

GPO Box 3123  
Brisbane QLD 4001

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

Tel.: **07 3360 6060**  
Toll-free: 1800 061 611  
(in Queensland outside  
Brisbane)

Fax: 07 3360 6333

mailbox@ccc.qld.gov.au  
www.ccc.qld.gov.au

ABN 32 164 714 360



Our Reference: AD-20-0670 – 20/183504  
Your Ref: qA19745  
Contact Officer: Mr David Caughlin

**OFFICIAL**

10 August 2020

Mr Karl Holden  
Committee Secretary  
Parliamentary Crime and Corruption Committee  
Parliament House  
BRISBANE QLD 4000

Via email: [pccc@parliament.qld.gov.au](mailto:pccc@parliament.qld.gov.au)

Dear Mr Holden

**RE: REVIEW OF THE CRIME AND CORRUPTION COMMISSION'S ACTIVITIES**

I refer to the Parliamentary Crime and Corruption Committee's invitation for submissions in relation to the Review of the Crime and Corruption Commission's activities.

Thank you for the opportunity to provide a submission. Please find *attached* the Crime and Corruption Commission's submission.

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

Yours sincerely

A handwritten signature in black ink, appearing to read "A. MacSporran", followed by a long horizontal line extending to the right.

**Alan MacSporran QC**  
Chairperson

encl.



**PCCC  
five-yearly  
review  
submission**

August 2020



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## List of recommendations

### Recommendations which have been addressed and resolved

PCCC Recommendation No.	Resolution
<p><b>Recommendation 3</b></p> <p>That the <i>Crime and Corruption Act 2001</i> be amended to provide that the Chairperson of the Commission be the Chair of the CRC, but may delegate this role to the Senior Executive Officer (Crime).</p>	Addressed via amendment to section 238 of the CC Act
<p><b>Recommendation 4</b></p> <p>The Committee recommends that the commission review court judgments that could have a bearing on the operation of the commission and the Queensland Police Service and that relevant departments, including DJAG, should ensure that any amendments considered necessary are dealt with expeditiously.</p>	Addressed via amendment to section 197 of the CC Act
<p><b>Recommendation 5</b></p> <p>The Committee recommends that the government give consideration to amending section 49 of the CC Act to remove the power for the commission to refer corruption investigation briefs to the ODPP for the purposes of considering prosecution proceedings.</p>	Addressed via amendment to section 49(5) of the CC Act
<p><b>Recommendation 8</b></p> <p>The Committee accordingly recommends that this Committee and its successors should continue to monitor whether the definition of "corrupt conduct" is inhibiting the commission from investigating any conduct that ought to be subject to its jurisdiction, and any amendments to section 15 introduced by the Government in response to any issues identified in the responses to the Department's Issues Paper.</p>	Section 15 of the CC Act was amended in March 2019 to broaden the definition. The CCC continues to monitor the suitability of the definition.
<p><b>Recommendation 9</b></p> <p>The Committee recommends that the commission give greater prominence to the principle of devolution on its website and public documents, including: specifying the kinds of conduct that the commission retains and investigates itself; the proportion of all complaints that are referred to the unit of public administration in which the conduct complained of occurred; and, explaining in plain English the practical effect of the principle of devolution.</p>	The CCC has released a number of plain English publications which explain the complex nature of the devolution principle, and continues to monitor its external communications to ensure they achieve objectives.
<p><b>Recommendation 10</b></p> <p>The Committee recommends that this Committee and its successors monitor the recommendations of the independent review panel, particularly in relation to potential options for resolving the potentially conflicted role of CEOs of local governments in the preliminary assessment and general management of complaints.</p>	Recommendation addressed to the PCCC – monitoring recommendations of independent review panel continues.
<p><b>Recommendation 11</b></p> <p>The Committee recommends that this Committee and its successors monitor and review the operation of the new notification threshold to ensure that the commission continues to be notified of matters that ought to be brought to its attention.</p>	Recommendation addressed to the PCCC – monitoring and review continues.



<p><b>Recommendation 12</b></p> <p>The Committee recommends that the <i>Crime and Corruption Act 2001</i> be amended to require units of public administration to prepare and retain complete and accurate records of any decision not to notify the commission of an allegation of corrupt conduct, including the reasoning on which that decision is based, the evidence (or lack thereof) considered and any findings in relation thereto.</p>	<p>Addressed via inclusion of section 40A of the CC Act</p>
<p><b>Recommendation 13</b></p> <p>The Committee recommends that the <i>Government Owned Corporations Act 1993</i> and the <i>Public Interest Disclosure Act 2010</i> be amended to provide that where a government owned corporation is required to refer a matter under the <i>Corporations Act 2001</i> or any other federal government legislation, that the commission also be advised so that both Federal and State bodies can liaise on the matter.</p>	<p>Addressed via amendment to section 156 of the GOC Act</p>
<p><b>Recommendation 15</b></p> <p>The Committee recommends that the definition of “reviewable decision” in section 219BA of the <i>Crime and Corruption Act 2001</i> be amended to specify that the commission may apply to QCAT for the review of a decision by the QPS not to initiate disciplinary proceedings against an officer for police misconduct.</p>	<p>Addressed via amendment to section 219BA of the CC Act.</p>
<p><b>Recommendation 17</b></p> <p>The Committee recommends that the government give consideration to a comprehensive review of the use of suspended sanctions within the police discipline system – in particular, whether the use of suspended sanctions is appropriate where the sanction is dismissal.</p>	<p>Addressed by commencement of the Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019 (PSA Act) – section 7.41</p>
<p><b>Recommendation 18</b></p> <p>The Committee recommends that the government consider amending section 12(2) of the Police Service (Discipline) Regulations 1990 to ensure that a suspended sanction remains on the subject officer’s record.</p>	<p>Addressed by section 7.31(2) of the PSA Act</p>
<p><b>Recommendation 19</b></p> <p>The Committee recommends that section 219G of the <i>Crime and Corruption Act 2001</i> be amended to lengthen the period for making an application to QCAT for review of a reviewable decision to 28 days.</p>	<p>Addressed via amendment to section 219G of the CC Act</p>
<p><b>Recommendation 21</b></p> <p>The Committee recommends that the government review the disclosure provisions of the <i>Crime and Corruption Act 2001</i> to ensure that they reflect contemporary principles of inter-agency cooperation, while maintaining adequate protections for the protection of confidential information.</p>	<p>Addressed via amendment to section 60 of the CC Act (in conjunction with section 231 of the CC Act)</p>
<p><b>Recommendation 23</b></p> <p>The Committee recommends that section 50 of the <i>Crime and Corruption Act 2001</i> 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 against former public sector employees.</p>	<p>Addressed via amendment to section 50(3)(b) of the CC Act</p>



<p><b>Recommendation 24</b> The Committee recommends that the <i>Crime and Corruption Act 2001</i> and other relevant legislation be amended to:</p> <ul style="list-style-type: none"> <li>allow a disciplinary finding against a commission officer who changes employment to another public sector agency to be transferred to the new employing chief executive;</li> <li>allow the commission to delegate the authority to make a disciplinary finding about a former commission officer to the new employing chief executive; and</li> <li>provide the same reciprocal rights to other public sector agencies whose employees change employment to the commission.</li> </ul>	Addressed via insertion of sections 273DA and 237DB of the CC Act
<p><b>Recommendation 25</b> The Committee recommends that the <i>Crime and Corruption Act 2001</i> and other relevant legislation be amended to enable the commission to provide and receive disciplinary information about a current holder of, or an applicant for, an appointment with the commission (including a secondment) that the commission, the chief executive of a public sector department or the commissioner of Police has about that person. The amendments should specify that the information may be requested in the same circumstances as those currently provided for in section 188B(1)(b) of the <i>Public Service Act 2008</i>.</p>	Addressed via amendment to section 446 of the CC Act
<p><b>Recommendation 28</b> The Committee recommends that the relevant legislation be amended to ensure that commission officers and Police Service Review Commissioners are afforded the same protections against civil liability provided to public servants.</p>	Addressed via section 335 of the CC Act, and section 9.7 of the PSA Act
<p><b>Recommendation 29</b> The Committee recommends that section 14(h) of the <i>Telecommunications Interception Act 2009</i> be amended to require all authorisations under section 66(2) of the <i>Telecommunications (Interception and Access) Act 1979</i> (Cth) and all written appointments of authorising officers under section 66(4) be kept in the authority's records.</p>	Addressed via amendment to section 14(h) of the <i>Telecommunications Interception Act 2009</i> (TIA Act) and insertion of section 14(i) in the TIA Act

### Recommendations which have been addressed by action which is ongoing

PCCC Recommendation No.	Status
<p><b>Recommendation 6</b> The Committee recommends that the government review Chapters 3 and 4 of the CC Act to: develop uniform provisions with generic application to commission functions where appropriate; and clarify what specific privileges are abrogated or unaffected by the provisions of the CC Act.</p>	Chapter 3 and 4 review is still "in progress", but nearing completion
<p><b>Recommendation 7</b> The Committee recommends that the government consider a review of the power provisions in the PPRA and CC Act to: ensure consistency between the PPRA and CC Act and between the various functions in the CC Act where appropriate; and consider any new powers necessary for the commission's operations.</p>	Review of PPRA and CC Act power provisions is still "in progress"



## Recommendations which have not been addressed but are no longer pursued by the CCC

PCCC Recommendation No.	Status
<p><b>Recommendation 1</b> The Committee recommends that the governance framework of the commission be considered by the Committee during its periodic review of the structure of the commission within the next 12 months.</p>	This recommendation was not implemented; however, the structure and governance framework of the CCC has changed significantly. These changes are outlined in Chapter 4 of this submission.
<p><b>Recommendation 2</b> The Committee recommends that the government give consideration to the potential implications of the commission's proposal to replace the system of specific and general referrals with a system of "referrals only", in particular the consequences of removing the condition expressed in section 28(1)(a) of the <i>Crime and Corruption Act 2001</i>.</p>	This recommendation was not implemented but it is no longer pursued by the CCC, as the periodic review of general referrals as mandated under the CC Act has established a system of general referrals which are currently fit for purpose.
<p><b>Recommendation 16</b> The Committee recommends that section 50 of the <i>Crime and Corruption Act 2001</i> be amended to enable the commission to initiate disciplinary proceedings in QCAT's original jurisdiction in respect of police misconduct.</p>	Expanded jurisdiction is no longer sought. With the reform of the police disciplinary system, the range of decisions the CCC can review (including classification of the conduct) has expanded.

## Recommendations from this review

### Recommendation 1: Adoption and implementation of prior recommendations

The CCC recommends that recommendations 14, 20, 22, 26 and 27 made in the PCCC's report No. 97 in relation to its previous review of the CCC which have not yet been implemented be adopted and progressed.

### Recommendation 2: Adoption and implementation of prior submissions 20 and supplementary submission 1(iv)

The CCC made a number of submissions to the previous five-yearly review which were not taken up as recommendations of the PCCC, and which have not been implemented. The CCC again supports those submissions.

### Recommendation 3: Review CCC's funding model to avoid possibility or perception of political interference by appropriation from Parliament

The CCC recommends that the CCC be funded by a direct appropriation from Parliament to avoid the possibility or perception of political interference in the allocation of funds to the CCC. This would strengthen the CCC's independence, and is consistent with the approach adopted, or advocated in other jurisdictions.

### Recommendation 4: Conflict of interest declarations

The CCC recommends that section 238 of the CC Act be amended to ensure that CCC officers are obliged to make conflict of interest declarations.

### Recommendation 5: Limited tenure of Senior Officers and Chief Executive Officer

The CCC recommends that the limit on the tenure of the chief executive officer be removed by amending section 231(2) of the CC Act.

The CCC recommends that the limits on the tenure of "senior executive officer" and "senior officers" be removed by repealing sections 247(3) to 247(3C) of the CC Act.



**Recommendation 6: Reasons given if bipartisan support is withheld**

The CCC recommends that the CC Act be amended to require reasons to be given if bipartisan support is withheld for the appointment of the Chairperson, Commissioners or CEO.

**Recommendation 7: Amendment of internal disciplinary powers**

The CCC recommends that the disciplinary provisions set out in Division 9 of the Act are amended to ensure that disciplinary action taken by the CCC in respect of seconded officers can operate with the same effect as if the officer were employed directly by the CCC (including sanctions such as demotion and termination), and that powers may be exercised in respect of officers engaged under section 256.

**Recommendation 8: Removal of CPSR secretariat function from CCC**

That the Crime and Corruption Commission no longer be responsible for the provision of secretariat support to the Commissioner for Police Service Review process.

**Recommendation 9: Amendment to CC Act to include vetting provisions**

The CCC recommends that the CC Act be amended to provide a mechanism for vetting of staff, with appropriate provision to address natural justice considerations.

**Recommendation 10: Review of the definition of "Money Laundering"**

The CCC recommends that a review be undertaken of the definition of "Money Laundering" as contained in the *Criminal Proceeds Confiscation Act 2002* to simplify the provision and ensure that it is "fit for purpose" to allow for effective prosecution of money laundering.

**Recommendation 11: Make compulsory powers available for crime prevention purposes**

The CCC recommends that the CC Act be amended in to make clear that compulsory powers are available in support of the CCC's crime prevention function.

**Recommendation 12: Enable CCC hearings for claims of privilege and reasonable excuse**

The CCC recommends that section 176 of the CC Act be amended to provide for hearings to be undertaken for the purpose of establishing claims of privilege and reasonable excuse in investigations where hearings are not otherwise authorised.

**Recommendation 13: Amendment to the intelligence operations provisions in the CC Act**

The CCC recommends that consideration be given to amending the intelligence operations provisions in the CC Act to enable the CRC to approve special investigations and special intelligence operations by reference to criteria other than the definition of criminal organisation as presently defined in the *Penalties and Sentences Act*.

**Recommendation 14: Amend section 113 to exclude copies of documents provided by UPAs or corporations**

The CCC recommends that section 113 of the CC Act be amended to remove the obligation to obtain property retention orders where the UPA or corporate entity has no reasonable expectation of return of the record.

**Recommendation 15: Publicising allegations of corruption**

The CCC recommends that the government consider implementing legislation restricting the publication of complaints of corruption made to the CCC, consistently with the CCC's previous recommendations.

**Recommendation 16: Review efficiency of QCAT in disciplinary proceedings**

The CCC recommends that the Government consider whether insufficient resourcing is contributing to delays in the efficient resolution of matters in QCAT.



**Recommendation 17: Amendment to the references to research and intelligence functions in the CC Act**

The CCC recommends that consideration be given to amending the references to research function and intelligence function in sections 52 and 53 of the CC Act by instead making reference to “activities” or “auxiliary functions”.

**Recommendation 18: Amendment to section 197 to clarify admissibility in perjury proceedings**

The CCC recommends that section 197 of the CC Act be amended to provide that, where a perjury prosecution is commenced, answers otherwise protected are not inadmissible by reason of section 197.

**Recommendation 19: Amendment to facilitate reporting to the PIM**

The CCC recommends that the *Telecommunications Interception Act 2009* be amended to provide for the CCC to notify the Public Interest Monitor of issues of warrant non-compliance.



# Chapter 1 – Overview

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## Introduction

Since the Parliamentary Crime and Corruption Committee's (PCCC) previous review of the Crime and Corruption Commission (CCC) in 2016, the CCC has implemented significant changes to its structure and operational activities to prevent and combat major crime and corruption, to promote a trustworthy public service and to provide an effective witness protection service.

