within our strategic plan.

External accountability

The CCC is a statutory body and is accountable for its actions through a variety of overseeing and monitoring mechanisms, the principal one being the Parliamentary Crime and Corruption Committee.

Our external accountability mechanisms are outlined in Table 1.

External reporting

We report on our strategic and operational performance through the annual report, reports requested by the PCCC, various publications and the CCC website. We also produce six-monthly reports to the Minister. The reporting includes both qualitative and statistical information and updates to the PCCC on reportable projects and activities.

Our strategic and operational performance targets are published through the Service Delivery Statement (part of the State Budget Papers) and are given actionable expression in the CCC's Strategic and Operational Plans. These performance targets include a range of measures relating to the efficiency and effectiveness of the CCC.

Operational performance is reported to the Minister and Queensland Treasury within the Service Delivery Statement performance reporting regime.

We provide audited financial statements through the Annual Report and specific information on organisational matters is provided annually in response to Estimates Committee requests.

The extent of our oversight is reflected in the following table.

Table 1: External accountability – monitoring and oversight roles

External accountability	Description
Parliamentary Crime and Corruption Committee (PCCC)	<ul style="list-style-type: none"> • The PCCC is a seven-member, all-party committee of the Queensland Legislative Assembly established to: <ul style="list-style-type: none"> - monitor and review the performance of the CCC - review CCC reports, including the annual report and research reports - request reports on matters that have come to the CCC's attention through the media or by other means - receive and consider complaints against the CCC, and deal with issues concerning the CCC as they arise.
Parliamentary Crime and Corruption Commissioner	<ul style="list-style-type: none"> • The Parliamentary Crime and Corruption Commissioner (Parliamentary Commissioner) assists the PCCC in its role of monitoring and reviewing the CCC. • The Parliamentary Commissioner, at the PCCC's direction, investigates

External accountability	Description
	<p>complaints against the CCC or its officers, and conducts audits and reviews of the CCC's activities. The Parliamentary Commissioner's powers include the ability to require CCC officers to give evidence at a hearing, and to require the production of records, files and other documents.</p> <ul style="list-style-type: none"> • The PCCC may also investigate some matters on their own initiative. • The PCCC may also direct the Parliamentary Commissioner to audit and review the CCC's activities. Each year the Parliamentary Commissioner submits an audit of the CCC to the PCCC.
Minister	<ul style="list-style-type: none"> • The Minister responsible for the CCC is the Honourable Yvette D'Ath MP, Attorney-General, Minister for Justice. • The Minister participates in the selection of the Chairman, Commissioners and Senior Executive Officers, approves senior officer appointment conditions and approves the CCC's budget. • The Minister has an obligation, under section 260 of the CC Act, to ensure that the CCC operates to best-practice standards. In order to do this, the Commission must report to the Minister on the efficiency, effectiveness, economy and timeliness of the CCC and its systems and processes, including operational processes and the dealing of complaints when and in the way the Minister requires. • The Minister is required to approve the CCC's research plan.
Crime Reference Committee	<ul style="list-style-type: none"> • The Crime Reference Committee, established under section 274 of the CC Act, has responsibility for referring major crime to the CCC for investigation. It also has a coordinating role for investigations into major crime conducted by the CCC in cooperation with any law enforcement agency. • The committee is chaired by the Senior Executive Officer (Crime), and consists of the Chairman of the CCC, the Commissioner of Police, the Principal Commissioner, Queensland Family and Child Commission, and two community representatives.
Public Interest Monitor	<ul style="list-style-type: none"> • The Public Interest Monitor monitors applications for, and the use of, surveillance warrants and covert search warrants under the CC Act and the PPRA. • The Public Interest Monitor has the following functions for surveillance warrants and covert search warrants: <ul style="list-style-type: none"> - to monitor compliance by the CCC in relation to matters concerning applications for surveillance warrants and covert search warrants - to monitor compliance by the CCC in relation to CCC telephone interception requirements - to appear at any hearing of an application to a Supreme Court judge or magistrate for a surveillance warrant or covert search warrant, or to test the validity of the application - to gather statistical information about the use and effectiveness of surveillance warrants and covert search warrants - whenever it is considered appropriate, to give to the Commission a report on non-compliance by the CCC.
Supreme Court	<ul style="list-style-type: none"> • Many of the CCC's coercive powers may be exercised only with the approval of a Supreme Court judge. These include: <ul style="list-style-type: none"> - a search warrant (where structural damage may occur) - a covert search warrant - a surveillance warrant - a notice requiring immediate attendance at a hearing - monitoring and suspension orders on financial institutions

External accountability	Description
	<ul style="list-style-type: none"> - an arrest warrant for non-attendance - an additional powers warrant. • The CCC is also subject to review in the Supreme Court in the following cases: <ul style="list-style-type: none"> - A person who believes that they are being investigated unfairly by the CCC may apply to the Supreme Court for relief. - The Supreme Court may decide issues of privilege raised by a person under investigation either at first instance or by reviewing a decision made by a presiding officer at a CCC hearing.
Controlled Operations Committee	<ul style="list-style-type: none"> • The Controlled Operations Committee is chaired by a retired Court of Appeal judge (the independent member), and consists of the Commissioner of Police (or a nominee) and the Chairman of the CCC. The committee was established under the PPRA to consider and make recommendations about applications for “controlled operations” to be undertaken by the QPS or the CCC. Controlled operations are investigations of serious indictable offences, misconduct or organised crime that involve police officers and others engaging in activities that may be unlawful.

Internal accountability

The Commission

The CCC is led by a five-member Commission comprising of the Chairman, Chief Executive Officer, Deputy Chairman and two Ordinary Commissioners who represent the community. The Commission is responsible for providing strategic leadership and direction for the performance of the agency’s functions, and the exercise of its powers

Each month the Commission meets formally to consider issues relating primarily to the strategic direction of the organisation. In guiding and maintaining the focus of the organisation, it discusses matters affecting all areas of the organisation including strategic, financial, and managerial issues, specific Crime and Corruption operations.

Current members

Chairman (Acting) (until 31.8.15)

Ms Ann Gummow

Chief Executive Officer (Acting) (until 31.8.15)

Ms Kath Florian

Deputy Chairman

Mr Sydney Williams QC

Ordinary Commissioners (Acting) (until 31.8.15)

Mr David Kent QC

Ms Soraya Ryan QC

Internal governance

CCC committees

Formal governance committees

Audit and Risk Management Committee: provides independent advice to assist the Commission in monitoring and developing systems to improve accountability and strengthen risk management.

Executive Leadership Group: considers strategic priorities, resource allocation and operational performance to ensure the efficient, effective and economical management of the organisation.

Workplace Health and Safety Committee: monitors the CMC's performance in providing a safe and healthy environment for its employees.

Operational committees

CCC groups and less formal committees perform an important function where a formal Committee structure for decision making is not required. In such cases a group of individuals gathered to address a particular purpose provides a forum for discussion and the exposure of the necessary advice or information across the Commission. Other bodies or groups that support the work or operations of the CCC include the:

- Agency Appointments Review Committee
- Business Continuity Committee
- CCC Consultative Forum
- Crime Intelligence and Research Review Committee
- Crime Operations Review Committee
- Managers Communication Forum
- Matters Assessment Committee
- Information Steering Group
- Review of Operations Corruption Committee
- Research Committee
- Witness Protection Advisory Committee.

Internal audit

The internal audit function operates independently of the activities it reviews, and serves to evaluate systems and processes to ensure the agency is operating efficiently, effectively and economically. Our Internal Auditor retains an independent and direct reporting relationship to the Chairman and the Audit and Risk Management Committee. All audits are risk-based, comprising financial compliance audits, performance audits and information technology computing audits, to ensure that areas of highest risk are addressed in Annual Internal Audit Plans. Audit plans are endorsed by the Audit Committee and have Commission approval.

The internal audit function operates under its own charter to ensure that our procedures, controls and practices are consistent with audit standards and the code of ethics prescribed by the Institute of Internal Auditors International Professional Practices Framework. The Internal Auditor also has due regard to Queensland Treasury's Audit Committee Guidelines.

Records management

From 1 July 2014, changes to the CC Act under section 269(1) delegated responsibility for the Commission's public records powers to the Chief Executive Officer. Section 62 of the CC Act provides the CEO with the authority to disseminate or give public access to Commission records and section 346B(5) provides authority to amend the Retention Access Period (RAP) of any Fitzgerald Inquiry record sent to Queensland State Archivist prior to 9 November 2011. The CEO must endorse the final disposal of CCC records.