This submission begins with a breakdown of the full suite of recommendations made by the PCCC in June 2016. The majority of these recommendations have been addressed through legislative reform. Others are in progress, while some are outstanding and are again supported by the CCC. This submission considers the evolving landscape of the last five years and identifies where further legislative amendments could promote efficiency and achieve consistency in the CCC's powers.

The CCC has invested heavily in structural and technological changes since the previous review. Digital investments, coupled with the development of a new case management system, are intended to enhance the CCC's organisational resilience and streamline procedures. A reformed organisational structure has improved the CCC's governance, policies and processes. This submission reflects on the progress of such initiatives, their outcomes, and proposed areas for further change.

This submission concludes with an overview of the performance of the CCC's Crime and Corruption functions. It canvasses areas of focus over the last five years and supplies a range of supporting statistics and figures. These statistics confirm that the CCC is performing well across the board, supported by robust assessment and operational processes.

## Overview of the CCC's functions, structure and objectives

### Governing legislation

The CCC is an independent specialist agency established on 1 January 2002 under the *Crime and Corruption Act 2001* (Qld) (CC Act). The CCC and its Act were renamed on 1 July 2014 following extensive external reviews.

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

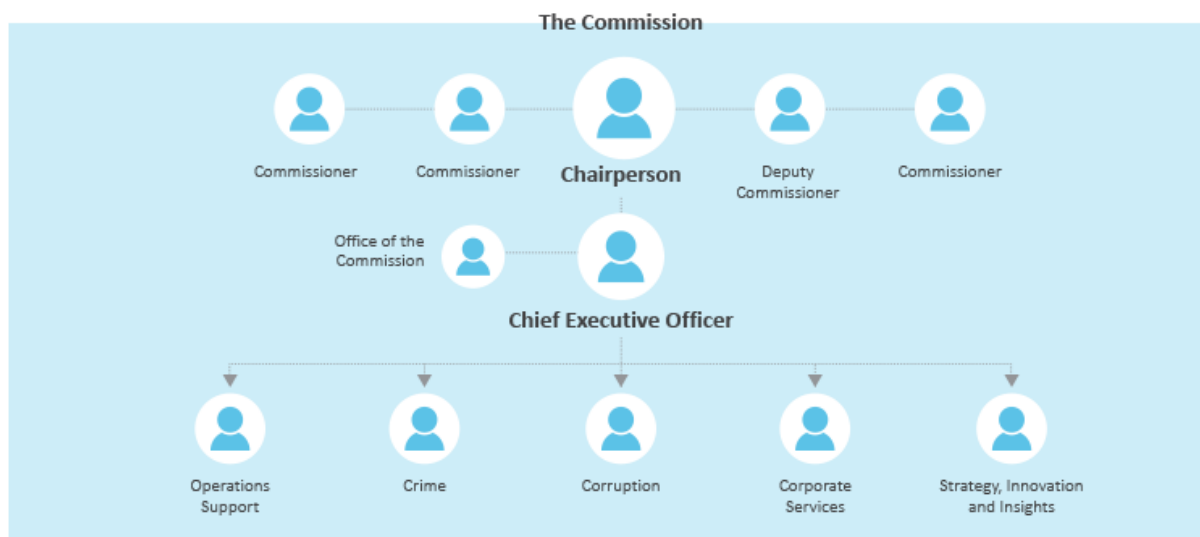
- a. to combat and reduce the incidence of major crime
- b. to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector.

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



## Our structure and staff

The CCC is headed by a five-member Commission, supported by an Executive Leadership Team. 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 Chairperson, CEO and other staff. Although independent of the government of the day, the CCC is fully accountable to the people of Queensland through the PCCC. Annexure 1 sets out the organisational structure of the commission and the model of its internal and external oversight.



## Strategic objectives and services

The origins of the CCC date back to 1989, when Mr Tony Fitzgerald presented the Queensland Government with the findings of the *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (known as the Fitzgerald Inquiry Report). Since that time, the Commission has evolved, but its core work has essentially remained the same.

The CCC's strategic objectives are to:

- reduce the incidence of major crime and corruption in Queensland
- build our organisational capacity.

In achieving these strategic objectives, the CCC provides the following services:

- investigating serious and organised crime
- receiving, assessing and investigating allegations of corruption
- developing strategies to prevent crime and corruption
- conducting research and undertaking intelligence activities on crime, corruption, policing and other relevant matters.

The CCC's performance is measured against the service delivery targets published in the State Budget Service Delivery Statements (SDS).



## Previous PCCC inquiry

In December 2019, the PCCC announced that it would hold an inquiry in relation to how the CCC performed certain of its functions. Submissions to the *Inquiry into the CCC's performance of its functions to assess and report on complaints about corrupt conduct* closed in late January 2020. The CCC provided a submission to that inquiry.

Due to the COVID-19 pandemic, the public hearings and further conduct of that inquiry were put in abeyance.

When the PCCC announced its call for submissions in relation to the five-yearly review, it announced that the inquiry into assessment and reporting would be incorporated into the five-yearly review.

The CCC adopts and relies on its previous submission in relation to that inquiry, which comprises Annexure 2 to this submission.



## Chapter 2 – Progress from previous reviews

### Recommendations from the PCCC's previous review

As a result of the PCCC's previous review of the CCC's structure, functions and operations, the PCCC produced report number 97, *Review of the Crime and Corruption Commission*, in June 2016. In report number 97, the PCCC made 29 recommendations in relation to the CCC. Of those:

- 15 recommendations have been addressed and resolved, largely through legislative reform
- six recommendations have been addressed by action which is ongoing
- three recommendations have not been addressed but are no longer relevant or pursued by the CCC
- five recommendations have not been addressed and are still supported by the CCC.

Those recommendations are set out in the tables below, along with a "current state" summary of which recommendations have been resolved, which recommendations have not been adopted but are no longer sought by the CCC, and which remain outstanding.

### Recommendations which have been addressed and resolved

The recommendations from the previous review which have been implemented have led to substantial improvements to the CCC's processes, governance, powers and jurisdiction. In particular, there have been substantial changes to the police disciplinary system, and aspects of the CC Act relating to how it performs its work. The most significant of these changes are addressed at the end of this chapter.

**Table 1:** Recommendations which have been addressed and resolved

PCCC Recommendation No.	Resolution
<p><b>Recommendation 3</b> That the <i>Crime and Corruption Act 2001</i> be amended to provide that the Chairperson of the Commission be the Chair of the CRC, but may delegate this role to the Senior Executive Officer (Crime).</p>	Addressed via amendment to section 238 of the CC Act
<p><b>Recommendation 4</b> The Committee recommends that the commission review court judgments that could have a bearing on the operation of the commission and the Queensland Police Service and that relevant departments, including DJAG, should ensure that any amendments considered necessary are dealt with expeditiously.</p>	Addressed via amendment to section 197 of the CC Act
<p><b>Recommendation 5</b> The Committee recommends that the government give consideration to amending section 49 of the CC Act to remove the power for the commission to refer corruption investigation briefs to the ODPP for the purposes of considering prosecution proceedings.</p>	Addressed via amendment to section 49(5) of the CC Act



<p><b>Recommendation 8</b></p> <p>The Committee accordingly recommends that this Committee and its successors should continue to monitor whether the definition of “corrupt conduct” is inhibiting the commission from investigating any conduct that ought to be subject to its jurisdiction, and any amendments to section 15 introduced by the Government in response to any issues identified in the responses to the Department’s Issues Paper.</p>	<p>Section 15 of the CC Act was amended in March 2019 to broaden the definition. The CCC continues to monitor the suitability of the definition.</p>
<p><b>Recommendation 9</b></p> <p>The Committee recommends that the commission give greater prominence to the principle of devolution on its website and public documents, including: specifying the kinds of conduct that the commission retains and investigates itself; the proportion of all complaints that are referred to the unit of public administration in which the conduct complained of occurred; and, explaining in plain English the practical effect of the principle of devolution.</p>	<p>The CCC has released a number of plain English publications which explain the complex nature of the devolution principle, and continues to monitor its external communications to ensure they achieve objectives.</p>
<p><b>Recommendation 10</b></p> <p>The Committee recommends that this Committee and its successors monitor the recommendations of the independent review panel, particularly in relation to potential options for resolving the potentially conflicted role of CEOs of local governments in the preliminary assessment and general management of complaints.</p>	<p>Recommendation addressed to the PCCC – monitoring recommendations of independent review panel continues.</p>
<p><b>Recommendation 11</b></p> <p>The Committee recommends that this Committee and its successors monitor and review the operation of the new notification threshold to ensure that the commission continues to be notified of matters that ought to be brought to its attention.</p>	<p>Recommendation addressed to the PCCC - monitoring and review continues.</p>
<p><b>Recommendation 12</b></p> <p>The Committee recommends that the <i>Crime and Corruption Act 2001</i> be amended to require units of public administration to prepare and retain complete and accurate records of any decision not to notify the commission of an allegation of corrupt conduct, including the reasoning on which that decision is based, the evidence (or lack thereof) considered and any findings in relation thereto.</p>	<p>Addressed via inclusion of section 40A of the CC Act</p>
<p><b>Recommendation 13</b></p> <p>The Committee recommends that the <i>Government Owned Corporations Act 1993</i> and the <i>Public Interest Disclosure Act 2010</i> be amended to provide that where a government owned corporation is required to refer a matter under the <i>Corporations Act 2001</i> or any other federal government legislation, that the commission also be advised so that both Federal and State bodies can liaise on the matter.</p>	<p>Addressed via amendment to section 156 of the GOC Act</p>
<p><b>Recommendation 15</b></p> <p>The Committee recommends that the definition of “reviewable decision” in section 219BA of the <i>Crime and Corruption Act 2001</i> be amended to specify that the commission may apply to QCAT for the review of a decision by the QPS not to initiate disciplinary proceedings against an officer for police misconduct.</p>	<p>Addressed via amendment to section 219BA of the CC Act.</p>



<p><b>Recommendation 17</b></p> <p>The Committee recommends that the government give consideration to a comprehensive review of the use of suspended sanctions within the police discipline system – in particular, whether the use of suspended sanctions is appropriate where the sanction is dismissal.</p>	<p>Addressed by commencement of the Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019) (PSA Act) – section 7.41</p>
<p><b>Recommendation 18</b></p> <p>The Committee recommends that the government consider amending section 12(2) of the Police Service (Discipline) Regulations 1990 to ensure that a suspended sanction remains on the subject officer's record.</p>	<p>Addressed by section 7.31(2) of the PSA Act</p>
<p><b>Recommendation 19</b></p> <p>The Committee recommends that section 219G of the <i>Crime and Corruption Act 2001</i> be amended to lengthen the period for making an application to QCAT for review of a reviewable decision to 28 days.</p>	<p>Addressed via amendment to section 219G of the CC Act</p>
<p><b>Recommendation 21</b></p> <p>The Committee recommends that the government review the disclosure provisions of the <i>Crime and Corruption Act 2001</i> to ensure that they reflect contemporary principles of inter-agency cooperation, while maintaining adequate protections for the protection of confidential information.</p>	<p>Addressed via amendment to section 60 of the CC Act (in conjunction with section 231 of the CC Act)</p>
<p><b>Recommendation 23</b></p> <p>The Committee recommends that section 50 of the <i>Crime and Corruption Act 2001</i> 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 against former public sector employees.</p>	<p>Addressed via amendment to section 50(3)(b) of the CC Act</p>
<p><b>Recommendation 24</b></p> <p>The Committee recommends that the <i>Crime and Corruption Act 2001</i> and other relevant legislation be amended to:</p> <ul style="list-style-type: none"> <li>• allow a disciplinary finding against a commission officer who changes employment to another public sector agency to be transferred to the new employing chief executive;</li> <li>• allow the commission to delegate the authority to make a disciplinary finding about a former commission officer to the new employing chief executive; and</li> <li>• provide the same reciprocal rights to other public sector agencies whose employees change employment to the commission.</li> </ul>	<p>Addressed via insertion of sections 273DA and 237DB of the CC Act</p>
<p><b>Recommendation 25</b></p> <p>The Committee recommends that the <i>Crime and Corruption Act 2001</i> and other relevant legislation be amended to enable the commission to provide and receive disciplinary information about a current holder of, or an applicant for, an appointment with the commission (including a secondment) that the commission, the chief executive of a public sector department or the commissioner of Police has about that person. The amendments should specify that the information may be requested in the same circumstances as those currently provided for in section 188B(1)(b) of the <i>Public Service Act 2008</i>.</p>	<p>Addressed via amendment to section 446 of the CC Act</p>



<p><b>Recommendation 28</b> The Committee recommends that the relevant legislation be amended to ensure that commission officers and Police Service Review Commissioners are afforded the same protections against civil liability provided to public servants.</p>	<p>Addressed via section 335 of the CC Act, and section 9.7 of the PSA Act</p>
<p><b>Recommendation 29</b> The Committee recommends that section 14(h) of the <i>Telecommunications Interception Act 2009</i> be amended to require all authorisations under section 66(2) of the <i>Telecommunications (Interception and Access) Act 1979</i> (Cth) and all written appointments of authorising officers under section 66(4) be kept in the authority's records.</p>	<p>Addressed via amendment to section 14(h) of the <i>Telecommunications Interception Act 2009</i> (TIA Act) and insertion of section 14(i) in the TIA Act</p>

### Recommendations which have been addressed by action which is ongoing

The previous PCCC review recommended a substantive review of the CCC's investigative powers. While that work has commenced, it has not been concluded.

**Table 2:** Recommendations which have been addressed by action which is ongoing

PCCC Recommendation No.	Status
<p><b>Recommendation 6</b> The Committee recommends that the government review Chapters 3 and 4 of the CC Act to: develop uniform provisions with generic application to commission functions where appropriate; and clarify what specific privileges are abrogated or unaffected by the provisions of the CC Act.</p>	<p>Chapter 3 and 4 review is still "in progress", but nearing completion</p>
<p><b>Recommendation 7</b> The Committee recommends that the government consider a review of the power provisions in the PPRA and CC Act to: ensure consistency between the PPRA and CC Act and between the various functions in the CC Act where appropriate; and consider any new powers necessary for the commission's operations.</p>	<p>Review of PPRA and CC Act power provisions is still "in progress"</p>

The Joint CCC and DJAG review of Chapters 3 and 4 of the CC Act is approaching a conclusion. The reviewers have reached "in-principle" agreement that amendment should be made to the CC Act to consolidate and clarify the CCC's investigative powers as follows:

1. Create a single power to issue notices to discover information and notices to discover documents or things, if the Chairperson reasonably suspects that a person has information relevant to the investigation, which applies to all of the CCC's functions whether it be a crime investigation, specific intelligence operation (crime), corruption investigation, specific intelligence operation (corruption), witness protection function or confiscation-related investigation.
2. Create uniform provisions to: (1) establish the procedure by which claims of reasonable excuse may be made in response to a notice, (2) establish a claim of reasonable excuse to refuse to answer a question asked in a hearing, (3) provide for the safekeeping of documents that are the subject of a claim of reasonable excuse, and (4) create a new provision for issuing a notice to attend a hearing to establish a claim of reasonable excuse, which apply to all of the CCC's functions.



3. Create single offence provisions for: (1) failing to answer a question at a hearing and (2) failing to produce a document or thing at a hearing, which apply to all of the CCC's functions.
4. Create a single procedure for deciding claims to establish a claim of reasonable excuse/ privilege at a hearing, which applies to all of the CCC's functions.
5. Establish the uniform application of the concept of reasonable excuse from responding to a notice including certain expressly identified privileges.