Financial management and performance management

Senior managers are responsible and accountable for the achievement of corporate goals and objectives within approved budget allocations.

We also report on our performance through:

- the annual Service Delivery Statement
- targets set through strategic and operational planning
- financial statements for inclusion in the annual report
- an internal budget reporting regime
- risk management reporting.

Performance reporting and monitoring is formerly facilitated through monthly Commission meetings; regular meetings with the PCCC; and six-monthly reports to the Minister.

Legislative compliance

Legal Services Division

As a result of our organisational restructure a Legal Services Division (LSD) was established on 1 July 2014. The Director heads the 16.3 staff attached to the division. LSD is separated into a number of specific units which cover specialised legal areas of the CCC.

- Director and General Counsel
- Litigation
- General legal
- Corruption
- Telecommunications

LSD staff provide independent and objective legal advice about operational matters, including Telecommunication Interception applications. In cases where the Commission is involved in litigation LSD represents the CCC before any court or tribunal. Right to Information and Information Privacy are also managed by the division.

The Director oversees the activities of LSD and provides independent legal advice to the Chairman and Commissioners.

Right to Information

Access to documents in the possession or control of the CCC may be available to the public under the *Right to Information Act 2009* (RTI Act).

While the CCC is subject to the access provisions of the RTI Act, the Act does not apply to particular documents such as those relating to surveillance devices, controlled operations, assumed identities, covert search warrants and telephone interception. A further limitation on access is a provision which

restricts access to documents in the Crime and Corruption areas of the CCC to those persons they concern.

The RTI Act requires that certain documents accessed under the Act may be published on the disclosure log on the CCC's website.

Information Privacy

The primary objectives of the *Information Privacy Act 2009* (IP Act) are to provide for the fair collection and handling of personal information in the public sector, and to provide a right of persons to access and amend personal information held by public sector entities. It sets out the Information Privacy Principles (IPP) to which public sector entities must adhere, unless exempted by the IP Act.

The IPP have limited application to the core activities of the CCC and do not apply to controlled operations, covert operations, telephone interception, witness protection or complaints and investigation of corruption. The CCC is also not subject to particular IPP if it is satisfied on reasonable grounds that non-compliance is necessary for performing its activities related to the enforcement of laws and intelligence functions.

Our workforce

As at 30 June 2015, the CCC had 336.6 permanent, temporary and casual FTE staff.

Table 2: Staff numbers, 2011–12 to 2014–15

Total staff			
2011–12	2012–13	2013–14	2014–15
358	303	329	336.6

Strategy, structure and resource allocations project

In 2011 the Commission initiated an exercise to review its staff establishment to ensure its resources were properly deployed to meet its commitments and manage its risks. This was continued in 2012 as part of the Commission's project to align the organisation's establishment with the labour budget. These initiatives resulted in the disestablishment of 28 FTE positions and 13 permanent employees receiving redundancy packages in the 2012–13 financial year.

Following the legislative review of early 2014 and resulting changes to the Act, the Commission restructured its establishment to ensure alignment with the revised Act. This resulted in an overall decrease of 11 permanent and seven temporary full-time positions in the establishment. The staffing implications of the restructure led to a seven redeployments of permanent staff and one redundancy.

Workforce management issues

We are focusing on the following workforce management strategies:

- attracting and retaining specialised staff
- growing organisational capability and resilience
- managing a multi-generational workforce
- strengthening management and supervisory practice at all levels of the organisation.

In 2014 we introduced a workforce continuity program to identify critical roles and suitable staff to act in those positions when required. The initial phase of the program has been completed with critical roles identified, and activity is underway to identify suitable staff for capability development within these roles.

To promote workplace productivity and a performance-based culture, the CCC maintains an Achievement and Capability Planning (ACP) framework. The ACP framework is structured to:

- align individual effort and development opportunities with corporate and business objectives; and
- foster staff conduct that aligns with the Commission's Code of Conduct.

CMG staffing

In 2013–14 we received additional grant funding of \$6.7m over four years to support legislative amendments resulting in greater criminal motorcycle gang (CMG) related activity, including increased crime hearings, investigations, surveillance and civil confiscations. This increased funding led to the creation of:

- 23 temporary positions for a 12-month period
- seven temporary positions for a three-year period for proceeds of crime work.

eLearning management system

Following the PCMC Inquiry into the limits of managing and recording compliance training for CCC staff, in 2014 the Commission approved the acquisition of an eLearning management system for delivering online compliance and professional development training. Since its implementation, customised online training has been delivered to staff in:

- Information security awareness
- Introduction to recordkeeping requirements
- Procurement awareness
- Credit card awareness
- Telecommunications interception
- Code of Conduct
- Work health and safety awareness.

Reporting improper conduct of our staff

The CC Act requires, variously, the Chairman, Deputy Chairman or CEO to report to the PCCC and the Parliamentary Commissioner if there is a suspicion that a CCC officer has acted in a way that involves or may involve improper conduct (s. 329). The CC Act also provides for a wider definition of CCC officers, by including former officers, and specifically allows the PCCC to request reports in respect of these matters.

Appendix 2: QCAT Matters

Circumstances/facts	QPS Decision	Reason for review to QCAT by CCC	Decision of Tribunal
<p>1. Allegation of inaction</p> <p>The subject officer was stationed at a station with only two police officers. In December 2009, the officer was off duty and there was no relief personnel rostered to work at the station that day. At about 11:30am local resident telephoned the police station and spoke with the officer. The caller stated that he had seen an abandoned car in a remote location, which caused him concern should the driver / occupant be exposed to the temperature and other environmental conditions in the area</p> <p>The officer was given the registration number of the vehicle and the caller was informed that police would look into it. However, the officer took no further steps to investigate the circumstances of the car being in that location.</p> <p>Four days later, while at another police station, the officer became aware that a search operation had commenced for a missing person. On becoming aware of this information, the officer spoke with the local CIB and informed the officer in charge of the earlier conversation with the caller. The next day the body of the driver of the abandoned car was located in bushland near to where the car was seen by the caller.</p>	<p>Criminal proceedings</p> <p>Nil.</p> <p>Disciplinary proceedings</p> <ol style="list-style-type: none"> 1. Demoted in rank from Sergeant 3.5 to Senior Constable 2.9 for a period of 2 years. 2. Wholly suspended for the 2-year period. 	<p>Yes - on the grounds that the sanction was disproportionate to the misconduct.</p>	<p>QCAT Orders</p> <ol style="list-style-type: none"> 1. Original sanction set aside. 2. The subject demoted from pay point Sergeant 3.5 to Constable 2.9 for two years.
<p>2. Allegation of perverting the course of justice</p> <p>A police officer was tasked to investigate a complaint of rape. In the course of the investigation the officer prepared a photo-board for the victim to view. After the conclusion</p>	<p>Criminal proceedings</p> <p>Nil.</p> <p>Disciplinary proceedings</p>	<p>Yes - on the grounds that the sanction was disproportionate to the misconduct.</p>	<p>QCAT Orders</p> <ol style="list-style-type: none"> 1. Demotion from Senior Constable 2.7 to Senior Constable 2.5 for 12 months from date of order.

Circumstances/facts	QPS Decision	Reason for review to QCAT by CCC	Decision of Tribunal
<p>of the formal photo board procedure, the officer improperly identified a suspect to the victim and prepared a statement for the victim to sign, which failed to acknowledge that assistance was given to her by the officer to identify the suspect.</p> <p>The investigation later found that the identified suspect was not the person responsible for the rape. During a formal interview the officer was untruthful, denying that the victim was assisted in her identification of a suspect.</p> <p>The officer was also investigated regarding conduct when dealing with a parental discipline/assault investigation. In this case the subject officer deleted the electronic file of an audio recording with a suspect. When questioned in relation to deleting the file and again was untruthful, denied the existence of the recording when asked by a senior and supervising officer but the supervisor had already obtained a copy of the recording prior to its deletion.</p>	<ol style="list-style-type: none"> 1. Pay point reduction from Senior Constable 2.7 to Senior Constable 2.5. 2. Sanction wholly suspended for a period of 2 years on the conditions that: <ul style="list-style-type: none"> • the subject did not commit any further acts of misconduct during that period • the subject complete booklets on Ethics and Ethical Decision Making; Eyewitness Identification; and Child Protection Investigations and Issues. 		<ol style="list-style-type: none"> 2. Salary to return to 2.7 following the 12 month process. 3. Subject eligible to progress pay level to 2.8 on 1 October 2014 subject to normal performance and planning assessment requirements.
<p>3. Allegations of failure to investigate properly</p> <p>The subject officer was assigned the task of investigation the alleged misconduct of a fellow officer (the fellow officer being accused of using excessive force in arresting a female suspect and further assaulting her in the watch house).</p> <p>The subject did not further interview the female suspect or any other witnesses other than the accused officer. The subject obtained watch-house CCTV footage which confirmed the watch-house assault. The subject officer reported to his senior officer that the CCTV footage did not support the allegation and recommended the accused officers be exonerated. Consequently, no action was taken against the accused officer who subsequently assaulted another citizen.</p>	<p>Criminal proceedings</p> <p>Nil.</p> <p>Disciplinary proceedings</p> <p>Reduction in rank from 4.4 to 3.5 suspended for 12 months provided the officer does not commit any further misconduct during the 12-month period.</p>	<p>Yes – that the matter be pursued by ordinary disciplinary processes (not ACDP). Also on the grounds that the sanction was disproportionate to the misconduct.</p>	<p>QCATA Orders (following appeal)</p> <ol style="list-style-type: none"> 1. Original sanction set aside. 2. The disciplinary proceeding returned to QPS for reconsideration and further processing.