It is anticipated that the joint review will be completed in 2020.

The issue of consistency between the CC Act and PPRA will be addressed once the review of Chapters 3 and 4 is complete.

The CCC supports this work being concluded before the PCCC's five-yearly review is completed, so that the proposed amendments can be readily implemented.

### Recommendations which have not been addressed but are no longer pursued by the CCC

Some of the recommendations previously made, but which were not adopted or progressed, are no longer pursued by the CCC. In general, this is where other legislative change or changes to operational practices have overtaken the need for these reforms.

**Table 3:** Recommendations which have not been addressed but are no longer pursued by the CCC

PCCC Recommendation No.	Status
<p><b>Recommendation 1</b> The Committee recommends that the governance framework of the commission be considered by the Committee during its periodic review of the structure of the commission within the next 12 months.</p>	<p>This recommendation was not implemented; however, the structure and governance framework of the CCC has changed significantly. These changes are outlined in Chapter 4 of this submission.</p>
<p><b>Recommendation 2</b> The Committee recommends that the government give consideration to the potential implications of the commission's proposal to replace the system of specific and general referrals with a system of "referrals only", in particular the consequences of removing the condition expressed in section 28(1)(a) of the <i>Crime and Corruption Act 2001</i>.</p>	<p>This recommendation was not implemented but it is no longer pursued by the CCC, as the periodic review of general referrals as mandated under the CC Act has established a system of general referrals which are currently fit for purpose.</p>
<p><b>Recommendation 16</b> The Committee recommends that section 50 of the <i>Crime and Corruption Act 2001</i> be amended to enable the commission to initiate disciplinary proceedings in QCAT's original jurisdiction in respect of police misconduct.</p>	<p>Expanded jurisdiction is no longer sought. With the reform of the police disciplinary system, the range of decisions the CCC can review (including classification of the conduct) has expanded.</p>



## Recommendations which have not been addressed but are still supported by the CCC

A number of recommendations from the previous review have not yet been implemented/adopted. Those which are still supported by the CCC, and the reasons for them, are outlined below.

### **Recommendation 1: Adoption and implementation of prior recommendations**

The CCC recommends that recommendations 14, 20, 22, 26 and 27 made in the PCCC's report No. 97 in relation to its previous review of the CCC which have not yet been implemented be adopted and progressed (for the reasons which follow).

### **Clarification of information-gathering powers for monitoring and prevention purposes**

**Recommendation 14:** *The Committee recommends that the government give consideration to amending sections 55, 73 and 75 of the Crime and Corruption Act 2001 to expressly provide that the powers conferred on the commission by these provisions apply to the performance of the commission's monitoring function.*

This recommendation, although supported by the Government in 2016, has not been implemented and remains supported by the CCC.

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 cooperative relationships with agencies rather than any compulsory power to require the provision of important information.

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.

It should be noted that if the CCC's substantive recommendation about re-casting the prevention, intelligence and research functions as subsets of the activity which Crime and Corruption can undertake in the performance of their functions were to be adopted, that would also address these issues.

**Recommendation 20:** *The Committee recommends that the government give consideration to amending sections 55, 73 and 75 of the Crime and Corruption Act 2001 to expressly provide that the powers conferred on the commission by these provisions apply to the performance of the commission's corruption prevention function.*

This recommendation, although supported by the Government in 2016, has not been implemented and remains supported by the CCC.

Given the restoration of the CCC's prevention function in May 2016, the CCC considers it would benefit from additional information and intelligence gathering powers. Prevention is the most effective way to deal with corruption risks. Identifying and addressing these risks, rather than having them crystallise into instances of actual corruption, improves the integrity of the Queensland public sector.

These could be developed in alignment with a whole-of-organisation strategic direction for prevention. The Queensland Audit Office (QAO) encourages, but does not require, all public sector agencies to implement fraud risk assessments and routine data analytics over areas inherently



susceptible to fraud. 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 interstate integrity agencies 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.

At present, information may be (and usually is) cooperatively obtained from units of public administration and other entities who have information which may be of assistance to the CCC's prevention, intelligence and research functions. Section 343 of the CC Act is a permissive/facilitative provision, which protects a person or entity that provides information to the CCC from exposure to liability for provision of that information. Sections 34(a) and 59(1) provide that the CCC is to work cooperatively with units of public administration. However, these provisions are aspirational or permissive. There will inevitably be instances where such information will not be forthcoming as and when it is required. It is for this reason that amendments are sought to mandate (rather than permit) provision of information for those ancillary CCC functions.

It is recommended that consideration be given to amending section 55 (Sharing of Intelligence Information), section 73 (Notice to enter and search official premises) and section 75 (Notices to Discover Information) to expressly state they also apply to the performance of the CCC's corruption prevention function.

The same considerations as for the above recommendation apply with respect to the amendment of proposed re-alignment of the prevention, intelligence and research functions. Further, it must be noted in respect of this recommendation that these issues have been ameliorated somewhat by recent amendments to section 33 of the CC Act (which now allows the CCC to deal with conduct liable to allow, encourage or cause corrupt conduct).

### **Use of evidence obtained in CCC investigations for disciplinary purposes**

**Recommendation 22:** *The Committee recommends that sections 42 and 44 of the Crime and Corruption Act 2001 be amended to ensure that the Commissioner of Police or a public official may, subject to claims of privilege, use information regarding alleged corruption provided by the commission for the purpose of dealing with the alleged corruption, including the taking of disciplinary action.*

The Government noted that it supported the intent of this recommendation, but was going to undertake further consideration as to what legislative amendments would best achieve the result. However, this recommendation was not addressed and remains supported by the CCC.

In certain circumstances, there may 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 (units of public administration or UPAs) to ensure that the CCC and/or public officials are provided with information relevant to the performance of their respective functions.



## Single confiscation agency

**Recommendation 26:** *The Committee recommends that the government give consideration to a single confiscation agency administering the schemes under Chapter 2, 2A and 3 of the Criminal Proceedings Confiscation Act 2002 (CPCA) and the relevant agency be provided with the appropriate resources to administer the schemes.*

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 was again raised in the 2015 submission to the PCCC review of the Crime and Corruption Commission. To date, this recommendation has not been implemented.

Advantages of this proposal include:

- 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 creation of a single confiscation agency administering the schemes under Chapter 2, 2A and 3 of the *Criminal Proceedings Confiscation Act 2002*, provided it is supported by a budget re-allocation to fund this additional activity.

## Public interest disclosure protections for CCC officers disclosing CCC wrongdoing

**Recommendation 27:** *The Committee recommends that the Crime and Corruption Act 2001 be amended to enable commission officers to make lawful disclosures concerning suspected corrupt conduct and improper conduct (as defined in section 329(4) of the Act). The amendments should also ensure that a commission officer who makes such a disclosure is entitled to the same protections granted to public sector employees under the Public Interest Disclosure Act 2010.*

The PCCC strongly supported this recommendation, and it was supported in-principle by the Government. Despite noting that targeted consultation would occur (with the CCC, the Committee and the Queensland Ombudsman) to determine the most appropriate public interest disclosure model for CCC officers, no amendments were made to the CC Act to give effect to the recommendation.

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 CCC 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) and its officers do not hold an appointment in a UPA. Therefore, the CCC is of the view that a CCC officer cannot commit corrupt conduct as defined in section 15 of the CC Act, insofar as the conduct relates to the performance of functions or the exercise of power of the CCC. 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 CCC officer can make a disclosure of improper conduct, in fact, the CCC Code of Conduct requires it. Under section 329 of the CC Act, the Chairperson, Deputy Chairperson 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 CCC 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 CCC officer under section 13(l)(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, again, that legislative provisions be introduced into the CC Act to enable CCC 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 section 329(4) of the CC Act.

#### **Recommendation 2: Adoption and implementation of prior submissions 20 and supplementary submission 1(iv)**

The CCC made a number of submissions to the previous five-yearly review which were not taken up as recommendations of the PCCC, and which have not been implemented. The CCC again supports those submissions, for the further reasons set out as follows.

#### **Removal of self-incrimination for disciplinary purposes**

**Submission 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*

In its 2015 submission to the PCCC, the CCC recommended abolishing the privilege against self-incrimination (also known as incrimination privilege) in disciplinary investigations or disciplinary proceedings, including disciplinary proceedings brought in the original jurisdiction of QCAT.



The powers available to the CCC are directed to its statutory objectives – the incidence of major crime and corruption. Professional disciplinary proceedings are directed towards protection of the public.<sup>1</sup> It is submitted that the public is best protected by ensuring that all available evidence may be considered by a tribunal assessing disciplinary proceedings relating to public sector officers.

The CCC noted that the abrogation of self-incrimination privilege has been the subject of extensive consideration, including by the Queensland Law Reform Commission. In 2011, the Independent Expert Panel noted that:

*The direct and derivative use of information or evidence from a directed disciplinary interview is a difficult area, with significant practical implications and competing public interests. Importantly, the issues also have broader implications for Government because changes in the police disciplinary context may create unintended consequences elsewhere in other public sector disciplinary systems. A careful, substantive policy review to cover the field adequately across the public sector, and not just at the obvious police disciplinary pressure point, is required.*

The PCCC noted that the matters raised by the CCC in relation to self-incrimination privilege could be dealt with by virtue of Recommendations 4 and 6 (discussed above) and, accordingly, did not make a recommendation to the Government.

The CCC now reiterates that recommendation in a slightly refined form.

It is recommended that section 197 of the CC Act be amended to make answers given in coercive hearings admissible against the witness in future disciplinary proceedings. It is further recommended that the privilege against self-incrimination in QCAT proceedings, protected under sections 98 and 214 be abrogated in respect of corrupt conduct proceedings brought under section 50 of the CC Act.

It is well-established law that police officers may be directed to participate in interviews for the purpose of disciplinary investigations, and that those disciplinary interviews may be relied on to substantiate disciplinary allegations against those officers.<sup>2</sup> That is so even where the officer's answers may tend to incriminate them. The rationale for implying such a power (to compel answers from an officer, even where those answers may be self-incriminatory) was that the underlying regulation formed "part of a statutory scheme which provides for the regulation and control of a police force – a body upon whose efficiency and probity the State must depend for the security of the lives and property of its citizens and a body which can operate effectively only under proper discipline."<sup>3</sup>

Under section 50 of the CC Act, the CCC can commence corrupt conduct proceedings against a prescribed person (a person who holds, or held, an appointment in a unit of public administration).

At present, a police officer may be directed to participate in a disciplinary interview by a fellow police officer under the regulations. That officer's answers are admissible against that officer in any disciplinary proceedings, including any corrupt conduct proceedings against the officer under section 50.

The CCC similarly has the power to compel a person to answer questions, even where their answers may tend to incriminate them. However, where a protective order is made under s197, that person's answers are inadmissible in, *inter alia*, disciplinary proceedings. That position is inconsistent as between an officer compelled by the police and the CCC. There is no good reason why this should be the case.

1 CC Act s. 219A.

2 See *Police Service Board v Morris* (1985) 156 CLR 397; *Nugent v Ian Stewart (Commissioner of Police & Anor* [2016] QCA 223.

3 *Morris* at 404 per Gibbs CJ.



While there are sound public policy reasons for the protection of section 197, those reasons may have less force where it is the very public official who is a) the subject of the investigation, b) has engaged in corrupt conduct, and c) has admitted under oath to engaging in corrupt conduct. In such circumstances, the considerations in *Morris* have some force in respect of CCC hearings as well. That is particularly so noting that the proceedings in question are disciplinary, rather than criminal, and directed towards the protection of the public, rather than determination of criminal culpability.

The other scenario where such conduct may be relevant is where a witness has provided evidence under compulsion to the CCC (whether in a hearing or by another mechanism). That witness gives evidence of corrupt conduct by another person, but in doing so is required to reveal conduct on their own part which may disclose their involvement in criminal activity. In such circumstances, the witness may be able to claim privilege against self-incrimination. This in turn may impair the prosecution of the individual who has engaged in the corrupt conduct. Such a circumstance runs contrary to the public interest, and the protective nature of disciplinary proceedings.

Against this, it is possible that such an amendment may weigh against persons being fully truthful in coercive hearings (despite their obligation to do so), thereby rendering them less effective.

Further, the “right to silence” and the privilege against self-incrimination<sup>4</sup> are fundamental rights, which are not to be abrogated lightly, or without serious policy consideration.

The cases which have considered these issues have drawn the distinction between criminal and civil proceedings (of which disciplinary proceedings are a subset). It may be that an appropriate balance could be struck by abrogating the privilege in disciplinary proceedings, and amending section 197, while incorporating a “use immunity” for self-incriminatory evidence led in corrupt conduct proceedings to prevent that evidence being used against the prescribed officer in any other forum.

Such an approach would allow a balance to be achieved between protecting an individual from self-exposure to criminal prosecution and ensuring that those in the public sector who have engaged in corrupt conduct may be held appropriately accountable.

Further, it may be that abrogating the privilege against self-incrimination in QCAT proceedings should only be applied to proceedings for corrupt conduct. That may be a more moderate position, where only conduct sufficiently serious as to fall within the ambit of “corrupt conduct” would warrant the abrogation of such a privilege. This would avoid the perception of “using a sledgehammer to crack a walnut”, by limiting the abrogation only to the most serious disciplinary cases.

Finally, it is noted that similar provisions exist in other jurisdictions. Section 114 of the *Independent Commission Against Corruption Act 1988 (NSW)* (the ICAC Act) provides for disciplinary proceedings to be taken where the ICAC has made a finding that a public official has engaged, or attempted to engage in corrupt conduct. That provision allows the entity deciding the disciplinary proceedings to receive evidence despite the immunity provisions contained in sections 26 and 37 of that Act. While the CCC may not make findings in relation to corrupt conduct by public officials, the underlying position is the same. Where the CCC has obtained sufficient evidence to consider a prescribed person has engaged in corrupt conduct, and therefore commence a proceeding, all the evidence available to the CCC should be admissible in those proceedings.

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4 In the compendious sense used in authorities such as *X7*, which recognises a bundle of rights which are collectively referred to as the “right to silence”, and includes privilege against self-exposure to penalty.



## Mode of appointment of CEO

In a supplementary submission to the PCCC, the CCC made submissions related to the governance structure of the CCC. Recommendation 1(iv) recommended that the CEO of the CCC should be appointed by, and answerable to, the Commission.

The rationale for that submission was premised on principles of good governance, clarity and accountability. Those reasons have not changed, and the CCC reiterates this submission.

## Effectiveness of implemented recommendations

### New definition of “corrupt conduct”

In March 2019, the definition of “corrupt conduct” in section 15 of the CC Act was significantly amended by the *Crime and Corruption and Other Legislation Amendment Act 2018* (Act No. 29 of 2018). Two substantive amendments were made to that definition.

Firstly, the requirement that corrupt conduct “is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person” (formerly s. 15(1)(c)) was removed. This amendment picked up on recommendations from the previous review to simplify the definition of “corrupt conduct”.

Secondly, the government introduced a new section 15(2) in response to stakeholder feedback to the Government's issues paper “Corrupt conduct under the CC Act” (25 February 2016). The changes were similar to those introduced in New South Wales and Victoria.

The new section 15 (2) was accompanied by changes to corruption investigation functions and powers (ss. 33(2) and 46A respectively) intended to capture conduct that could impair public confidence in public administration, provide greater scope to reduce opportunities and incentives for corrupt conduct, and to allow the CCC to more proactively address corruption risks. Significantly, the new section 15 (2) definition of corrupt conduct was limited to particular types of conduct outlined in section 15 (2)(b) and (c).

The Amendment Act removed the following aspects of the definition of corrupt conduct:

- the “benefit or detriment test” – the requirement that a person had to be engaged in the conduct in question for the purpose of obtaining a benefit or causing a detriment; and
- the list of example offences in the former section 15(2).

While the focus of section 15 was previously on the conduct of public sector employees, it now clearly recognises that actions of people outside the public sector can also result in a loss of confidence in agencies, and ensure these actions will fall within the CCC's jurisdiction. In this way, the amendment expands the CCC's investigative jurisdiction with respect to corrupt conduct, providing the CCC with greater scope to reduce the opportunities and incentives for corrupt conduct in the Queensland public sector and allow it to more proactively address corruption risks. The expanded definition of corrupt conduct has limited application to non-criminal action, where it applies to private citizens not susceptible to disciplinary proceedings.



Since that time, the CCC has received 20 referrals of suspected corrupt conduct under section 15 (2) however, of these, only 12 were assessed as corrupt conduct by the CCC. Two matters are currently under investigation (specifically, the CCC is providing financial investigation assistance to the QPS, which is the lead agency in relation to both investigations) and the remaining matters have been referred back to the referring agencies to deal with. This relatively low number of referrals to the CCC based on the expanded definition of corrupt conduct is consistent with the CCC's submission to the government in 2018 that it did not anticipate a large increase in complaints in relation to this amendment.

### **Simplification of dissemination provisions**

The *Crime and Corruption and Other Legislation Amendment Act 2018* also streamlined the information disclosure provisions of the CC Act. It consolidated sections 55 (2), 60 and 62 into a single provision, which is now section 60. This has simplified the process by which the CCC discloses information to other entities.

### **Expansion of disciplinary prosecution and review jurisdiction**

The *Crime and Corruption and Other Legislation Amendment Act 2018* amended section 50 of the CC Act, to expand the range of persons against whom the CCC can commence a prosecution for corrupt conduct in QCAT.

That expanded definition of "prescribed person" also expanded the CCC's disciplinary review jurisdiction, allowing the CCC to review decisions in relation to complaints of corruption made by UPAs.

In late 2019, as part of the reform of the Queensland Police Service (QPS) disciplinary system, significant further amendments were made to the CC Act provisions as they relate to disciplinary proceedings against police officers. In summary, these amendments (as they relate to the CCC's involvement in reviews of QPS decisions) expanded the range of "reviewable decisions", and gave the CCC a right to elect to join a review commenced by an officer.

### **Police disciplinary system reform**

In October 2017 a Memorandum of Understanding (MOU) for a new police discipline system was signed by the CCC, the QPS, the Queensland Police Union and the Queensland Police Commissioned Officers Union of Employees, as well as by representatives of the Queensland Government and the State Opposition. The MOU formed the basis of incremental change implemented on an informal 'agreement' basis until the substantive changes were introduced through the passage of the *Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019*. The Act came into effect on 30 October 2019, and substantially amended the Police Service Administration Act and the CC Act.

The key features of the new discipline framework include improved timeliness and consistency for disciplinary matters for QPS officers and complainants, and a remedial and educative focus for disciplinary matters, with an emphasis on identifying and correcting inappropriate conduct early. The system aims to ensure that disciplinary investigations will be shorter and more targeted.



Key features of the new system include internal governance processes, such as:

- the Joint Assessment of Complaints and Moderation Committee (JAMC)
- the Investigative Consultation Process (ICP)

and legislative reforms, including:

- the Abbreviated Discipline Process (ADP), and
- an expansion in the scope of “reviewable decisions” in QCAT.

### **Impacts of the new police disciplinary system**

The implementation of the JAMC has resulted in an increase in prosecutions of both sworn and unsworn officers for identified data breaches and other police conduct which involves criminal offending. The JAMC has also proved to be a useful mechanism for communicating CCC expectations to regional QPS Professional Practice Managers, increasing their awareness of disciplinary standards. The CCC has observed an increased consistency with findings and sanctions following the creation of the Office of State Discipline.

The relationship with ESC and the CCC has generally proven to be a positive and collegiate one, and minor issues are often resolved between the respective lawyers and, where relevant, via the ICP.

### **Abbreviated Discipline Process**

As anticipated, there has been a significant increase in police discipline matters being referred to the CCC since implementation of the ADP. Fewer matters now move to formal discipline hearings in the first instance, as QPS and the Subject Member seek to negotiate a prompt resolution of the disciplinary matter. In most cases, the CCC either accepts the proposed sanction or offers an alternative sanction, which is then accepted. Matters that are rejected proceed to full hearing before a Prescribed Officer. Those decisions may be reviewed in QCAT.

### **Issues since implementation**

Since the reform of the discipline system, surprisingly, there has been no discernible change in the number of referrals to QCAT. An emerging issue is that officers in many cases achieve a lower sanction when they reject an ADP and proceed to a disciplinary hearing. In such circumstances this operates as a powerful disincentive for officers to agree to an ADP, and fails to achieve the object of efficient resolution of matters. Where sanctions imposed after such a hearing are inadequate, the matters inevitably progress to reviews in QCAT. It is hoped that as the system matures, these issues will be addressed.

Other issues continue to loom in the disciplinary space, but again, it is hoped that as the new system is “bedded down” these issues will reduce in frequency and scale.

The chief issues are:

- An inappropriate reliance by QPS on one narrow aspect of the “public interest” test located within the DPP Guidelines. In some QPS internal investigations, criminal proceedings are not pursued because disciplinary proceedings are considered adequate to deal with the misconduct. This represents a selective reading of the guidelines, which in fact acknowledge that, despite the availability of other mechanisms, ordinarily the public interest will favour criminal prosecution. The fact that a criminal prosecution is not commenced in turn is used to ameliorate the seriousness of the underlying conduct. This may result in sanctions which do not adequately reflect the true gravity of the misconduct. (This issue has been raised through the JAMC process and is being addressed, although still arises in some disciplinary matters.)



- Where officers are criminally prosecuted, submissions are almost invariably made against the imposition of a harsher sentence, or the recording of a conviction, on the basis that the officer will also likely face disciplinary proceedings. Where the criminal penalty is reduced to reflect this fact, the disciplinary proceedings frequently “double-dip” by taking into account the relatively lenient sentence imposed as reflecting that the underlying misconduct is therefore less serious. That is then reflected again in sanctions which do not reflect the true gravity of the misconduct.
- The CCC supports the ability for a disciplinary sanction to include a requirement that the officer undertake a period of community service (CS). However, the CCC questions the practice of CS being exclusively undertaken at Police and Community Youth Club establishments. While this provides a benefit to the QPS, there are many circumstances where community service could be better served where it will have some connection to the underlying misconduct. The educative focus of CS means that officers and the community may gain greater benefit where the officer’s service will provide some connection to the community they have wronged, or the conduct they have engaged in.

As a result of the above, the number of disciplinary proceedings in QCAT has remained static as the CCC continues to review QPS decisions.

JAMC may operate as a solution to this issue of criminal conduct not being adequately addressed, given the CCC can assume responsibility for the matter early and intervene before the discipline takes place.

The CCC has also recommended to the ESC that matters which have been already assessed should be re-referred to the JAMC meetings, if new evidence of further corrupt conduct emerges during an investigation. For example, if an unprofessional conduct matter uncovers evidence of abuse of authority.

Other “teething” issues observed since implementation of the new system include:

- the Subject Member failing to notify the CCC that a sanction is being reviewed (s. 219P(3) of the CC Act)
- outcomes in regional QPS branches do not enjoy the same level of consistency as those determined by the centralised disciplinary office.

### **No longer a need for expanded jurisdiction**

The CCC previously sought an amendment to section 50 of the CC Act to allow the CCC to prosecute in QCAT both proceedings for corrupt conduct and police misconduct.

Following the amendments to the PSAA, the CCC no longer seeks that expanded jurisdiction. QPS are now better equipped to deal with police misconduct matters, subject to CCC review of those decisions. The range of decisions the CCC can review (including classification of the conduct) has expanded, adding to the robustness of the disciplinary system. The definition of “reviewable decision” in section 219BA has also been amended to include a decision not to commence disciplinary proceedings. As a result, the CCC can now review a decision not to take disciplinary action (including post-separation disciplinary action under Pt7A of the PSAA), as well as a range of intermediate steps.

### **Amendment of section 197(7)**

Section 197(7) was introduced into the Act by the *Crime and Corruption and Other Legislation Amendment Act 2018*. This provision clarified what was the existing legal position – that evidence was not inadmissible simply because it was derived from answers obtained through compulsory examination. This is a significant clarification of the legal position in respect of evidence gathered through the use of the CCC’s coercive powers.



## Coercive hearings – recent caselaw, continued monitoring

The caselaw regarding coercive hearings continues to evolve and will require continued monitoring. Some of these cases relate directly to the CCC's governing legislation, while others involve articulation of principles which bear on how the CCC exercises its compulsory powers. Recent cases include those having explored issues regarding:

- abuse of power in disclosing evidence obtained through unlawful compulsory examinations by the Australian Crime Commission (*Tony Strickland (a pseudonym) v Commonwealth Director of Public Prosecutions* [2018] HCA 53)
- whether an employee being compelled to give evidence against their employer infringes the "companion principle" (*Commonwealth of Australia v Helicopter Resources Pty Ltd* [2020] HCA 16)
- whether the prospect of self-incriminating evidence being used to obtain derivative evidence against a witness gives rise to a reasonable excuse to refuse to answer questions (*NS v Scott* [2017] QCA 237)
- the amendment to section 197 of the CC Act in 2018, confirming that this subsection makes clear that derivative use may be made of compulsory acquired information (*PRS v CCC* [2019] QCA 255)
- whether taxation legislation authorised the disclosure of compulsorily obtained evidence to prosecuting authorities for the purpose of considering and formulating the prosecution case (*CDPP v Leach (No 2)* [2018] QCA 131); and the impact of evidence impermissibly disclosed to investigators on the institution or continuation of a criminal prosecution (*CDPP v Leach (No 3)* [2020] QDC 42)
- whether a compulsory investigative procedure if sufficiently authorised by statute may be invoked notwithstanding that, as a matter of practical reality, the result will fundamentally alter the ability of an accused to defend charges that may have been or may be laid against him or her (*R v Independent Broad-Based Anti-Corruption Commissioner* (2016) 256 CLR 459 [48] – [52] and [73] – [75])

One recent decision has led the CCC to make a submission to seek new amendment to the provisions governing the exercise of its coercive powers. This is set out in Chapter 3.

## Other significant legislative change

### Human Rights Act

In January 2019, the Queensland Parliament passed the *Human Rights Act 2019* (HR Act). The HR Act aims to protect and promote 23 human rights and build a culture in the Queensland public sector that respects and promotes human rights. The CCC is a public entity under the HR Act and is required to act in a way which is compatible with human rights.

To prepare for the commencement of the HR Act on 1 January 2020, the CCC:

- adopted a Human Rights policy which outlines the CCC's obligations as a public entity and referral entity under the HR Act and established procedures for dealing with any human rights complaints received by the CCC
- reviewed its main operational policies and procedures to ensure they acknowledge and reflect the CCC's human rights obligations



- prepared tools to support policy reviews and decision-making to ensure that decision-makers properly consider human rights issues
- provided all CCC staff with training and education about the HR Act and the CCC's human rights obligations.

The implementation of the HR Act has seen an increase in workload in reviewing policies and procedures, when they are updated or amended, to ensure compliance with HR Act obligations. There has also been an increase in record-keeping and reporting, consistently with obligations to account for HR Act complaints.

There have been no immediate operational ramifications due to the implementation of the HR Act, however these considerations are factored in to the "front end" of the decision-making processes of the CCC.

Finally, there have been no legal challenges to the CCC's activities to date which have incorporated challenges under the HR Act. However, it is noted that any observations to this point about the impact of the HR Act are preliminary at this time.



## Chapter 3 – Legislative challenges and recommendations

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### Comment on the current legislation

The CC Act (and related legislation which bears on the CCC) in its present form has aspects which are adequate to achieve the CCC's legislated objectives and performance of its functions. Some of these provisions have been carefully examined through judicial consideration,<sup>5</sup> and are well-suited to achieve the CCC's objectives.

However, as the CCC's operational focus evolves and as new challenges emerge in relation to the CCC's primary (Corruption and Crime) and ancillary functions, there are opportunities identified in relation to the corporate governance of the CCC, and the Crime and Corruption functions, which can assist the CCC to better fulfil its purposes. Those opportunities for reform are set out below.

### Strengthening the CCC's corporate structure and governance

The CCC submits the following areas should be closely examined to consider whether there are opportunities for improvement in the legislative and structural aspects of the CCC's governance arrangements.

#### Funding model

The funding models of independent oversight bodies/integrity agencies and their perceived incompatibility with the statutory mandates of their independence have been reviewed recently in both Victoria and New South Wales.

From 1 July 2020, Victoria's Independent Broad-based Anti-corruption Commission (IBAC) will embrace legislative changes which will allow for budgetary and funding independence. IBAC will no longer be dependent upon a department but rather funded by a separate disclosed budget line through the Parliament Appropriation Bill each financial year.

In a similar model to the CCC, IBAC was previously funded through and aligned with the Department of Premier and Cabinet. This model was seemingly incompatible with the independent status of IBAC and in February 2019, the Integrity and Accountability Legislation (Public Interest Disclosures, Oversight and Independence) Bill 2018 was passed in the Victorian Parliament, giving IBAC budgetary and funding independence.

The legislative changes include a system by which IBAC's budget will be determined in consultation with the Integrity and Oversight Committee. To assist in the determination of the budget IBAC will be required to submit to the Integrity and Oversight Committee a draft annual plan describing IBAC's proposed work program at the beginning of each financial year.

An independent performance auditor will also be appointed who will be required to conduct a performance audit at least every four years of IBAC to determine whether it is achieving its objectives effectively, economically and efficiently and in compliance with the governing Act.

In late 2019 the New South Wales Public Accountability Committee (PAC) and the Independent Commission Against Corruption (ICAC) also canvassed the issue of agency independence, tabling in NSW Parliament a report addressing their desire for a new independent funding model.

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<sup>5</sup> See, for example, the decisions of *NS v Scott* [2017] QCA 237, *PRS v Crime and Corruption Commission* [2019] 255.



In December 2019, PAC held hearings and drafted a report in relation to the budget process for independent oversight bodies including ICAC<sup>6</sup>. Four (4) recommendations of relevance to the funding process of ICAC were made. In short, the recommendations prescribed a process by which ICAC's funding process would be overseen by the parliamentary oversight committee and the annual funding would be allocated through the appropriation legislation rather than the relevant Minister. The recommendations sought to preserve ICAC's independence from the Executive Government and to impose a delineation of ICAC's funding and deployment of resources from any perceived government or ministerial influence. The recommendations made by PAC largely mirror the objectives of the legislative changes imposed upon Victoria's IBAC. In response to PAC's report and recommendations, in May 2020, ICAC tabled in parliament a special report addressing the need for a new independent funding model for ICAC<sup>7</sup>. An appendix to the report was an advice provided by Mr Bret Walker SC in relation to the independence of ICAC and the budget process by which its operations are funded. That advice concluded that there is an inherent conflict between the essential independence required of ICAC to perform its functions and the dependence of the ICAC funding model upon responsible ministers and the government.