Circumstances/facts	QPS Decision	Reason for review to QCAT by CCC	Decision of Tribunal
<p>The subject officer subsequently claimed not to have looked at the CCTV even though the subject officer had asserted in police documents that he had.</p>			
<p>4. Allegation of excessive use of force</p> <p>An Indigenous woman was arrested in relation to drink driving and public nuisance offences and transported to a police watch-house. Due to the woman's non-compliant behaviour and previous suicide attempts, the subject officer and another officer were directed to change the woman into a watch-house smock. The officers moved the woman into a room that was not covered by CCTV for this purpose.</p> <p>The woman alleged that while in this room, the officer grabbed her by the hair and forced her face and head into the besser block wall on two occasions. The officer attempted to do this a third time before her fellow officer placed her hand between the woman's head and the wall to soften the impact. After changing the woman into the smock, the subject officer grabbed the smock and punched the female in the mouth. The subject officer continued to maintain her grip on the woman's smock and dragged her out of the non-monitored room towards a padded cell. Upon entering the main area of the watch-house, the subject released her grip. The woman was then led to a padded cell where she stopped outside the cell and offered passive resistance by not moving.</p> <p>The female then lashed out with her right fist at the subject officer, with the blow landing on the subject officer's chest. The subject officer then punched the woman in the face while the woman grabbed the front of the subject officer's head by the hair. Fellow officer's come to the assistance of the subject officer and the female is then left in the cell.</p>	<p>Criminal proceedings</p> <p>Nil.</p> <p>Disciplinary proceedings</p> <ol style="list-style-type: none"> 1. 1 penalty point and subject to receive one on one operational skills and tactics training within a two month period (total penalty units 2). 2. 1 penalty point and subject to receive one on one operational skills and tactics training within a two month period (total penalty units 2). 	<p>Yes - on the grounds that the sanction was disproportionate to the misconduct.</p>	<p>QCAT Order</p> <p>Original sanction decision set aside and matter remitted back to the QPS to be determined according to law by a different prescribed officer.</p>

Circumstances/facts	QPS Decision	Reason for review to QCAT by CCC	Decision of Tribunal
<p>5. Allegation of excessive use of force</p> <p>The subject officer was on duty in a Police Beat. A member of the public entered the Police Beat to enquire about an acquaintance. The officer told the person that for privacy reasons no information could be provided. As the person was leaving the Police Beat, it was alleged that he called the officer an offensive name. The area around the Police Beat is covered by CCTV.</p> <p>CCTV footage shows that the officer ran from the Police Beat and placed the person in a lateral vascular neck restraint (LVNR) from behind. The person is seen to be dragged back towards a nearby police vehicle and his head is seen to impact against the front right hub of the police vehicle. The officer, while maintaining the LVNR, then dragged the victim into the foyer of Police Beat entrance, where with the assistance of another police member, handcuffs were applied.</p>	<p>Criminal proceedings</p> <p>Nil.</p> <p>Disciplinary proceedings</p> <p>Reduced in rank from Senior Constable 2.2 to Constable 1.6 for 12 months, wholly suspended on the conditions that the subject:</p> <ul style="list-style-type: none"> • not commit any further misconduct within the following 12 months • perform 80 hours of community service within the 12 month period. 	<p>Yes - on the grounds that the sanction was disproportionate to the misconduct. It was noted that a number of aggravating factors were either ignored or 'glossed over' by the Service.</p> <p>For example: The use of an LVNR is a lethal use of force option; and although the fact that the victims head struck the police vehicle was included in the misconduct charge it was not referenced in the précis of the circumstances of the incident.</p>	<p>QCAT Orders</p> <p>QCAT substituted the following sanction:</p> <ol style="list-style-type: none"> 1. The subject's pay point be reduced from 2.3 to 2.1 from 16 October 2014 for 6 months until 16 April 2015. 2. Thereafter subject officer is eligible to apply for pay point 2.4 from 16 July 2015, subject to normal industrial requirements of the Queensland Police Service.
<p>6. Allegation of excessive use of force</p> <p>The subject officer was off-duty and was travelling to work when he observed officers from the Queensland Fire Service restraining a youth (17 years old) who had assaulted a traffic control officer. The off-duty police officer stopped to render assistance and arrested the person responsible for the assault. The youth was walked back to a paved area by the officer and seated him on the ground. The area where the youth was seated is covered by CCTV.</p> <p>The youth was seen to become agitated but did not move from his seated position. The youth refused to respond to the officer's requests for him to keep quiet. The CCTV then shows the subject officer strike the youth in the head with his knee. This caused the youth's head to strike a window and he was knocked momentarily unconscious.</p>	<p>Criminal proceedings</p> <p>Nil.</p> <p>Disciplinary proceedings</p> <p>Dismissal suspended on the conditions that:</p> <ul style="list-style-type: none"> • Do not commit any acts of misconduct for a period of two years • 100 hours of community service in 2 years • Meet with HSO once a month for six months • Perform duty for 3 months whereby mentored for at least 50% of shifts. 	<p>Yes - on the grounds that the sanction was disproportionate to the misconduct.</p>	<p>QCAT Orders</p> <ol style="list-style-type: none"> 1. The sanction imposed by the decision maker was set aside insofar as the conditions imposed. 2. The following conditions were imposed: <ol style="list-style-type: none"> a) Not to commit misconduct for two years from the date the sanction was originally imposed, that is, 24 February 2014. b) Perform 100 hours of community service in the next 12 months. c) From 24 February 2015 meet with HSO once a month for six months, or such longer period that is

Circumstances/facts	QPS Decision	Reason for review to QCAT by CCC	Decision of Tribunal
<p>Members of the fire service are seen to immediately intervene and restrain the police officer while other fire officers administered first aid to the youth who was later taken to hospital.</p>			<p>recommended by the HSO, to undergo counselling as assessed and recommended by the HSO.</p> <p>d) From 24 February 2015 perform duty at Mt Gravatt station and be mentored by a senior officer for 100% of shifts for at least 3 months subject to a report stating he can return to duties without supervision.</p> <p>3. All of the conditions set out above are in place for a maximum of 2 years from 24 February 2014, being the operational period of the suspended sanction.</p>
<p>7. Allegation of unauthorised use of information</p> <p>Two matters of misconduct were alleged against an officer:</p> <ul style="list-style-type: none"> Firstly, the accessed QPRIME without authority and identified that a friend was nominated as a suspect in a fraud. Over a period of months, the subject officer continued to check QPRIME to access a number occurrence reports related to the friend. The officer then relayed information to his friend, including that he was wanted for questioning. The subject officer was warned about his involvement in the investigation. Secondly, the officer conducted unauthorised QPRIME checks on a known outlaw motorcycle gang member (OMCG) associate and confirmed that this person was an associate of another acquaintance. The officer made further unauthorised checks and then advised his acquaintance that his friend was under investigation and wanted for questioning regarding 	<p>Criminal proceedings</p> <p>Nil.</p> <p>Disciplinary proceedings</p> <p>Paypoint reduction by one point (Constable 1.3 to 1.2), wholly suspended for 12 months on the following conditions:</p> <ol style="list-style-type: none"> 80 hours community service at PCYC within 12 months. no further misconduct. 	<p>Yes - on the grounds that the sanction was disproportionate to the misconduct.</p>	<p>QCAT Orders</p> <p>The sanction imposed by the decision maker was set aside and substituted with:</p> <ol style="list-style-type: none"> Reduction of one pay point for six months from 4 March 2015 (returning to his current pay-point from 4 September 2015 and being eligible to progress subject to the usual industrial requirements). 80 hours community service at PCYC (with community service already performed to be counted in satisfaction of this order) within 12 months from 16 June 2014.