ICAC is currently funded by a mix of appropriations by Parliament and grants for supplementary funds from the Department of Premier and Cabinet (DPC). In practice it is members of the executive government or senior bureaucrats that control the "purse strings" to funds requested by ICAC. This gives those persons a degree of practical influence over what ICAC can investigate, and to what extent it can investigate it. This is incompatible with its statutory independence.

ICAC has proposed a funding model in which a budget assessor would assess the agency's funding requirements. The budget assessor would also have the role of approving the need for any additional funding during the course of the financial year to cover unexpected demands on the agency's functions. The core funding would be provided by way of annual appropriation by the NSW Parliament and appropriated directly to ICAC and not require the authority of the responsible minister.

The model proposes that ICAC would prepare a draft budget in consultation with appropriate entities including Treasury. The draft budget would be submitted to the ICAC budget assessor for determination as to whether the budget provides an appropriate level of core funding adequate for ICAC to carry out its functions. The budget would then be tabled in Parliament. The amount determined by Parliament would be appropriated directly to ICAC and not to the usual responsible minister.

As an independent oversight body, the legislative changes adopted by IBAC and the current review findings of ICAC (including the advice of Mr Walker, SC) are of relevance to the CCC's current funding model and its impact upon its independent functioning.

The CCC is funded by parliamentary appropriations for the provision of its outputs. These appropriations are received by the Department of Justice and Attorney-General and forwarded to the CCC on a quarterly basis in the form of grants.

The CCC's grant process is by way of a budget submission made directly by the CCC to the Attorney-General. The CCC independently drafts the budget submission. The budget submission is then made to Treasury on the CCC's behalf by the Attorney-General. As with all budget submissions it is then considered by the Cabinet Budget Review Committee (CBRC).

Approved budgetary funds are then provided to the Department of Justice and Attorney-General and distributed to the CCC quarterly. Submissions for supplementary funding for additional and unforeseen expenses are made through the Attorney-General to the CBRC.

6 *Inquiry into budget process for independent oversight bodies and the Parliament of New South Wales* (Report – 12 December 2019).

7 New South Wales Independent Commission Against Corruption Special Report: *The need for a new independent funding model for the ICAC* (May 2020) ://www.icac.nsw.gov.au/ArticleDocuments/933/Section%2075%20Report%20-%20May20%20\_Final.pdf.aspx



The statutory independence of the CCC is paramount to the performance of its functions of reducing major crime and corruption, and as an oversight body. To allow the independent functioning of the CCC, any funding model must be as free as possible from the potential for political influence, or perception of political influence, that may control or influence the investigations undertaken.

IBAC's adoption of a more independent funding model, the advice of Mr Walker, SC, ICAC's report and the recommendations of PAC, raise relevant questions in relation to whether the current funding model of the CCC is compatible with its statutory independence. It is submitted that the considerations which obtain for the ICAC in NSW arise with equal force in respect of the CCC. Consideration should be given as to whether the current funding model is appropriate, noting the steps being taken in other jurisdictions.

**Recommendation 3: Review CCC's funding model to avoid possibility or perception of political interference by appropriation from Parliament**

The CCC recommends that the CCC be funded by a direct appropriation from Parliament to avoid the possibility or perception of political interference in the allocation of funds to the CCC. This would strengthen the CCC's independence, and is consistent with the approach adopted, or advocated in other jurisdictions.

## Internal declarations of conflicts of interest

CCC officers should be held accountable to make conflict of interest declarations in respect of both perceived and actual conflicts relevant to their work at the CCC.

The CC Act currently includes a range of obligations in relation to the declaration of matters that may give rise to conflicts of interest:

For CCC officers, section 238 requires the CCC to keep a register of each officer's pecuniary interests and personal or political associations, and requires each officer to make a declaration for that purpose, "as soon as practicable after the officer's appointment" and "within 30 days after any substantial change in the officer's pecuniary interests or personal or political associations", however there is no legal obligation on CCC officers to declare a conflict of interest in relation to specific matters they may be allocated to work on.

For Commissioners, section 267 applies to a Commissioner if he or she "has a material personal interest in an issue being considered, or about to be considered, by the Commission" which "could conflict with the proper performance of the person's duties about the consideration of the issue". In such a case, the Commissioner is required to disclose the interest and not take part in consideration of the issue.

For members of the Crime Reference Committee, section 289, which is in similar terms to section 267, operates to impose an obligation on members to disclose the interest and not take part in consideration of the issue.

Imposing an obligation to declare a conflict of interest in relation to specific matters on all CCC officers, rather than just Commissioners and members of the Crime Reference Committee, is consistent with the CCC's public position on the role that the proper management of conflicts of interest plays in protecting against corruption and promoting public confidence in the integrity of public institutions.

In addition to creating a corruption risk, failing to properly declare and manage a conflict of interest undermines perceptions of the integrity of processes, and creates a lack of confidence in processes and the outcomes they lead to including that the very legitimacy of projects can be undermined.



Properly dealing with conflicts of interest is integral to the effective and efficient functioning of the public sector.

The Queensland community expects all people involved in public sector administration to adhere to the highest standards of integrity in dealing with conflicts of interest.

Moreover, the community expect the highest standards of ethical leadership – both political and within public sector agencies.

#### **Recommendation 4: Conflict of interest declarations**

The CCC recommends that section 238 of the CC Act be amended to ensure that CCC officers are obliged to make conflict of interest declarations.

### **Tenure of senior officers**

Commissioners, the Chief Executive Officer (CEO) and Senior Officers of the CCC may not be appointed or employed for more than ten years.

The CEO's position is included with "officers", within Ch 6, Pt 1, Div 2 of the CC Act. Section 231 provides that a Commissioner or the CEO may not hold office for a total period of more than ten years.

Senior officers<sup>8</sup> of the CCC must not hold office for more than 10 years (though this may be extended to 15 years if deemed necessary for the efficient operation of the CCC).

"Senior officer" is defined in section 247(5) of the CC Act as *a senior officer whose principal duties relate directly to the performance of the commission's prevention, crime, corruption, research or intelligence functions or the giving of legal advice to the commission*. A senior officer is a person employed at the Senior Executive Service (SES level).

Significantly, a "senior officer" in s247 does not include a senior officer whose principal duties support the CCC's functions, such as those relating to information technology matters, financial matters and human resource management matters, and thus are not restrained by the limited tenure provisions of the CC Act. It is unclear why such a distinction is drawn.

Section 249 provides that an officer who was employed in the public service and resigns their position to take up an appointment as a CCC senior officer may, at the conclusion of their term of office at the CCC, return to the public service at the level to which they were appointed when they resigned, and retain all prior rights which accrued to them as a public service officer. This position leads to a differential treatment between public service officers and potential SES appointees from both the private sector, and from within the CCC, who do not enjoy the same right of return.

### **Historical context**

The Fitzgerald report provided the template for the creation of the Criminal Justice Commission. The report went into significant detail about the proposed operations, methods, priorities and structure of the CJC. The report provided for a fixed term for the appointment of the first Chairman, although it was silent as to the rationale for this, and made no recommendation for term limits to be applied to any other officers of the CJC.

8 Section 247(5) CC Act states that a *senior officer* is a person whose principal duties relate directly to the performance of the CCC's prevention, crime, corruption, research or intelligence functions or the giving of legal advice to the CCC, but does not include a senior officer whose duties support the CCC's functions.



In previous reviews to the PCMC/PCCC, the CMC/CCC raised for consideration (and the 6<sup>th</sup> PCMC recommended continued monitoring of) staff retention and renewal. These reviews recognised the importance of striking a balance between the need for renewal at a senior level of the CCC and an appropriate level of stability. In its 2012 submission, the CMC noted that term limits for senior officers continued to present issues related to:

- i. Attracting, engaging and retaining experienced staff]
- ii. Organisational capability and improvement
- iii. Managing a multi-generational workforce; and
- iv. Strengthening management and supervisory practice at all levels of the organisation.

Those considerations remain relevant.

### **Reasons for abolishing limited tenure for senior officers**

The restriction on senior officers' tenure applies not only to continued employment in one role or even one division, but within the entire agency. This may have a perverse outcome by eliminating from a pool of potential candidates staff who have worked in other senior positions within the CCC. This may deplete corporate knowledge, and discourage promotion or lateral transfer of quality staff.<sup>9</sup>

The prospect of limited tenure could deter high-quality candidates from seeking such positions within the CCC. This is especially the case for those earlier in their careers, who may be reluctant to foreclose future opportunities by taking time-limited appointments at an early stage. Such term limits impose an artificial "ceiling" on movement within senior executive ranks.

It may be argued that tenure limits encourage innovation and prevent stagnation of ideas through the infusion of new people. However, this overlooks the fact that innovation can come from within, and the length of a person's employment is not indicative of their capacity to plan, to innovate, and to deploy their experience in new ways. Internal rotation of staff, particularly at senior levels can facilitate this. Senior officers whose vision ceases to drive the agency forward may not have their contract renewed at the end of any given five-year (or shorter) term. But forced departure of officers after a fixed period may serve to achieve the opposite – the loss of skilled, talented staff who continue to drive the CCC forward.

Limited tenures can hinder long-term planning and policy implementation – particularly harmful in the areas requiring long-term vision, such as legislative reform and building capability in emerging areas. Officers who are approaching their term limits may prefer to invest their efforts in short-term projects with more immediate results. In this way, limited tenures may act to prevent innovation – especially towards the end of an officer's tenure.

Finally, the divergent approach in section 249, drawing a distinction between senior officers who provide ancillary support to the CCC, as opposed to those responsible for the CCC's core functions or the provision of legal advice, may be problematic in implementation. Determining whether an officer's role falls within the ambit of section 247(5) may pose some difficulty, as organisational structures and functions change over time. Moreover, the Act is unclear as to whether periods as a senior officer (as defined in section 245) in areas excluded from section 247(5) are counted towards the calculation of

<sup>9</sup> For example, a senior officer who has performed well in a SES position for a number of years may have skills which could benefit another area of the CCC. If they were close to their 10-year limit, this may act as a disincentive to appoint that person. In addition, an officer who had left the CCC after 10 years and gained experience in another agency may be precluded from bringing that combination of corporate knowledge and external perspective to bear to a role again within the CCC at the SES level. Such an outcome cannot be desirable.



any ten-year period. It is also unclear as to whether the ten-year limit applies depending on the officer's particular role when ten years is reached.<sup>10</sup> This cannot be desirable.

### Approach in other states

A maximum statutory term for Commissioners is unanimously supported by the States. Victoria and New South Wales have adopted the most restrictive approach, with a five-year limit on their Commissioners' terms. Tasmanian, South Australian and Western Australian Commissioners have a limited tenure of 10 years. New South Wales, Victoria and South Australia also impose limited tenures for Deputy or Assistant Commissioners. The CC Act imposes comparable restrictions.

No term limits are imposed on the Chief Executive Officer's role in Victoria or the Australian Capital Territory. In New South Wales, the CEO may be appointed for a term not exceeding seven years, but is eligible for re-appointment (the legislation does not limit the number of terms a CEO may serve).<sup>11</sup> Other agencies throughout Australia have Chief Executive Officers or equivalent positions, but these are not legislated.

The CC Act alone imposes limited tenure on senior officers. It is also the only Act to draw a distinction between officers with duties directly relating to the functions of the CCC, and those whose primary duties are supportive of the functions of the CCC – the rationale for which is unclear. The utility of such a restrictive approach in Queensland must therefore be questioned.

### Other public sector bodies

Such restrictions do not apply elsewhere across the Queensland public sector. Concerns about reducing corruption risks, if they genuinely do outweigh the need to retain high-level staff, must apply with equal force across the Queensland public sector.

In summary, removal of limited tenures is recommended for the following reasons:

- i. to bring Queensland in line with other states
- ii. to ensure consistency across the public sector
- iii. to ensure equal opportunities for all senior officers at the CCC (irrespective of whether their duties directly relate to, or merely support, the CCC's core function)
- iv. to make a CEO position and SES positions more attractive to potential candidates
- v. to retain a sufficient bank of experience at the senior levels of the CCC
- vi. to encourage a CEO and SES to develop long-term plans and policies for the CCC, and consistently work at a high level.

It is not recommended that limited tenure for Commissioners at the CCC be repealed. This is consistent with the approach in other States, and effectively acts as a safeguard against the stagnation of "new thinking" and also prolonged and systemic corruption within the CCC.

It is recommended that the current base-term of appointment of five years be preserved. The CEO or SES whose skills or direction no longer supports the needs of the CCC may not have their contract renewed at the conclusion of their term. In this way, regular turnover at the senior levels of the CCC will occur in a more organic and meritocratic manner.

<sup>10</sup> For example, if an officer serves nine and a half years in a senior officer position related to the performance of the CCC's crime function, before moving to a senior officer position responsible for operations support.

<sup>11</sup> *Independent Commission Against Corruption Act 1988 (NSW)* s. 104.



Repealing the current tenure provisions for the CEO and SES will make these positions more attractive to potential candidates and ensure that a sufficient bank of experience is retained at the CCC. On balance, these are more compelling considerations than promoting regular turnover and “new thinking” among the CEO and SES, which can be stimulated through other means.

**Recommendation 5: Limited tenure of Senior Officers and Chief Executive Officer**

The CCC recommends that the limit on the tenure of the chief executive officer be removed by amending section 231(2) of the CC Act.

The CCC recommends that the limits on the tenure of “senior executive officer” and “senior officers” be removed by repealing sections 247(3) to 247(3C) of the CC Act.

**Appointment of Commissioners, CEO and Chairperson – reasons given if bipartisan support withheld**

The requirement for bipartisan support for the nomination or reappointment of a chairperson, Commissioner or chief executive officer is an important safeguard.<sup>12</sup> It reduces the risk of, or perception of, partisan political appointments, and enhances the independence of the roles.

There may be good reason one side or the other withholds its support for a nominee. A candidate may be unsuitable for a variety of reasons. However there should be a legitimate reason for refusing bipartisan support. The absence of such a reason will almost certainly undermine public confidence in the independence of the appointment.<sup>13</sup>

A question arises, then, as to how to balance these competing considerations – to ensure that unsuitable candidates are not appointed or reappointed, while also ensuring that consent is not withheld arbitrarily. It is submitted that an appropriate balance would be struck by requiring the PCCC to report publicly in a situation where bipartisan support for a candidate is not provided.

Given the infrequency with which such appointments are made, it would not be unduly burdensome. Moreover, it is to be hoped that such a situation would rarely arise. Requiring public reasons for withholding support for a nominee could be expected to ensure that unsuitable candidates were not nominated (lest the reasons for their unsuitability be exposed), and equally, that the reasons for not providing bipartisan support were transparent.

Finally, it is to be hoped that most appointments would be made without the need for such a report. It is not unreasonable to expect that most appointments be made with bipartisan support. This proposal is a further safeguard for the independence of these important statutory appointments.

**Recommendation 6: Reasons given if bipartisan support is withheld**

The CCC recommends that the CC Act be amended to require reasons to be given if bipartisan support is withheld for the appointment of the Chairperson, Commissioners or CEO.

12 This recommendation would apply to the Chief Executive Officer only if the recommendation set out in the submission to the previous review, and made again here – that the CEO be appointed by the Commission – is not accepted.

13 See for example the situation in Western Australia at <https://www.abc.net.au/news/2020-04-23/ccc-commissioner-john-mckechnie-to-be-out-of-job-in-days/1217836>; Western Australia Corruption and Crime Commission, *Misconduct risks in electorate allowances for Members of Parliament*, 17 December 2019.



## Review of internal disciplinary powers and processes

Chapter 6, Part 1, Division 9 was introduced into the CCC's governing legislation by the *Crime and Misconduct and Other Legislation Amendment Act 2014*. That Division was introduced in response to the recommendations of the Callinan–Aroney review of the CCC's operations. That Division introduced provisions providing for disciplinary action to be taken against CCC staff.

These provisions were amended by the *Crime and Corruption and Other Legislation Amendment Act 2018*. These amendments introduced a mechanism for sharing information between agencies, and for action to be taken in respect of staff who either engaged in misconduct while employed at, or were seconded to, the CCC, but had since moved to, or returned to, another agency, or staff who engaged in misconduct at another agency and moved to the CCC.

There are two areas where it is submitted the current disciplinary provisions could benefit from further review and consideration. These are in respect of the CEO's powers to direct an agent engaged by the CCC to participate in an interview, and a clarification of the disciplinary powers the CEO may exercise in respect of a person who engages in improper conduct while seconded to the CCC.

Division 9 applies to CCC officers. The Dictionary to the Act provides that a "commission officer" generally includes CCC staff employed under sections 254 and 255, but also persons engaged under section 256.

The Commission may issue directions to staff, pursuant to section 257, but this power of direction is confined to staff engaged only under sections 254 and 255 – not section 256.

It is not clear, in those circumstances, that the CEO may direct a person engaged under section 256 to participate in a disciplinary interview. Given that disciplinary action is directed towards protection of the public, such an anomaly is undesirable and should be remedied.

Secondly, the current framing of the disciplinary provisions in Division 9 limits the action which the CCC may take against a seconded officer.

An officer seconded to the CCC retains an employment relationship with their "home agency". Subdivision 4 of Division 9 makes provision for dealing with disciplinary action against a former CCC officer who has moved or returned to their "home agency". The CCC's CEO may make a disciplinary declaration about that person, declaring what the disciplinary outcome would have been had the person not left the CCC.

Under subdivision 3, the person's current chief executive (that is, at their "home agency") may take disciplinary action against the person. Disciplinary action may not be taken against the person by both the CCC and the "home agency".

There are circumstances where a person's misconduct may be so grave that the CCC's CEO would consider that dismissal is the appropriate disciplinary outcome. Where a person is a secondee, dismissal for these purposes only amounts in practice to termination of the secondment. The same considerations apply to disciplinary sanctions such as demotion or reduction in pay levels – they do not apply to seconded officers because the CCC cannot alter the underlying employment relationship between the employee and their "home agency".



While the CCC's CEO may refer the matter to the CEO of the "home agency" to take disciplinary action against the former employee, the "home agency" retains complete control over that process, including the outcome.

#### **Recommendation 7: Amendment of internal disciplinary powers**

The CCC recommends that the disciplinary provisions set out in Division 9 of the Act are amended to ensure that disciplinary action taken by the CCC in respect of seconded officers can operate with the same effect as if the officer were employed directly by the CCC (including sanctions such as demotion and termination), and that powers may be exercised in respect of officers engaged under section 256.

### **Commissioner for Police Service Reviews (CPSR) secretariat function**

Police officers with grievances about promotions, transfers and disciplinary matters other than misconduct can apply to have these decisions reviewed by independent Review Commissioners external to the QPS. Police Service Review Commissioners are appointed under section 9.2A *Police Service Administration Act 1990*. The CCC Chairperson may nominate a person with appropriate experience to be a Commissioner for police service reviews. The appointment is made by the Governor in Council.

Pursuant to section 35 of the Police Service Administration Regulation 2016, the CCC funds and provides the secretariat for the Police Service Review function. That role provides administrative support to Review Commissioners to assist them perform their functions, including receiving and processing review applications, scheduling hearings before the Review Commissioners, and providing advice about the administrative review process to police officers. The secretariat is the equivalent of 0.5 of the full-time equivalent (FTE) of an AO4 administration officer (and the officer who occupies that role undertakes other duties within the CCC for the other 0.5 FTE). PSR hearings and the secretariat function are delivered at the CCC premises.

With the exception of providing the secretariat and premises, the CCC has no role in the actual review process.

The CCC supports the continuation of an independent function to review QPS promotions, transfers and disciplinary matters other than misconduct. However, the CCC suggests that this function is best delivered in an agency whose purpose and services are more aligned to the police service review function. The Public Service Commission provides services to deliver a high performing public service and has significant advisory expertise in workforce strategy and management. Aligning the police service review function with the Public Service Commission would deliver greater support to Review Commissioners while maintaining the necessary independence.

The alternative solution would be to remove the CPSR secretariat and funding to be entirely independent of any agency, and directly attached to the CPSRs. This could be achieved by allocation of funds directly from Government.

Removing the CPSR secretariat function from the CCC provides greater clarity as to the respective roles of the CCC and CPSR. The CCC's corruption jurisdiction involves corrupt conduct and police misconduct. The CPSR function reviews decisions regarding promotion, transfer or discipline.

The provision of the secretarial services to the CPSR through the CCC may create the impression that the decisions of the CPSR have the imprimatur of the CCC, or may have some overlap with CCC functions and activities.



In the event that the recommendation is accepted, the CCC would transfer the current funding supporting the secretariat function to the appropriate agency.

#### **Recommendation 8: Removal of CPSR secretariat function from CCC**

That the Crime and Corruption Commission no longer be responsible for the provision of secretariat support to the Commissioner for Police Service Review process.

### **Personnel security vetting provisions**

The CCC Personnel Security policy and procedure sets out the standards of personnel security and the process to assess suitability in accordance with those standards for CCC officers and contractors who provide services to the CCC in order to protect the personnel and information of the CCC.

The process of security vetting by the CCC is not prescribed by legislation, other than the CC Act requirement that a CCC officer must consent to a criminal history check as a condition of appointment<sup>14</sup> and the requirement that candidates must disclose any history of serious disciplinary action upon request<sup>15</sup>.

The CCC notes that the absence of statutory vetting requirements in the CC Act may be contrasted with its NSW counterpart ICAC (which has vetting powers to refer to the sources of information set out in section 104C of the *Independent Commission Against Corruption Act 1988 NSW*) and with the Queensland Police Service (which has wide statutory vetting powers set out in Part 5AA and the Schedule of Relevant Information in the *Police Service Administration Act 1990 Qld* and a requirement that candidates must be given reasons why they are considered not to be suitable unless disclosure of this information may prejudice an investigation, identify a confidential source of information, endanger a person's life or physical safety, prejudice law enforcement or national security or is prohibited by law<sup>16</sup>).

Because of the confidential and often sensitive nature of work performed by the CCC, it is imperative that careful and considered security vetting is undertaken to protect CCC officers and information. A recent review and amendment of the CCC Personnel Security policy and procedure confirmed that it:

sets out appropriate vetting criteria which are effective to protect the personnel and information of the CCC, adapting the provisions of the Commonwealth Protective Security Policy Framework (which details the pre-employment screening processes and standardised vetting practices to be undertaken when engaging personnel who have access to Australian Government resources and the requirements of the Australian Government Security Vetting Agency) for this purpose; and

affords candidates procedural fairness by giving reasons for adverse determinations of a candidate's suitability unless there are exceptional circumstances where disclosure of this information presents a security concern, reflecting the approach taken by the Queensland Police Service.

While the CCC considers that the Personnel Security policy and procedure reflects best practice, consideration should be given to amending the CC Act should be made to detail the security vetting requirements in the CC Act. Given the nature of the work undertaken by the CCC, it is arguable that a more stringent level of security vetting may be warranted than that provided for potential QPS employees. This may bear on the nature and quality of procedural fairness which may be afforded to a potential appointee. By way of comparison, it is relevant to note that the NSW ICAC legislation does

14 S. 330 *Crime and Corruption Act 2001*.

15 S. 273G *Crime and Corruption Act 2001*.

16 S. 5AA.12 *Police Service Administration Act 1990* (Qld).



not contain provisions dictating the process for dealing with any procedural fairness considerations in vetting prospective employees.

The CCC submits that consideration should be given to inclusion of specific statutory provisions allowing for security vetting of prospective and current CCC officers and contractors, and to whether, and what kind of, procedural fairness safeguards may be built in to that process.

**Recommendation 9: Amendment to CC Act to include vetting provisions**

The CCC recommends that the CC Act be amended to provide a mechanism for vetting of staff, with appropriate provision to address natural justice considerations.

## Strengthening the CCC's powers to combat major crime

### Definition of money laundering

The offence of Money Laundering is contained in section 250 of the *Criminal Proceeds Confiscation Act 2002* (CPCA). The existing offence is complex, unwieldy and rarely used. The CCC submits that this offence should be substantially revised to ensure that it is "fit for purpose" in providing a mechanism to prosecute those who seek to conceal or deal in the proceeds of criminal activity.

A person engages in money laundering if they:

- Engage, directly or indirectly, in a transaction involving money or other property that is tainted property; or
- Receive, possess, dispose of, or bring into Queensland money or other property that is tainted property; or
- Conceal or disguise the source, existence, nature, location, ownership or control of tainted property.

The definition of "tainted property" is contained within section 104 of the CPCA. That definition is confusing, self-referential and circular.

It includes property described within section 250(2)(a) of the CPCA – which is the offence of money laundering. That is, "tainted property" is defined to include property involved in a transaction involving tainted property. "Tainted property" is also defined to include (for the purposes of an offence against s. 25) property mentioned in section 252 (which is described as property suspected of being tainted property). That "tainted property" is defined as including "tainted property" highlights the problem.

While there have been sentence appeals where an offender has pleaded guilty to the offence of Money Laundering, it does not appear that the operation of section 250 of the CPCA has been the subject of judicial consideration.

Money laundering is dealt with differently in other jurisdictions. Money laundering offences are also contained in Part 10.2 of the Commonwealth Criminal Code.

An alternative approach is contained in the *Crimes Act 1900* (NSW) Part 4AC. The offences (in particular, s. 193B) are simplified and the definitions are clear and contained in the same part of the Act. It is respectfully submitted that the NSW provisions provide a clearer framework for prosecuting money laundering activity.



We recommend reviewing the definition of money laundering in section 250 of the CPCA to provide clarity as to what constitutes money laundering, and avoid constraining the ability to successfully prosecute cases of money laundering. This would assist to better achieve the objects of the CPCA, in removing the financial gain and increasing the financial loss associated with illegal activity.

**Recommendation 10: Review of the definition of “Money Laundering”**

The CCC recommends that a review be undertaken of the definition of “Money Laundering” as contained in the *Criminal Proceeds Confiscation Act 2002* to simplify the provision and ensure that it is “fit for purpose” to allow for effective prosecution of money laundering.

## Review of the use of CC Act powers for Crime prevention

The CCC’s priorities are informed by and support the Queensland Government’s priorities, commitments and targets. This also involves Queensland’s commitments to national frameworks, agreements and strategies. The Queensland Police Service (QPS) priorities for serious and organised crime also have particular significance for setting the major crime priorities for the CCC, and so our close engagement with the QPS and its partner agencies is important to fully realising opportunities to collaborate with them, and remain informed and responsive to those priorities.

Consideration should be given to amending section 26 of the CC Act to clarify that crime hearings and compulsory information production powers are available for crime prevention purposes. This would have benefits for matters such as the child death review panel<sup>17</sup> in reviewing child deaths and serious injury.

The proposed amendment is broadly consistent with recommendations 14 and 20 made in respect of the Corruption function by the previous PCCC review, and reiterated above.

As for the above submission in relation to previous recommendations 14 and 20, these matters would also be addressed if the research, prevention and intelligence functions were subsumed as activities in relation to the CCC’s substantive functions, as proposed below.

**Recommendation 11: Make compulsory powers available for crime prevention purposes**

The CCC recommends that the CC Act be amended in to make clear that compulsory powers are available in support of the CCC’s crime prevention function.

## Commission hearings to establish claims of privilege and reasonable excuse

The joint DJAG/CCC reviewers amending Chapters 3 and 4 of the CC Act have noted that consequential amendment may be required to section 176 as follows:

- S176 (2) to allow for confiscation related investigation hearings for the limited purpose of establishing a claim for reasonable excuse.
- S176(3) which currently limits the scope of hearings the CCC is able to hold in relation to the performance of its intelligence function to those permitted under section 55A or 55D authorisations. The purpose of the amendment would be to ensure the ability to hold hearings for the purpose of establishing reasonable excuse/ privilege in the context of specific intelligence operations where the 55A or D authorisation does not already authorise the holding of a hearing.

<sup>17</sup> Which came into operation on 1 July 2020, and is chaired by the Principal Commissioner, Queensland Family and Child Commission.



An amendment is also required to 176(3) to clarify that 55D hearings are part of the crime function. In accordance with section 25, immediate response investigations under section 55D fall within the CCC's crime function.

As for matters raised in respect of the CCC's powers for Corruption prevention and intelligence activities, this could also be addressed by the proposed changes to the CCC's "functions", as set out below.

**Recommendation 12: Enable CCC hearings for claims of privilege and reasonable excuse**

The CCC recommends that section 176 of the CC Act be amended to provide for hearings to be undertaken for the purpose of establishing claims of privilege and reasonable excuse in investigations where hearings are not otherwise authorised.

## Intelligence and immediate response investigation powers, and connection to criminal organisations

The existence of a criminal organisation is a jurisdictional requirement to found the CCC's power to authorise a specific intelligence operation.

The power to conduct a specific intelligence operation, and the immediate response powers, were introduced into the CC Act in 2013. When introduced, they were tied to the definition of a "criminal organisation" which was then located within the CC Act, but replicated the definition introduced at the same time into other legislation, including the *Criminal Code*.

Following legislative amendments in 2016 arising out of the taskforce into organised crime legislation,<sup>18</sup> the definition of a "criminal organisation" was altered, and relocated to the *Penalties and Sentences Act 1992* (PSA). That provision is suitable for the purposes of criminal sentencing, but provides problematic constraints on the CCC's intelligence hearings capabilities.<sup>19</sup>

For example, a "criminal organisation" in section 161O of the PSA requires proof that the group of persons, by their association, represent an unacceptable risk to the safety, welfare or order of the public. That question may be apt to inform sentencing considerations, such as the triggering of mandatory additional periods of imprisonment, or the imposition of a control order.

The Taskforce recommended a unified provision defining a "criminal organisation", and a participant therein, contained in a single location. The CCC does not cavil with the definition of a "criminal organisation" as adopted in the 2016 amendments. However, it submits that its special intelligence operations, and immediate response powers, should not be anchored to that term. It is submitted that these powers could be appropriately informed by the CCC's existing core functions – major crime and (in respect of special intelligence operations only) corruption.

The CCC's Crime Reference Committee (CRC) may authorise a specific intelligence operation if certain conditions are met. In essence, the CCC must be satisfied that a criminal organisation, or a participant, engages in criminal activity, or that a person has engaged in corrupt conduct to help a criminal organisation.

Intelligence gathering is, by definition, an inquisitive process. It involves not just investigating specific instances of criminal activity, but exploration of broader concepts such as groups, patterns of criminal behaviour, criminal commodity markets, or crime types. It may be that one of the aspects appropriately explored through intelligence operations is to determine the extent of risk posed by a

<sup>18</sup> *Report on the Taskforce on Organised Crime Legislation*.

<sup>19</sup> The taskforce noted that one of the difficulties in the then-definition of "criminal organisation" was its suitability to contemporary non-hierarchical criminal structures, and the consequent problems for proving such an organisation for prosecutorial purposes.



criminal group, or emerging crime trend. That necessarily may precede satisfaction that the criminal group (or criminal activity) represents an unacceptable risk.