Circumstances/facts	QPS Decision	Reason for review to QCAT by CCC	Decision of Tribunal
<p>assaults. The associate then approached the complainant and told him that he has a mate at QPS and knew details of the complaint.</p>			
<p>8. Allegations of excessive use of force</p> <p>The subject officer, in company with other officers, was involved in a planned traffic operation on a major highway. During the operation two incidents occurred:</p> <ol style="list-style-type: none"> 1. An automated police system advised officers that an approaching car may have been stolen. The subject officer stepped out onto the road to direct the car to stop. The car did not stop. The subject threw his torch at the back windscreen of the car. It was later found inside the car. 2. A few minutes later, the police system identified another car approaching which also may have been stolen. Again the officer stepped onto the road to direct the car to stop. When the car did not stop the officer withdrew his firearm and fired at the car. One bullet hit the driver's side rear door and two bullets hit the rear of the car. One of the bullets went through the car boot, perforated the rear seat and passed through the cabin of the car on to the dashboard. <p>There were four or five juveniles in the car at the time and the officer was aware of that the offender's conduct was for minor traffic offences.</p> <p>The officer raised the 1996 death of a relative in mitigation of his conduct as he said it had heightened his sense of self-protection while on traffic duty.</p>	<p>Criminal proceedings</p> <p>Nil.</p> <p>Disciplinary proceedings</p> <p>The first incident was reduced to a breach of discipline by the QPS while the discharge of the firearm was categorised as police misconduct.</p> <p>Decision:</p> <ol style="list-style-type: none"> 1. Reprimand. 2. Reduction from 2.9 to 2.8 for 12 months after which able to progress in accordance with normal industrial arrangements. 	<p>Yes – the first incident was considered by the CCC to be Misconduct and not a Breach of Discipline. Also appeal on the grounds that the sanction was disproportionate to the conduct.</p>	<p>QCAT Orders</p> <p>Recommended orders agreed to by the parties</p> <p>QCAT were satisfied that the officer's action amounted to misconduct.</p> <p>Orders:</p> <ol style="list-style-type: none"> 1. Initial decision set aside. 2. Subject demoted from senior constable 2.9 to constable 1.6 but such demotion is wholly suspended for 12 months from 3 December 2014.
<p>9. Allegation of being under the influence of alcohol while on duty</p> <p>The subject officer was rostered to perform general duties</p>	<p>Criminal proceedings</p> <p>Nil.</p> <p>Disciplinary proceedings</p>	<p>Yes – on the grounds that the sanction was disproportionate to the misconduct.</p>	<p>QCAT Orders</p> <ol style="list-style-type: none"> 1. Pay point reduced to 2.1 for 24 months from 23 December 2014.

Circumstances/facts	QPS Decision	Reason for review to QCAT by CCC	Decision of Tribunal
<p>commencing at 6pm. As the officer had consumed alcohol before commencing duty he used the station's Alcolmeter to test his blood alcohol reading. Over a 20-minute period device returned three positive readings of .096, .072 and .027.</p> <p>The officer attended a discipline interview in relation to being under the influence of alcohol while on duty. During this interview, the subject provided the following false or misleading information in relation to being affected by alcohol while on duty and was unable to explain the Alcolmeter the positive alcohol readings.</p> <p>The CCC also noted that at the time the officer was self-administering the breath test he was in possession of QPS accoutrements, including a firearm at a time when the officer would have known he was affected by alcohol.</p> <p>The officer was also subject to a further allegation that, while on duty, he drove a QPS vehicle at 44km/h along an 80-metre culvert at night time, slowing the vehicle to 36km/h prior to striking the raised section of the culvert, causing major damage to the QPS vehicle.</p>	<ol style="list-style-type: none"> 1. Official reprimand under section 10(a) of PSDR 1990. 2. The sanction not to be suspended. 3. Progression to Senior Constable pay level 2.1 to be back dated to May 2013. Any progression to 2.2 is at the discretion of the relevant Assistant Commissioner. 		<ol style="list-style-type: none"> 2. May progress to pay point 2.3 following the above period. 3. Can retain credit for 100 points obtained for 2.2 progression.

References

Callinan, I & Aroney, A, April 2013, *Review of the Crime and Misconduct Act and Related Matters, Report of the Independent Advisory Panel*

Keelty, M, November 2013, Report - *suggestions regarding the reform of the Crime and Misconduct Commission, Queensland*

Parliamentary Crime and Misconduct Committee Report no. 90, April 2013 *Inquiry into the Crime and Misconduct Commission's release and destruction of Fitzgerald Inquiry documents*

Parliamentary Crime and Misconduct Committee Report no. 86, May 2012 *Three Yearly Review of the Crime and Misconduct Commission*

Legislation cited in this report

Child Protection (Offender Prohibition Order) Act 2008

Corruption and Crime Commission Act 2003 (WA)

Crimes Act 1914 (Cth)

Crimes Act 1958 (Vic)

Crime and Corruption Act 2001 (Qld)

Crime and Misconduct Act 2001 (Qld)

Criminal Organisations Act 2009

Criminal Procedure Act 1986 (NSW)

Criminal Proceeds Confiscation Act 2002 (Qld)

Information Privacy Act 2009

Judges (Pensions and Long Leave) Act 1957

Justices Act 1886

Police Powers and Responsibilities Act 2000 (Qld)

Police Service Administration Act 1990 (Qld)

Police Service (Disciplinary) Regulation 1990 (QLD)

Public Officers Superannuation Benefits Recovery Act 1988

Queensland Civil and Administrative Tribunal Act 2009

Regulation of Investigatory Powers Act 2000 (UK)

Right to Information Act 2009



Crime and Corruption Commission
GPO Box 3123, Brisbane QLD 4001

Level 2, North Tower Green Square
515 St Pauls Terrace,
Fortitude Valley QLD 4006

Phone: 07 3360 6060
(toll-free outside Brisbane: 1800 061 611)

Fax: 07 3360 6333

Email: mailbox@ccc.qld.gov.au

www.ccc.qld.gov.au



Crime and Corruption Commission
QUEENSLAND

October 2015

Supplementary submission to the PCCC review of the Crime and Corruption Commission

Contents

About this submission	3
Abbreviations	4
The Commission	5
The composition of the Commission	5
The Crime Reference Committee and its referrals	9
Enabling timely and effective response to major crime: the referral system	9
Disclosure and protections	13
Review of disclosure provisions – sections 55, 60 and 62	13
Enabling CCC officers to make a disclosure of “corrupt conduct” with protection from reprisal	14
Civil liability of CCC officers	15
Submission amendment	16
Amendments to the QCAT table	16
References	17
Legislation cited in this submission	17

About this submission

This supplementary submission has been prepared to inform the PCCC of a number matters that could not be finalised before, or have come to prominence since, the presentation of the CCC's primary submission in July 2015. It does not attempt to respond individually to the contributions made by others and aims to address matters that could further assist the CCC meet its obligations to the people of Queensland.

Specifically, this submission offers recommendations to:

- assist the development of the best possible and clearest governance arrangements for the organisation
- adjust the major crime referral mechanism to maintain ongoing and flexible responses to major crime that are comparable to those in like agencies
- simplify the controlled dissemination of information held by the CCC
- ensure that CCC staff have the required protections when making disclosures about reportable inappropriate conduct (as other public servants have when making a public interest disclosure)
- afford CCC staff the same civil liability protections available to other public servants.

The opportunity has also been taken to correct information in table 3.7, QPS decisions reviewed, 2012–13 to 2014–15, page 56 of the CCC's primary submission.

Abbreviations

ACC	Australian Crime Commission
CC Act	<i>Crime and Corruption Act 2001</i>
CCC	Crime and Corruption Commission
CEO	Chief Executive Officer
CJC	Criminal Justice Commission
CRC	Crime Reference Committee
ICAC	Independent Commission Against Corruption
NSWCC	New South Wales Crime Commission
OMCGs	Outlaw motorcycle gangs
PCCC	Parliamentary Crime and Corruption Commission
PID Act	<i>Public Interest Disclosure Act 2010</i>
QCAT	Queensland Civil Administrative Tribunal
QPS	Queensland Police Service
UPA	Unit of Public Administration

The Commission

The composition of the Commission

The Queensland Audit Office regards corporate governance as a cornerstone of sound stewardship and effective management. By definition corporate governance is the manner in which an organisation is controlled and governed in order to achieve its strategic goals and objectives.¹

Corporate governance had its origin in the private sector, where shareholders delegate many of their responsibilities as owners to company directors, who together as a board oversee the executive management of the business on their behalf.