The current definition of criminal organisations will limit intelligence collection to organised crime groups who are already well known in law enforcement and will require significant intelligence work-up and resources to attempt to meet the definition of a criminal organisation in respect of each identified organised crime syndicate. For this reason the CCC seeks amendments to the current definition of a criminal organisation.

The evolving criminal landscape sees actors moving across multiple networks, or professional facilitators who may provide services to multiple networks. Money launderers and communications specialists may serve the interests of one or several criminal organisations, but may also provide such services to criminal actors who act individually, and may not satisfy the definition of a criminal organisation, or a participant therein. In such cases, both the facilitators and the criminals themselves would be beyond the reach of these intelligence activities.

This jurisdictional question applies with equal or greater force in relation to the “immediate response” powers. Responses to public safety must necessarily be rapid and based on less-than-complete information. One can readily envisage a scenario in which a public safety incident is brought about by a “lone wolf” actor. The inquiry may include seeking to establish whether the activity was conducted alone, or in concert with others. In such circumstances, the CCC’s powers to conduct an “immediate response” hearing would not be available, due to the jurisdictional constraint requiring a connection to a criminal organisation. It would be highly undesirable if such an inquiry were prevented because the very subject matter of the inquiry were a jurisdictional prerequisite to undertake such an inquiry.

For these reasons, it is submitted that the provisions related to specific intelligence operations, and immediate response activity, should be amended to remove the jurisdictional requirement of established connection to a criminal organisation.

#### **Recommendation 13: Amendment to the intelligence operations provisions in the CC Act**

The CCC recommends that consideration be given to amending the intelligence operations provisions in the CC Act to enable the CRC to approve special investigations and special intelligence operations by reference to criteria other than the definition of criminal organisation as presently defined in the *Penalties and Sentences Act*.

### **Section 74A Notice to produce for confiscation-related investigation and section 113 Application for order in relation to seized things**

It is anticipated that the joint DJAG/CCC review will recommended the terms of a consolidated legislative provision provide for issuing a *Notice to discover documents or things* across CCC functions. A document or thing produced under this section is taken to have been seized under a warrant under part 2 (noting that the status of a document or thing as “seized” will now apply across all functions) as per sections 74(8) and 74A(7). Note that section 74A(7) currently only references documents produced and not things. The reviewers have noted that the proposed consolidated provision should refer to documents *and* things.

The reviewers have also noted that section 113 requires amendment to provide a limited exclusion for copies of documents or things from UPAs or financial institutions where it would be reasonable to expect that the provider would not require them to be returned or retained.



**Recommendation 14: Amend section 113 to exclude copies of documents provided by UPAs or corporations**

The CCC recommends that section 113 of the CC Act be amended to remove the obligation to obtain property retention orders where the UPA or corporate entity has no reasonable expectation of return of the record.

## Strengthening the CCC's powers to combat corruption

### Publication of complaints

The CCC recently published its report on *An investigation into the appointment of a school principal*. That report reiterated a point which has been made previously:

660. In October 2012, the Queensland Government was concerned that the then Crime and Misconduct Commission (CMC) was being called upon to investigate complaints being inappropriately made for political purposes. The Queensland Government said that it considered such complaints were a distraction for the CMC and diverted the CMC's resources away from its important major crime and misconduct (as it was then) functions.

661. In response to those concerns, in October 2012 the Queensland Government appointed an Independent Advisory Panel consisting of the Honourable Ian Callinan AC and Professor Nicholas Aroney to review the (then) *Crime and Misconduct Act 2001* and related matters.

662. A copy of the Independent Advisory Panel's report was tabled in the Legislative Assembly on 18 April 2013.

663. The Independent Advisory Panel made the following recommendation:

*"The law should be that it is an offence for any person (including an officer of the CMC) to disclose that a complaint has been made to the CMC, the nature or substance or the subject of a complaint, or the fact of any investigation by the CMC subject only to three exceptions.*

*The first exception should be that, in the case of a public investigation, fair reporting of, and debate about it, will be permissible.*

*The second exception should be as authorised by the Supreme Court in advance of publication or disclosure if there be a compelling public interest in such publication or disclosure.*

*The third is the case of a person cleared or not proceeded against who authorises in writing disclosures of it.*

*Disclosure could of course occur if otherwise required by law, such as Court processes or Court order.*

*The restriction upon publication or disclosure should be permanent in the case of no further action by the CMC, an absence of any finding against, or a "clearance" of a person or persons unless that person or persons make the publication or disclosure themselves or give prior written consent to it.*

*If, however, an investigation leads to criminal proceedings or disciplinary proceedings in QCAT, then, from the time of commencement of those proceedings, no restriction on publication or disclosure should remain.*

*There should be a suitable deterrent penalty for unlawful publication or disclosure by anyone."*



664. The *Crime and Corruption Act 2001* has not been amended to respond to this recommendation or its intention.

665. In October 2017 the CCC held a public forum to discuss whether it was in the public interest to publicise allegations of corrupt conduct and, if it was not, what legislative or other options were available to prevent this.

666. Publicising allegations of corrupt conduct may adversely affect the ability of the CCC to perform its corruption function, damage the reputation of the person alleged to have engaged in corrupt conduct, and compromise the fair trial of persons charged with corruption. However, identifying a solution that ensures allegations of corrupt conduct are kept confidential must be balanced against the right to freedom of speech within current legal constraints and the need for open and accountable government.

667. The CCC recommended that a proposed new offence be established in relation to publicising allegations of corrupt conduct during a local government election period or publishing that a complaint has been, will be or may be made to the CCC against a councillor or candidate during a local government election period.

668. The CCC recommends this proposal be implemented and extended to the State election period.

669. The CCC recently said, in a media statement:

*“It is the CCC’s longstanding position that it is always the preference for complaints and other correspondence relating to assessments and investigations to remain confidential so matters can proceed without allegations being aired publicly. Publication of a complaint or correspondence may compromise how effective inquiries undertaken by the CCC can be, especially when potential witnesses have advanced warning. The publication of a complaint can also lead to unsubstantiated allegations being aired publicly, and may give the appearance a complaint is motivated for political gain or other reasons.”*

670. The CCC repeats this observation in relation to this matter.

The CCC understands that the Attorney is considering this recommendation at the time of preparation of this submission.

#### **Recommendation 15: Publicising allegations of corruption**

The CCC recommends that the government consider implementing legislation restricting the publication of complaints of corruption made to the CCC, consistently with the CCC’s previous recommendations.

### **Proceedings before QCAT**

Substantial reforms have recently been implemented regarding the police disciplinary system in Queensland. A chief objective of these reforms was to ensure that inordinate delays which have historically plagued the police disciplinary system were addressed. This recognised that delays in such processes were undesirable for all parties, as it added to stress for the officers, and failed to achieve the protective purposes of discipline.

QCAT reports that the average time to finalise an application relating to “Occupational regulation”, including disciplinary proceedings against police officers, is 37 weeks.



Although variable in their seriousness and complexity, the CCC observes that many QCAT matters relating to police discipline take substantially longer than 37 weeks from application to finalisation.

For example, in the matter of *Crime and Corruption Commission v Assistant Commissioner Codd & Anor*<sup>20</sup>, the CCC filed proceedings on 29 May 2017. A hearing took place on 9 May 2018 and QCAT's decision was not delivered until 22 January 2019. There are many other examples of such delay<sup>21</sup>.

Such delays are inconsistent with the QCAT *Reserved Decision Policy* issued on 29 November 2018, which states that QCAT decision makers must endeavour to deliver decisions (with reasons) within three months of each decision being reserved.<sup>22</sup> This policy reflects QCAT's statutory objective that proceedings are intended to be quick and economical.

QCAT has, itself, recognised the problem of delay. In its 2017-18 Annual Report it noted that its resourcing was "stretched beyond all reasonable and proper levels of tolerance", and that a lack of resourcing was preventing it from achieving its goal of providing efficient access to justice.<sup>23</sup> The link between efficiency and resourcing was again drawn in the 2018-19 report (although not specifically in reference to disciplinary proceedings).

The CCC is concerned about fairness to officers as a result of delay in resolving discipline matters. Further, drawn-out QCAT proceedings have the potential to undermine public confidence in the QPS and the overarching discipline system. Given that the protection of the public is the primary objective of disciplinary proceedings, delays in resolution of these matters have the potential to compromise that important public purpose.

Addressing these excessive timeframes is an important continuation of the work done in recent years to improve police discipline (and discipline in the public sector more broadly).

#### **Recommendation 16: Review efficiency of QCAT in disciplinary proceedings**

The CCC recommends that the Government consider whether insufficient resourcing is contributing to delays in the efficient resolution of matters in QCAT.

## **Strengthening powers relevant to both Crime and Corruption**

### **Research and intelligence – discrete functions to subsume within substantive functions**

The CCC has a range of ancillary functions which support its primary statutory objectives,<sup>24</sup> or provide support more broadly to the administration of criminal justice and public sector integrity in Queensland. Some of those functions are discrete, and can operate independently of the CCC's core functions,<sup>25</sup> while others are closely aligned to those core functions.

Those functions which are closely tied to the core functions of the CCC should be subsumed within those core functions. This would provide greater clarity and control over how these activities are

20 [2019] QCAT 7.

21 In *Crime and Corruption Commission v Lee*, the matter was heard between 21 and 24 March 2017, with a decision not delivered until 22 December 2017; in *Officer JXR v Deputy Commissioner Gollschewski* [2018] QCATA 55, the appeal was heard on 31 March 2017, and the decision delivered on 26 April 2018; a current matter in which the CCC is involved was heard on 8 April 2019 and, at the date of this submission, no decision had been received.

22 QCAT *Reserved Decisions Policy*, Hon. Justice Martin Daubney AM, 29 November 2018.

23 *Queensland Civil and Administrative Tribunal Annual Report 2017-2018*, p. 6.

24 CC Act, ss 4 and 5.

25 The witness protection function and the criminal proceeds confiscation functions in particular.



undertaken, and ensure that they are closely aligned with the strategic priorities of the core functional areas.

The CCC's research, intelligence and other functions are set out in part 4 of Chapter 2 of the CC Act[1]. There is some circularity about the references to the CCC's functions in Part 4, for example, section 52 provides:

*S52(1) The commission has the following functions-*

*(a) to undertake research to support the proper performance of its functions..."*

The CCC has a prevention role in relation to major crime and it may do this by analysing information obtained from its investigations, and providing and reporting crime prevention information to government organisations and the general community.

To support our crime functions the CCC may also analyse intelligence and information about the incidence of crime, and are also required to build and maintain our intelligence data, including that sourced from other law enforcement agencies.

The CCC may also undertake research for crime prevention or concerning the administration of criminal justice, or other matters referred to the CCC under legislation or by the Attorney-General.

These functions were originally set out in the blueprint for what became the Criminal Justice Commission (CJC) in the report of the *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* provided by Mr Fitzgerald QC on 3 July 1989. That report proposed a structure for the CJC. It set out the divisions which the CJC was to have to achieve the objectives of reform for the criminal justice and integrity landscape in Queensland at the time. Those recommendations led to "research" and "intelligence" being established as separate divisions within the CJC, and later as discrete "functions".

While that structure was well suited to the circumstances which obtained at the time, the CCC and its predecessor agencies have undergone substantial change in the years since.<sup>26</sup>

The essential wisdom in having intelligence, research and prevention activities in relation to both major crime and corruption still applies. However, it is submitted that changing the way in which these activities are described, and subsuming them as activities or ancillary functions which support the primary functions of the CCC, better reflects the purpose of those activities.

As noted above in Chapters 2 and 3, there are areas where the CCC's powers could be clarified, to identify with more precision their application to prevention, research, monitoring and intelligence activities. Moving the prevention, research and intelligence functions within the ambit of the crime and corruption functions would provide clarity as to the use of these powers in aid of these activities to support those core functions.

The CCC considers that the circular reference to "functions" in the CC Act would benefit from legislative amendment to differentiate the primary crime and corruption functions of the CCC from the research, intelligence and prevention activities which support these primary functions. This could be achieved by replacing the reference to "research functions", "intelligence functions" in sections 52 and 53 of the CC Act with references to "auxiliary functions" or "activities".

<sup>26</sup> The commencement of the Queensland Crime Commission, and then amalgamation back into the Crime and Misconduct Commission, the shift in focus to more serious instances of corruption reflected in the change to the Crime and Corruption Commission, and the abolition and subsequent re-institution of the research function, all are examples of the substantial structural changes which have occurred in the years since the Fitzgerald Inquiry.



### **Recommendation 17: Amendment to the references to research and intelligence functions in the CC Act**

The CCC recommends that consideration be given to amending the references to research function and intelligence function in sections 52 and 53 of the CC Act by instead making reference to “activities” or “auxiliary functions”.

### **Amendment to section 197 regarding use of answers in perjury proceedings**

In May 2020 a Judge of the District Court made a ruling on a pre-trial application in relation to evidence to be received at the defendant’s upcoming trial for perjury.<sup>27</sup> That ruling considered the interpretation of section 197 of the CC Act, as it applies to a prosecution for perjury.

Section 197 of the CC Act provides a mechanism for a witness in a hearing to be protected from self-incriminating answers being used against them. It is commonly referred to as “use immunity”. This “use immunity” provision balances the consequences of compelling a witness to answer questions which may incriminate them.

Section 197(3) provides exceptions to the usual “use immunity” which ordinarily applies where the CCC has made an order under section 197(5) of the Act.

For present purposes, the provision displaces the presumption that evidence given by a witness is inadmissible against that witness, where the proceedings are about, *inter alia*, the falsity or misleading nature of an answer given.

Section 197(1) refers to “an answer” and “the question” in the singular. They use the definite article.

Section 197(3), in providing for the exception, refers to “the answer” being admissible, where the proceeding is about (s. 197(2)) “the falsity or misleading nature of an answer document or thing mentioned in subsection (1)”. (emphasis added)

Under subsection 197(5) the presiding officer in a CCC hearing may make an order that all answers, or a class of answer, given by an individual are to be regarded as having been given on objection by the individual. Subsection (6) provides that, where such an order is made, the individual is taken to have objected to the giving of each answer. (Such orders are commonly referred to as “blanket protection orders”.)

The effect of the District Court’s ruling was that a proper construction of section 197(3) meant that only the specific answers which comprised the particulars of the perjury allegation were admissible in the proceedings against the defendant.

If this ruling were followed in other cases, the CCC considers that it may make perjury prosecutions arising from allegedly false evidence given in CCC hearings unduly difficult and artificial for both the prosecution and defence. The construction of section 197 found in that pre-trial application may have the effect of divorcing the specific questions and answers which comprise the particulars of the perjury charge from necessary contextual information about the course of the hearing, something which, depending on the circumstances, could be prejudicial to the prosecution or defence.

A second consideration also arises in relation to the construction of these provisions. The exemption in section 197(3), on a close reading, only exempts evidence otherwise inadmissible from the operation of section 197(2), where the proceeding is about the falsity of the answer given by the witness in the CCC hearing.

<sup>27</sup> As it is a pre-trial ruling, it is not publicly available, in accordance with the usual practice to avoid prejudice to ongoing criminal prosecutions.



Perjury cases (particularly those arising from CCC hearings) are often premised on an inconsistency between evidence given by the witness in a CCC hearing, and other evidence given in a “judicial proceeding” – whether that is elsewhere within the same CCC hearing, at another CCC hearing, or in a separate criminal proceeding.<sup>28</sup> Section 123A allows a jury to make a special finding where they are satisfied that an accused has made two contradictory statements under oath, but cannot conclude which is false. A prosecution in which section 123A is relied on would presumably fall within the scope of section 197(2) – being a proceeding about the falsity of an answer given in the CCC hearing.