Statutory bodies more closely resemble the private sector in that they have management boards constituted under legislation, non-executive members on the board and usually a non-executive member as chairperson.

Government departments provide a very different model. They do not have management boards, but generally have an executive group whose function is to provide support for the accountable officer (Director-General) in stewardship of the department.

This arrangement has a number of differences from the private sector (Statutory Body, GOC) model.

- a) Accountability lies with a single person in the chief executive or Director-General who is the accountable officer as prescribed in the *Financial Accountability Act 2009*;
- b) Members of the department's management group are also executive officers whereas company boards are mostly comprised of non-executive members; and
- c) The chairman of the departmental executive group is normally the accountable officer whereas in private sector companies the role of chief executive is most often separate from that of chairman of the board.

The Commission, as currently constituted, is a hybrid of the private sector and public sector corporate governance models.

The Commission is constituted by two full-time Commissioners (the Chairman and CEO) and three part-time Ordinary Commissioners (one of whom is Deputy Chairman).

The Commission is responsible for:

- a) providing strategic leadership and direction for the performance of the Commission's functions,
- b) the exercise of the Commission's powers, by the Chairman, CEO and staff,
- c) preparation of the strategic and business plans,
- d) the establishment of internal management committees and their charters,
- e) the preparation of the internal audit charter prepared for the Financial Accountability Act 2009, and
- f) compliance with the approved budget.²

¹ Auditor-General of Queensland Report No. 7 1998-99, *Corporate Governance Beyond Compliance – A Review of Certain Government Departments*, 4 June 1999.

² See sections 251 and 259 of the CC Act.

In order to fulfil its responsibilities, the Commission considers it necessary and in accordance with best practice governance standards to have a balance of appropriate skills in the membership of the Commission.³ A skill balance is also needed to complement the skills of the Chairman so as to contribute to the effective oversight of the CCC and achievement of the CCC's strategic objectives. The requirement in the CC Act for Ordinary Commissioners to have the qualifications, experience or standing appropriate to assist the Commission to perform its functions⁴ is considered appropriate as the skill set required will vary over time.

The Commission recommends that the position of CEO no longer be a Commissioner and that instead a fourth Ordinary Commissioner (all to be renamed simply 'Commissioner') be appointed. This would assist in broadening the range of relevant expertise or viewpoints to be represented on the Commission, such as those concerning governance, research, management, civil liberties and community representation. This arrangement would enhance the Commission's ability to effectively oversee the performance of the CCC's functions.

Chairman

Under the CC Act the Chairman is not subject to the direction of the Commission⁵ which is in direct contrast to the position that applied under the CM Act. This means there is no check on the unilateral exercise of those powers by the Chairman in matters not delegated to the CEO.⁶ This situation has the potential to result in arbitrary operational and strategic decisions being taken without the appropriate level of independent scrutiny by the Commissioners (the Board).

Governance best practice would be to restore the position of the Chairman being subject to the Commission.

The amendments made to the CC Act included changing the term Chairperson to Chairman. While section 32(B) of the *Acts Interpretation Act 1954* addresses the interpretation of non-gender neutral language, community expectations might regard the change to be ideological; the opportunity to revert to gender-neutral language should be considered.⁷

Chief Executive Officer

The Commission considers the division of responsibility between the positions of Chairman and Chief Executive Officer as unclear. It has the potential to add unnecessary complexity to an organisational environment which, as one of Queensland's key integrity agencies, should be held up as a prime example of an effective corporate governance framework.

The Chairman is responsible for the proper performance of all functions under the CC Act other than those reserved to the CEO or the Commission. Primarily the Chairman's functions are in relation to the Crime, Corruption, Intelligence, Research and Proceeds of Crime functions.

The CEO has a list of functions under the Act which appear to be focused on both corporate management as well as operational management. The CEO also has functions which intersect with functions held by the Chairman and/or the Commission. In that sense the CEO's functions are confused and add unnecessary complexity to the CCC, as illustrated below:

- The CEO is subject to the direction of and is to report to the Commission.⁸ However, because the Commission does not enjoy the usual power to hire and dismiss a CEO, the check on executive power envisaged by those sections of the CC Act is greatly weakened.

³ Department of the Premier and Cabinet, *Welcome Aboard A guide for members of Government Boards, committees and statutory authorities*, 4th Edition, July 2010, last updated 27 August 2014, pages 6-7.

⁴ Section 225(2) CC Act.

⁵ However, if asked by the Chairman, the Commission may assist the Chairman. See ss. 251(3) and 252(3) CC Act

⁶ Section 269(1) CC Act.

⁷ It is acknowledged that technically the "man" in Chairman is not gender-specific in that it is derived from the Latin *manus* meaning hand, but the community perception is that it is gendered language.

⁸ Section 253 CC Act.

- The CEO is also a Commissioner.⁹ When taken with the extensive executive authority of both the Chairman and the CEO, it is doubtful the Commission has the capacity to hold either role to account, even though everything done by the Chairman¹⁰ or the CEO¹¹ is done in the name of the Commission.
- Under s. 259(2) the CEO has responsibility for developing the budget for the Commission but the Commission is otherwise responsible for complying with the budget. To put it simply, the CEO is the senior executive through whom the Commission is acting to develop the annual budget. However under s. 269 the CEO is responsible for the commission's financial accountability functions.

Those functions, amongst other things, are to:

- achieve reasonable value for money by ensuring the operations of the statutory body are carried out efficiently, effectively and economically, and
- undertake planning and budgeting for the statutory body that is appropriate to the size of the statutory body.

Given the Commission's responsibility under s. 259 for complying with the approved budget (a reserved function of the Commission and one which is not delegated to the CEO), there is considerable overlap and consequently confusion as to whether it is the Commission or the CEO who is responsible for one of the most fundamental financial accountability functions.

- Section 35A grants the CEO the power to issue detailed directions about the performance of the organisation's Corruption function, which under s. 252(1)(b) is the responsibility of the Chairman. It is one of a number of provisions that appear to confer operational responsibilities on the CEO position (see also ss. 40 and 269).
- The Act delegates to the CEO the power to appoint to the positions of senior executive officer (Crime) and senior executive officer (Corruption).¹² This power is confusing for more than one reason. Firstly the CC Act explicitly states in s. 245(4) that senior officers, including the senior executive officers of Crime and Corruption, are subject to the direction and control of the Chairman. There is nothing in the CC Act that states that the CEO can direct and control senior officers in the exercise of the Commission's powers or functions. This would be a power one would normally expect a CEO to have; however in the CC Act this is held by the Chairman.

The CCC is not unlike other organisations that perform best when there are clear lines of authority and accountability. The Commission supports the concept of a CEO or CEO-like position which has responsibility for assisting the Chairman and the Commission in the carrying out of a number of corporate management functions including such things as the management of resources and leading performance management, risk management and ethical values and practices.

For reasons of good governance, clarity and accountability, the position should be appointed by the Commission and report directly to the Chairman, as do other senior officers under the CC Act.

Role of Deputy Chairman

The CC Act introduced the formal Deputy Chairman position. Prior to the introduction, when the Chairman was not available, Commission meetings were usually chaired by one of the legally qualified Commissioners, more as a mark of respect, as they were often retired judges. Further, because they were eligible for appointment as Chairman they were, on occasions, appointed acting Chairman when the Chairman was on leave.

This makes it important to ensure that not only should at least one of the Commissioners be eligible for appointment as Chairman, but also that they should have the capacity and availability to act in that position.

⁹ Section 223 CC Act.

¹⁰ Section 252 CC Act.

¹¹ Section 253 CC Act.

¹² Section 269 CC Act.

To avoid any uncertainty that might arise from there being no designated Deputy Chairman, it may be worthwhile having in place pre-approved acting arrangements to operate when the Chairman is absent. It is suggested that the Commission, on an annual basis, provide the Minister with a list, in order of preference, of persons available to act in the position of Chairman during the Chairman's absence.

Should the list of nominees be approved by the Minister, the first available person on the list could be invited to act in the Chairman's role whenever a vacancy arises over the following 12 months. Existing requirements for the Chairman and Commissioners to advise the Minister of their absences would remain in place.¹³

Acting Commissioners

The CC Act now permits the appointment of Acting Commissioners during a vacancy in the relevant Commissioner's office.¹⁴ Such direct executive appointments do not require bipartisan support of the PCCC and, in practice, can be for lengthy periods of up to 12 months¹⁵ before a formal appointment is required.

Acting appointments without bipartisan support can result in a perception that the acting appointments lack independence. To avoid this, it is recommended that acting appointments of Commissioners be limited to three months, which should provide sufficient time to obtain bipartisan support for an appointee.

Recommendation 1

It is recommended:

- (i) That the Chairman be subject to the direction of the Commission.
- (ii) That the Commission still comprise five people, the Chairman, deputy chairman and three Commissioners, or alternately the Chairman and four Commissioners and one or more of the four Commissioners being eligible for appointment and have the capacity and availability to act as Chairman in the Chairman's absence.
- (iii) That when appointing a Commissioner, the Minister is to consult with the Chairman to identify:
 - (a) the existing skill sets and experience required of the part time Commissioners; and
 - (b) the skills the Commission needs to meet its current and future strategic objectives.
- (iv) That the CEO and senior officers be appointed by, and answerable to, the Commission.
- (v) That the CEO not be a Commissioner and not be a statutory appointment.
- (vi) That those sections of the Act which currently confer operational responsibilities on the CEO role be repealed or amended (see ss. 35A, 40, 269).
- (vii) That the acting appointment of any person as a Commissioner for more than three months receive bipartisan approval.

¹³ Section 234 CC Act.

¹⁴ Section 237 CC Act.

¹⁵ Section 237 CC Act read in combination with s.24B(5) *Acts Interpretation Act 1954*.

The Crime Reference Committee and its referrals

Enabling timely and effective response to major crime: the referral system

The CCC has jurisdiction to investigate “major crime”. This jurisdiction, as defined in Schedule 2 of the CC Act, comprises four key limbs:

- 14 year offences (referred to internally as “serious crime”)
- criminal paedophilia
- organised crime, and
- terrorism.

However, the CCC does not exercise this jurisdiction of its own initiative. Sections 25-26 of the Act provide that the CCC is to perform its crime function by “investigating major crime referred to it” by the Crime Reference Committee (CRC). In other words, referrals from the CRC are the legal mechanism by which the CCC accesses its major crime jurisdiction.

However, the current framework has some ambiguous terminology and criteria that potentially hinder the CCC’s ability to intervene in time-sensitive matters as quickly as it would wish. The CCC aims to ensure that its system of referrals enables it to conduct or be involved in major crime investigations in as timely and effective a manner as possible, while maintaining a high level of accountability to the Crime Reference Committee.

Operation of the referrals system

Current tests for general and specific referrals

Referrals are dealt with by ss. 26A-31 of the Act, which provides for two kinds of referral:

- specific referrals: a “particular incident of major crime” for investigation
- general referrals: “major crime” for investigation.

The main difference between the two types of referrals is procedural – s. 28 of the Act provides different pre-conditions that must be satisfied for each:

- To make a general referral, the threshold consideration is the “public interest.” The CRC must be satisfied that it is in the “public interest” to refer the major crime for investigation (s. 28(2)), having regard to the various factors listed in s 28 (3) and (4)). Once a general referral has been made, particular investigations that fall under it can be commenced by the Senior Executive Officer (Crime) (s. 277), subject to the oversight of the CRC (ss. 29, 29A). The CRC may, upon application of a test, direct that the CCC end any particular investigation or impose limitations on it.
- To make a specific referral, the CRC must consider the “public interest” and the factors listed in s. 28(3) in the same way it does when making a general referral. However, two additional criteria must be considered in the case of a specific referral (s. 28(1)):
 - (a) the police have carried out an investigation into the particular incident of major crime that has not been effective; and
 - (b) further investigation into the particular incident is unlikely to be effective using powers ordinarily available to police.

Simply put, a specific referral can only be made if an existing police investigation has “stalled”.

Artificial distinction between general and specific referrals

The current legislation draws a distinction between “specific referrals” and “general referrals” and, correspondingly, between “major crime” and a “particular incident of major crime.” It is submitted that such distinctions have created a framework that is difficult to apply in practice:

- Like any law enforcement body, in practice the CCC investigates crime by commencing an investigation. An investigation – by its very nature – will focus on particularised “incidents” as well as certain suspects, places, activities, offences, facts and timeframes. This reality does not sit on all fours with the distinction between “major crime” and a “particular incident”. The artificiality of the distinction is highlighted when one considers investigative scenarios that involve a series of incidents such as, for example, multiple armed robberies or a series of homicides. How is a particular incident distinguishable from a series of such incidents? And how is a series of incidents any different from ongoing criminal activity?
- The Act defines “major crime” (such as may found a general referral), but does not define “particular incident of major crime” (such as may found a specific referral) or give any guidance as to how to differentiate between the two terms.
- On a logical interpretation, “major crime” would include major crime that is constituted by a “particular incident”.
- The examples of “major crime” that are listed beneath paragraph (b) of s. 27(1) are not helpful in clarifying how that term differs from a “particular incident”. Most of the examples listed (eg, “terrorism” or “criminal paedophilia”) could really only be investigated in the context of an incident or “one-off” act.

Managing time-critical intervention: specific v general referral

In practice, the two “effectiveness” criteria that must be met in order for a specific referral to be made are problematic, in that they do not enable a timely and effective response to homicide investigations – a key area of work for the CCC.

Specific referrals are used almost exclusively as a means of referring homicide investigations to the CCC, so as to enable coercive hearings to be accessed in appropriate matters. In each calendar year, approximately 9-12 such investigations (or about 25% of all homicides in Queensland) are referred. Usually, however, by the time a homicide investigation is capable of meeting the statutory criteria and a specific referral is applied for and made, many months may have elapsed. This means that the CCC’s intervention (primarily through its coercive hearings power) may not be as effective as it otherwise could have been, had such assistance been given much earlier. Since homicide is at the very top spectrum of criminal responsibility, one could argue that CCC assistance should be as accessible as possible.

By contrast, the CCC can commence a particular investigation under a general referral within a short timeframe, irrespective of how far a police investigation (if there has been one) has progressed. In practice, it is not uncommon for the CCC to become involved in certain kinds of investigations at a quite early stage (for example, in relation to stolen firearms, patterns of armed robberies, the activities of OMCGs, or homicides with a nexus to organised crime or against a vulnerable victim). The CCC’s involvement in such investigations from the outset can maximise the effectiveness of any coercive hearings that are held by, for example, enabling witnesses to be questioned about still-recent events, and expediting outcomes in the public interest (such as quickly recovering stolen firearms).

The CCC also uses general referrals to commence its own investigations into organised crime and criminal paedophilia, and without any police investigation already being underway.

Oversight role of the CRC

The CRC has the important role of providing independent oversight of the CCC’s performance of its crime function. It meets monthly and, as part of its role, has the following functions:

- to make referrals by applying the appropriate tests (see above)

- to keep informed generally of the conduct of the CCC's major crime function on an ongoing basis, including in relation to the progress of investigations that have already commenced (s. 277(1)(a))
- to scrutinise particular crime investigations that have been commenced by the Senior Executive Officer (Crime) under a general referral (s. 277(1)(b)), with a view to considering whether to impose any limitations on the investigation, or to direct that the investigation be ended (ss. 29-29A)
- to review general referrals every 5 years (s. 30A).

It is recommended this oversight be preserved. The only recommended change to the CRC is in relation to one aspect of its governance: that the Chairman of the CCC ought to be the Chair of the CRC, but have the ability to delegate this Chairmanship to the Senior Executive Officer (Crime).

Legislative approaches in other jurisdictions

The recommended approach in relation to the referral system is similar to that taken by the Australian Crime Commission (ACC) and the NSW Crime Commission (NSWCC).

The ACC operates within a series of "determinations" that reflect the work priorities for the ACC as determined by its board. The current determinations reflect a broad range of criminal conduct. They are comparable to the CCC's general referrals, insofar as they enable the ACC to conduct its operational activity. If a new investigation falls within the terms of a determination, there are no further criteria to be met for that investigation to be commenced. Not only does the ACC legislation contain no notion of a specific referral, but there is no equivalent of the legislative test in s 29 of the CC Act that considers the appropriateness of a new investigation commenced under a general referral.

In relation to the NSWCC, its Management Committee has the principal function of referring for investigation matters relating to, inter alia, "relevant criminal activities", "serious crime concerns", "criminal activity of a criminal group" and "police inquiries".¹⁶ Despite categorising the types of matters that can be referred, the process and statutory test for every referral is essentially the same, and is indicative of a system under which referrals can be made on either an "umbrella" or "one-off" basis. The statutory test for a NSWCC referral considers the following factors (s. 51(2) of the *Crime Commission Act 2012* (NSW)):

- the investigation is in the "public interest"
- use of the NSWCC's powers appear to be "necessary" to investigate the matter
- the criminal activity is "sufficiently serious or prevalent" to warrant the NSWCC's involvement.

It is to be emphasised that – unlike the test for a CCC specific referral – the NSWCC Management Committee when making a referral is not required to consider the "effectiveness" or otherwise of an existing police investigation. Additionally, the level of oversight of the NSWCC Management Committee is lower than that provided by the CRC, as set out above.

Recommendation: A system of "referrals" only

Under the recommended approach, the CRC would retain its role as a check and balance in overseeing the referral regime. It would consider whether each broad-based referral was in the public interest and review each referral every five years. It would similarly continue to scrutinise every investigation commenced under such a referral. The CRC would continue to be required to consider the factors listed in s. 29 as to whether, in relation to each investigation:

- it may be more appropriate for another entity to undertake the investigation;
- it may be more effective for another entity to undertake the investigation;
- investigation by the commission is not a justifiable use of resources; and

¹⁶ *Crime Commission Act 2012* (NSW) ss. 51, 54.

- Investigation by the commission is not in the public interest.

Upon consideration of the s. 29 factors, the CRC would continue to have the ability, under s 29, to issue limitations on the investigation, or direct that it be ended.

The s. 29 factors, as set out above, were introduced to the legislation as a means of requiring the CRC to satisfy itself that each particular crime investigation commenced is in the public interest (which had been the issue in *Scott v Witness C [2009] QSC 35*). By stipulating matters for the CRC to have regard to when considering giving directions, the s. 29 factors are intended to achieve consistency with the “front end” considerations the CRC applied under s 28 when they made the referral (under which the particular investigation was approved) in the first instance.¹⁷

Recommendation 2:

That amendments be made to the CC Act to:

- adopt a system of “referrals” only; and
- provide that the Chairman of the CCC be the Chair of the CRC, but with the ability to delegate Chairmanship to the Senior Executive Officer (Crime).

¹⁷ Explanatory memorandum, 2009 amendments, page 10.

Disclosure and protections

Review of disclosure provisions – sections 55, 60 and 62

In the course of its work the CCC is frequently required to disclose material in its possession to other entities. At present it does so under the various provisions in the CC Act that allow disclosure while maintaining confidentiality. However the Act as it is currently drafted is more directed at protecting or limiting access to confidential information than to facilitating contemporary inter-agency partnering arrangements.

The CC Act clearly enables disclosures for very specific purposes, such as providing a corruption investigation report to the director of public prosecutions under section 49(2)(a). However, managing disclosures under the more general provisions in sections 55, 60(1), 60(2) and 62(1) are particularly complex and confusing.

For example, the CCC may receive information that: (a) a child's safety may be at risk; (b) a person is threatening self-harm; or (c) a person is threatening to harm the life or safety of a police officer or another appointment holder. Before determining what to do with this information, CCC officers have to assess whether this type of information is:

- intelligence information which can be disclosed under section 55(2);
- information about a possible offence which can be disclosed under section 60(1);
- information that a unit of public administration has a proper interest in under section 60(2);
- information that the CCC may use under section 62(1) in performing its functions; or
- information that cannot be disclosed because the disclosure is outside the commission's functions without a CCC delegate's express written authority under section 62(1).

The CCC processes material under these provisions as quickly as possible, but the time taken can compromise the recipient's response to the information. The legal complexity and confusion may also cause, or contribute to, inconsistency in the application of the Act or to a breach of policy leading to possible referral under s 329 of the Act to the PCCC and/or to investigation by the Parliamentary Commissioner.

The problems with effectively implementing sections 55, 60(1), 60(2) and 62(1) arise from two legislative artifacts.

Firstly, these disclosure powers, which can be traced back to corresponding provisions in the *Criminal Justice Act 1989* and the *Crime Commission Act 1997*, are contained in provisions that are primarily intended to restrict access to confidential material.

Secondly, the provisions belong to an era when the CCC's predecessor (the CJC) was not obliged to work cooperatively with other entities to optimise the use of public resources.

The disclosure provisions in comparable New South Wales legislation, the *Independent Commission Against Corruption Act 1988* (NSW) [ICAC (NSW) Act] are based on a different premise. While still maintaining confidentiality, section 16 of the ICAC (NSW) Act facilitates inter-agency cooperation by allowing ICAC (NSW) to disclose intelligence and information to Australian and NSW law enforcement agencies and other entities.

The enabling statutes for other NSW agencies (such as, the Ombudsman, the Police Integrity Commission and the Crime Commission) have similar cooperative disclosure provisions to section 16 of the ICAC (NSW) Act.

The CCC therefore seeks a review of the disclosure provisions in the CC Act with a view to achieving a clear, concise, comprehensible and practical legislative framework that reflects our contemporary obligations to cooperate with other entities.

Recommendation 3:

That the disclosure provisions of the CC Act be reviewed to reflect contemporary principles of inter-agency cooperation while still maintaining the requisite levels of confidentiality.

Enabling CCC officers to make a disclosure of “corrupt conduct” with protection from reprisal

No public sector entity is immune from corruption. For that reason, the CCC considers that, as an integrity agency, it should have a clear process by which its officers can report corrupt conduct by a commission officer, and do so without fear of reprisal. At present the legal protection that allows them to do that is uncertain.

The CCC is not a unit of public administration (UPA)¹⁸ and its officers do not hold an appointment in a UPA. Therefore, the CCC is of the view that a commission officer cannot commit corrupt conduct as defined in s. 15 of the CC Act, insofar as the conduct relates to the performance of functions or the exercise of power of the CCC.¹⁹ Corrupt conduct is narrowly defined in section 15(1)(a) as that which:

adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of:

- (i) a unit of public administration; or
- (ii) a person holding an appointment.

Under the CC Act, a commission officer can make a disclosure of improper conduct. In fact, the CCC Code of Conduct requires it. Under s. 329 of the CC Act, the Chairman, Deputy Chairman or CEO, depending on the classification of the subject officer, is then obliged to notify the PCCC.

However, there do not appear to be adequate provisions to protect the officer who originally made such a disclosure.

The CC Act contains some protective features, such as the offence of victimisation of a person who “gave evidence to or helped the Commission” in the performance of its functions (s. 212). However, it is doubtful that this provision applies to the above staff disclosure as it does not relate to the performance of the CCC’s functions.

Nor does the *Public Interest Disclosure Act 2010* (PID Act) assist in this regard. Although commission officers may be public officers (s. 7) of a public sector entity (s 6), they are not able to make a lawful PID, with its accompanying protections, in relation to corrupt conduct of another commission officer under s 13(1)(a)(i) of the PID Act. This is because corrupt conduct is defined by reference to s.15 of the CC Act which only applies to a UPA or holders of an appointment in a UPA.

The CCC therefore recommends that legislative provisions be introduced into the CC Act to enable commission officers to make a lawful disclosure concerning corrupt conduct and be protected against reprisal for doing so. Consideration could also be given to extending the disclosure protection to improper conduct as defined in s 329(4) of the CC Act.

Recommendation 4:

That the CC Act be amended to provide staff the same protections available to staff in UPAs under the PID Act. The amendment is to enable commission officers to make a disclosure of corrupt conduct by a commission officer and to provide them with the associated protections for doing so.

¹⁸ See s.20(2) CC Act.

¹⁹ This aspect of the CC Act was made clear in a letter by a former Chairperson, Ross Martin QC to the Independent Advisory Panel (Hon I D F Callinan and Prof N Aroney), on 8 February 2013.

Civil liability of CCC officers

New provisions were inserted into the *Public Service Act 2008* in March 2014 that affect the civil liability of “State employees”. The key provision is section 26C. The protections provided under these new sections are more comprehensive than the protections that apply to CCC officers under section 335 of the CC Act and the CCC’s corresponding policy. While these reforms were intended to apply to the public sector broadly, it is not clear whether they apply to CCC officers or to Police Service Review Commissioners.²⁰

The key difference between the *Public Service Act* and the CC Act provisions concerns the protection threshold. Under section 26C, state employees do not incur any civil liability when they act in an official capacity, even if they are negligent. Instead, liability will always attach to the state. But under the CC Act, civil proceedings can be brought against individual CCC officers and CCC officers are potentially personally liable for negligent acts. Similarly, Police Service Review Commissioners are liable to civil action for negligent acts.²¹ The CCC seeks legislative amendments to ensure CCC officers and Review Commissioners are afforded the same protections as public servants and to remove any uncertainty about the application of section 26C.

Recommendation 5:

That the relevant Act or regulation be amended to ensure CCC officers and Review Commissioners are afforded the same protections as public servants and to remove any uncertainty about the application of section 26C.

²⁰ Police Service Review Commissioners are appointed under s. 9.2A *Police Service Administration Act 1990* but are paid and administered by the CCC. The CCC has agreed to indemnify the Commissioners for civil liability arising from their official duties, including the legal costs of judicial reviews.

²¹ *Police Service Administration (Review of Decisions) Regulation 1990*, s.16.

Submission amendment

Amendments to the QCAT table

The QCAT table 3.7 on page 56 of the CCC's original submission contains two incorrect numbers.

- (i) In the column headed 2014-15 the 'Number lodged with QCAT for review' was 1. The correct number is 2.
- (ii) In the same column it states the 'Number under review or appeal from previous reporting periods' was 8. The correct number is 4.

The amended table is below.

Table 3.7: QPS decisions reviewed, 2012-13 to 2014-15.

	2012-13	2013-14	2014-15
Number of QPS decisions reviewed	102	46	77
Number lodged with QCAT for review	7	5	2
Number under review or appeal from previous reporting periods	10	14	4

References

Legislation cited in this submission:

Acts Interpretation Act 1954

Crime and Corruption Act 2001 (Qld)

Crime Commission Act 2012 (NSW)

Criminal Justice Act 1989

Financial Accountability Act 2009

Police Service Administration Act 1990

Police Service Administration (Review of Decisions) Regulation 1990

Crime and Corruption Commission
GPO Box 3123, Brisbane QLD 4001

Level 2, North Tower Green Square
515 St Pauls Terrace,
Fortitude Valley QLD 4006

Phone: 07 3360 6060
(toll-free outside Brisbane: 1800 061 611)

Fax: 07 3360 6333

Email: mailbox@ccc.qld.gov.au

www.ccc.qld.gov.au

November 2015

Second supplementary submission to the PCCC review of the Crime and Corruption Commission

Contents

About this submission	3
Sharing of disciplinary history information	4
Maintaining the ethical standards of CCC officers	4
Post-separation disciplinary regime	6
Initiating and continuing discipline action where employee changes public sector employer	6

About this submission

This second supplementary submission has been prepared to inform the PCCC of a significant matter that has come to prominence since the presentation of the CCC's primary submission in July 2015 and supplementary submission in October 2015. It does not attempt to respond individually to the contributions made by others and aims to address matters that could further assist the CCC meet its obligations to the people of Queensland.

Specifically, this submission offers recommendations to:

- Assist the CCC in maintaining the ethical standards of commission employees and the public service generally through the ability to share disciplinary information about prospective and current employees
- Assist the CCC and the public sector more generally in disciplining employees post-separation through initiating and continuing disciplinary action where officers change public sector employers.

Sharing of disciplinary history information

Maintaining the ethical standards of CCC officers

In 2010, a suite of disciplinary provisions was introduced for the Queensland public service and Queensland police service to ensure the ethical standards of employees was maintained and to allow post-separation disciplinary action (*Criminal Code and other Legislation (Misconduct, Breaches of Discipline and Public Sector) Amendment Act 2010*). The same model was subsequently introduced for the Fire and Emergency Services and the Ambulance Service (*Integrity Reform (Miscellaneous Amendments) Act 2010*).

The disciplinary regime established in the *Crime and Corruption Act 2001* (CC Act) by the 2104 amendments was based upon the *Public Service Act 2008* provisions. However a recent review of the CCC's employment and disciplinary processes has identified some significant gaps compared to the above public sector agencies. These have the potential to hinder the CCC's ability to maintain a workforce with high standards of integrity.

In particular the CCC does not have the legislative power to require another public sector agency to provide details of the disciplinary history of its former employees who are seeking employment or secondment, or are currently employed at the CCC. For example under the *Ambulance Service Act 1991*¹ the chief executive officer can require the chief executive of another department or service to provide disciplinary information about a current or former employee (section 18K). This provision only applies where it is reasonably necessary for the requesting chief executive officer to make a decision about the employment or continued employment of a person or a discipline finding, action or declaration that the chief executive officer is considering in relation to that person (section 18K (1)(b)). There is a reciprocal right by a chief executive of a department or the Fire and Emergency Services in relation to disciplinary information in the possession of the Ambulance Services (section 18J). The chief executive of the Ambulance Service may use the disciplinary information for the purpose of making the said decision in relation to employment or disciplinary action (section 18L(2)). Disciplinary information is defined very broadly to mean a current investigation, a disciplinary finding, possible disciplinary action and disciplinary action or declaration (section 18L(3)).

A similar disciplinary information sharing framework exists between all public service departments and between public service departments and the Queensland Police Service². The explanatory notes to the Criminal Code and other Legislation (Misconduct, Breaches of Discipline and Public Sector) Amendment Bill comments that "the use of a person's previous Queensland public service or Queensland Police Service disciplinary information to determine their suitability for employment can be seen as adversely affecting the rights of the individual concerned"(page 6). However it is concluded that by prescribing the circumstances when the power can be used and by guiding agencies in how the information can be used, "the Bill achieves an appropriate balance between the rights of the individual and the public interest".

The CCC is of the view that the high community expectations of persons employed at the CCC warrants this provision being available to the CCC to obtain disciplinary information (as broadly defined) in the prescribed circumstances of making a decision in relation to employment (including secondment) or disciplinary action. The disciplinary information sharing agencies should include, at least, all public service departments and the Queensland Police Service.

The CCC would complement this legislative power with administrative guidelines to ensure natural justice and consistency in decision making similar to those in the relevant public service Directive.³

¹ This is a useful example as ambulance service officers, like CCC officers, are not public servants.

² Albeit in a more restrictive way for the QPS

³ Directive 15/13.

Recommendation 1:

- That provisions be introduced in the CCC Act and other relevant Acts to allow the sharing of disciplinary information between the CCC, public service departments, the Queensland Police Service and other public sector agencies who already have this legislative power.
- That disciplinary information be given the same meaning as in the *Public Service Act 2008*, section 188B(3) and *Ambulance Services Act 1991*, section 18L(3).
- That the prescribed circumstances for sharing of disciplinary information be the same as in the *Public Service Act 2008*, section 188B(1)(b) and *Ambulance Services Act 1991*, section 18K(1)(b) with the clarification that it extends to decisions about secondment.

Post-separation disciplinary regime

Initiating and continuing discipline action where employee changes public sector employer

The 2010 suite of disciplinary provisions for the Queensland public service also introduced a range of options to public service departments whose employees resign or change to another department prior to disciplinary action being completed. The CCC was given the power to make a post-separation disciplinary declaration under section 273D in the 2014 amendments to the CC Act. However there is no provision to ensure that disciplinary action initiated by the CCC can be continued against officers who move to another public sector entity, or vice versa. Public service departments, the Fire and Emergency Service and the Ambulance Service can each continue disciplinary action commenced by the former employing public service department or service (see *Public Service Act 2008* section 188AB; *Ambulance Service Act 1991* section 18E,18F).

The ability of a chief executive to delegate their authority in relation to disciplinary action or transfer a disciplinary finding to a new employing chief executive is an integral part of the post-separation regime established by the *Criminal Code and other Legislation (Misconduct, Breaches of Discipline and Public Sector) Amendment Act 2010*. It is considered to be in the interests of the public sector's integrity as a whole that the CCC should be able to similarly delegate its authority to take disciplinary action, accept such a delegation or transfer/accept a disciplinary finding.

Recommendation 2:

That amendments be made to the CC Act and to other relevant Acts:

- To allow a disciplinary finding against a CCC officer who changes employment to another public sector agency to be transferred to the new employing chief executive
- To allow the authority to make a disciplinary finding to be delegated from the CCC to the new employing chief executive when a CCC officer changes to another public sector agency
- To provide those reciprocal rights to other public sector agencies whose employees change employment to the CCC.

These provisions should be modelled on the *Public Service Act 2008*, sections 187A, 188AB and the *Ambulance Service Act 1991*, section 18F.

Crime and Corruption Commission
GPO Box 3123, Brisbane QLD 4001

Level 2, North Tower Green Square
515 St Pauls Terrace,
Fortitude Valley QLD 4006

Phone: 07 3360 6060
(toll-free outside Brisbane: 1800 061 611)

Fax: 07 3360 6333

Email: mailbox@ccc.qld.gov.au

www.ccc.qld.gov.au