However, there will also be situations in which the prosecution case will be that a statement made in a CCC hearing is true, but falsifies another statement made under oath. Arguably in such circumstances, the *true* statement would not be admissible, as it would not fall within the exemption in section 197(3).

The perversity of such an outcome is laid bare by the following example: Imagine a witness in a CCC hearing makes two statements under the protection of a “blanket order” pursuant to section 197(5). Imagine the witness initially states, “I was never there at the scene of the murder”, and later confesses “Yes, I was at the scene of the murder when it occurred”. Assume that there is sufficient evidence to place the person at the scene of the murder, but insufficient evidence to falsify the former statement in its own right. It is arguable that, if satisfied that the latter statement is true, it is also inadmissible to prove the former statement was a lie, as the proceeding does not relate to the falsity of *that* answer.

Finally, there may be other circumstances in which a witness’s “truthful” answers may be relevant and probative but, on the construction of section 197 adopted in the recent District Court decision, may not be admissible. A witness may have answered a series of questions about peripheral matters with clarity and ease of recollection, and then feigned memory loss or a lack of recall about the specific events being investigated. In such circumstances these other “truthful” answers may be relevant to assessing whether the witness was dishonest in their professed forgetfulness by way of a contrast, but may nevertheless be inadmissible. Equally, what would amount to a witness’s prior inconsistent statements may be relevant and probative in a proceeding about false evidence given in another context, or elsewhere within a CCC hearing.

The CCC proposes a clarification to section 197 to provide that, where a prosecution relates to the *truth or falsity or misleading nature of an answer given*, then *all answers* given by the witness are admissible in those proceedings.

To be clear, this proposed amendment would not be intended to displace the usual rules of evidence which would otherwise determine the issue of admissibility. For example, such evidence would still need to be relevant to the proceeding, and the trial judge would retain their discretion to exclude evidence on discretionary grounds, as reflected in section 130 of the *Evidence Act 1977*.<sup>29</sup>

**Recommendation 18: Amendment to section 197 to clarify admissibility in perjury proceedings**

The CCC recommends that section 197 of the CC Act be amended to provide that, where a perjury prosecution is commenced, answers otherwise protected are not inadmissible by reason of section 197.

28 See *R v Mauric* [2018] QCA 143

29 For example, a trial judge may decide that evidence given in a CCC hearing, while otherwise relevant and admissible, may be excluded on the basis that it relates to uncharged criminal activity, or other discreditable conduct, and is of limited probative value.



## **Amendment to the *Telecommunications Interception Act 2009***

At the PCCC public meeting on 17 July 2020, the Parliamentary Crime and Corruption Commissioner (Parliamentary Commissioner) raised an issue as to notification to the Public Interest Monitor (PIM) when potential non-compliance in respect of a warrant is identified and advised to the Parliamentary Commissioner.

The Parliamentary Commissioner noted her view that such matters should also be notified to the PIM, but that there is no legislative obligation to do so. The Parliamentary Commissioner noted that this may present legislative difficulties, as telecommunications interception (TI) powers are largely regulated under Commonwealth legislation.

It is noted that the role of the PIM in respect of TI activities is different from that which obtains in relation to surveillance device and covert search provisions of the CC Act. Under the existing statutory framework, the day-to-day oversight and reporting role which the PIM undertakes for those powers is undertaken by the Parliamentary Commissioner in respect of TI activities.

### **The role of the PIM under the CC Act**

Section 326 of the CC Act sets out the PIM's role under the CC Act. Subsection 1 limits that role to "surveillance warrants and covert search warrants". That role includes "to monitor compliance by the commission with this Act in relation to matters concerning applications for surveillance warrants and covert search warrants"; "to appear at any hearing of an application ..."; "to gather statistical information about the use and effectiveness of [such warrants]"; and "... to give to the commission and the parliamentary committee a report on noncompliance by the commission with this Act".

The role of the PIM under the CC Act extends to general compliance monitoring "in relation to matters concerning applications for ... warrants", as well as a general reporting obligation. The role of the PIM is also articulated in several other pieces of legislation.

### **Role of the PIM under the PPRA**

Section 742 of the PPRA sets out the PIM's role under that Act. It is broadly similar to those functions under the CC Act.

### **Role of the PIM under the TI Act**

The *Telecommunications Interception Act 2009* (Qld) (the TI Act) sets out certain activities of the PIM in respect of TI. They include acknowledging the role of the PIM in appearing on applications for TI warrants, as well as an option to report on non-compliance by the CCC or QPS with the Queensland or Commonwealth TI legislation.

Section 13(2) of this Act expressly limits the powers and functions of the PIM in respect of TI to those powers and functions set out in this Act. (That is, it expressly excludes the more general powers and functions set out in the CC Act and PPRA.)

Section 22 sets out the role of the "inspecting entity" in relation to TI warrants. That also allows the PIM to undertake inspection of the agency's records to ensure compliance with sections 14–16 and 18–20. Those provisions are connected with record-keeping in relation to TI warrants. However, the PIM is only the inspecting entity for the police service. The CCC's inspecting entity is the PCC Commissioner. Thus, the PIM has no monitoring or oversight role in relation to the CCC's compliance under the TI Act.

### **Role of the PIM under the TIA Act**

Under the *Telecommunications (Interception and Access) Act 1979* (Cth), the PIM's role is confined to the appearance on applications for warrants by interception agencies in Queensland (and Victoria). It does not give the PIM any further powers regarding monitoring or compliance.



### **PIM's compliance supervision**

The “inspecting entity” has certain reporting functions for Queensland TI warrants. Generally speaking, they are inspection of TI records, and reporting on non-compliance with those record-keeping obligations. These are set out in Part 3 of the Qld TI Act. The reporting obligations for an inspecting entity are found in Part 4 of the Act. The inspecting entity may report on breaches of Part 3, but also may report on other breaches identified as a result of their inspections.

Under the Queensland TI legislation, the PIM is the “inspecting entity” for QPS TI warrants. However, the inspecting entity for CCC warrants is the PCC Commissioner.

Thus the PIM has no general reporting role, or ongoing supervision role, in relation to CCC TI warrants.

### **Advice to the PIM**

The PIM appears as a public interest contradictor in respect of TI applications. The PIM makes submissions as relevant to the issue of the warrant.

Given that the PIM or appears on warrant applications, there is a sound argument that the PIM should be kept abreast of compliance issues in existing warrants. Where an application is to renew an existing warrant, this would be relevant information.

The CCC submits that the TI Act could be amended to include an obligation on the CCC to notify any issues of non-compliance with warrant conditions. While this practice has been adopted (in particular since the issue was raised with the CCC by the PCC Commissioner), it may be prudent to make this an express compliance obligation on the CCC to reflect adopted practice.

#### **Recommendation 19: Amendment to facilitate reporting to the PIM**

The CCC recommends that the *Telecommunications Interception Act 2009* be amended to provide for the CCC to notify the Public Interest Monitor of issues of warrant non-compliance.



## Chapter 4 – Positioning the CCC for the future

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### Predecessor 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* (the CMC Act). Callinan and Aroney examined the history and evolution of the CMC. A copy of their report was tabled in the Legislative Assembly on 18 April 2013. The report contained 17 recommendations aimed at ensuring that the CMC operated more effectively and that it was able to focus on its previous major crime and misconduct functions. The report also addressed broader organisational issues within the CMC.

The Callinan and Aroney Review noted that, since its inception in 1989, relations between the CJC and the government of the day were sometimes tense. The Review stated:

The CMC is unique among Australia's anticorruption agencies for the wide range and scope of functions that it is required to perform. It, alone amongst these agencies, has several responsibilities: in relation to major and organised crime, official misconduct (both "serious" and otherwise), police misconduct, non-conviction-based confiscation, witness protection and terrorism. No other Australian agency has nearly so many functions.

In July 2013, the Government released its response to the Callinan and Aroney Review. An implementation panel was established to oversee the actioning of recommendations for the organisational and administrative review of the organisation. A report of the organisational review was submitted to the chair of the implementation panel in November 2013. This organisational review was completed by former Australian Federal Police Commissioner Mr Mick Keelty AO (the Keelty report).

Mr Keelty's report contained recommendations which related to many topics including "Improving Public Confidence in the Crime and Misconduct Commission", "Timeliness of Investigations & Complaints", "Current Culture in CMC", "Complaints Management Systems for Misconduct Matters", and "Internal Processes & Procedures in CMC and Related Agencies".

Mr Keelty's review was critical of the structure and role of the organisation, saying that it was very much based on the problems of the past and the organisation was not gearing itself toward the future. He was critical of the length of time some staff have been at the organisation and what he described as a passive work ethic. He said that the lack of rotation of staff is a major problem for the future success of the organisation. He further stated the following:

- There is strong resistance to external influences making progress and reform much more difficult than it needs to be.
- Resistance is frequently an element of any change process however, the observation was made that there is considerable resistance coming from senior and mid-level staff. This is cause for concern in that it is the senior managers who should be driving the reforms and the rotation of senior staff will be a critical factor in achieving change.
- A cursory examination of police secondments reveals that three senior police officers have been attached to the misconduct investigations area since 1999 and another six have been attached to witness protection or surveillance for the same period if not since the Fitzgerald Inquiry in the last 1980s.



- This is not only poor human resource practice but it is inimical to anti-corruption strategies embraced by modern investigation bodies. This culture of retaining the “status quo” must be contributing to the inefficiency of the organisation.

Mr Keelty recommended that the role of Chairperson be supplemented and complemented by the appointment of a Chief Executive Officer to implement an organisational change agenda covering staffing, leadership, management and general alignment of skills to deliver the agency’s refined functions into the future.

In the years since the previous PCCC review, a number of significant reforms have been undertaken which have addressed Mr Keelty’s recommendations.

## Improvements to governance, policies and processes

In 2018 the CCC commenced a comprehensive review and change of its governance, policies and processes to deliver improved outcomes. This review led to the introduction of the Operating Model, Operating Framework and a single Operations Manual.

### Operating Model

The Operating Model describes the way that the CCC approaches its business, and includes the principles which guide how operational activities are undertaken.

The Operating Model encompasses:

- the CCC “value chain” – the processes and activities through which the CCC creates and delivers value
- activity groups that deliver actions, products and services
- phases of activity undertaken throughout the lifecycle of the CCC’s operational activities
- governance oversight systems and structures that ensure value is delivered to the CCC’s stakeholders.

Effective governance is critical to the Operating Model. To support its implementation the functions of the Executive Leadership Team (ELT) were expanded in 2018. The ELT’s involvement in assessment and review of operational matters is intended to ensure that the ELT can coordinate resources and monitor operational activity to ensure ongoing feasibility of operations and delivery of intended outcomes.

The ELT is responsible for considering potential investigations and project proposals, and for ongoing review of approved investigations and projects. In the assessment phase, the ELT provides governance in assessing matters by:

- determining the prioritisation of matters, including assessing which investigations and projects become part of the ongoing work program
- considering and advising on policy, research and intelligence projects required to support the CCC’s legislated purposes and functions
- considering resource commitments.



In reviewing matters, the ELT provides governance in ongoing matters by:

- approving high-level plans (pre-assessment, feasibility and delivery) and key decisions for matters
- coordinating resource commitments
- overseeing and reviewing matter progress (scope, time, resourcing, budget, risks, issues and outcomes)
- monitoring performance of operational activity against plans
- monitoring the progress of matters referred to UPAs for action
- ensuring the scope and the manner in which a matter is being undertaken continues to best achieve the CCC's objectives.

These reforms to the way in which matters are categorised and managed is consistent with recommendations 4, 5 and 9 of the Keelty report.

## Operational Framework

The Operational Framework establishes the policy and minimum standards for how the CCC achieves the purposes of the CC Act.

The Operational Framework provides an overarching framework for the CCC's activities, setting out a high-level summary of the CCC's primary and supporting functions, and how it conducts its activities in pursuit of those functions. It intersects with the Operating Model and Operational Framework to provide a set of materials which encompass how the CCC does its work.

## Operations Manual

The Operations Manual was completed in early 2020, and provides a consistent framework for policies and procedures relating to complaints handling and investigations, including associated support activities.

The manual is divided into three main sections:

- Identification of Matters (IM), relating to the receipt and assessment of matter
- Management of Matters (MM), covering the delivery and finalisation of investigations
- Matter Practices (MP), including processes relating to witnesses, the collection of documents and information, and covert activities

It collates, replaces and supersedes existing operational policies and procedures to provide a single "point of reference" for the CCC's operational activities.

The development of these frameworks has been in conjunction with, and in support of, the two major technological systems being developed to support the CCC's operations – Nexus and GRC, which are addressed below.



## Service-led organisational structure

In 2019 the CCC underwent an organisational restructure to provide a simplified, service-led structure, aligned with the CCC's operating model and strategic requirements.

The previous structure included nine divisions – Crime, Corruption, Operations Support, Intelligence, Financial Investigations, Legal Services, Policy and Research, Strategic and Corporate Services and Office of the Commission (including Audit) – and resulted in a high CEO span of control, a complex governance structure, unclear accountabilities, strategic capabilities grouped with corporate capabilities, and potential cases of capability duplication.

The new structure has five divisions – Crime, Corruption, Operations Support, Corporate Services, and Strategy, Innovation and Insights. The new structure facilitates a sharper focus on core business of reducing the incidence of major crime and corruption, enhanced strategy development and greater investment in critical organisational capabilities.

## Digital investments

In recent years, the CCC has made substantial investments in digital technologies to improve its processes, generate efficiencies and drive innovation. This includes a case management system (Nexus), as well as a governance, risk and compliance platform (GRC), and a transition to an increasingly digitised workplace.

### Case Management System - Nexus

The Keilty report specifically identified that the CMC's case management systems were outdated, and that this was adversely impacting performance and investigative outcomes. Mr Keilty recommended that the CMC develop a new case management system that combines the requirements of the Crime and Corruption divisions.

In 2016–17, the CCC received funding of \$4.3 million over two financial years for a case management system.

The Nexus case management solution is a new IT operating system (software and associated database) that will provide case management capabilities across all operational areas of the CCC. Nexus will streamline and automate operational processes, and support a consistent and integrated approach to case management practices across the agency. Nexus will deliver other efficiencies including system automation and workflow functionality (replacing some manual processes and activities), and it will become the single “point of truth” for operational performance reporting.

Nexus will be used by the majority of staff working at the CCC involved in corruption and crime investigations, complaints assessment and operational projects. It will be a primary tool for investigators, lawyers, intelligence officers, support staff and management to access operational data and manage information. Nexus delivery is expected by the end of 2020.



## Digital Workplace Program

From 1 July 2018, the CCC received funding of \$16.3 million over four financial years (and approximately \$3.9 million ongoing funding per year) to address a range of organisational ICT risks and invest in new technology and digital tools.

The Digital Workplace Program (DWP) was subsequently established to deliver enhancements to the CCC's organisational resilience (through transitioning to cloud services), forensic computing processes and technologies, and online intelligence gathering processes and security. Outcomes are focused on:

- anywhere, anytime access to the CCC network on CCC devices with internet connection
- heightened security and alignment with Whole-of-Government ICT policies, and
- data-driven decisions powered by cloud-based artificial and business intelligence tools.

The CCC's approach to contemporary digital infrastructure aligns with the Whole-of-Government ICT policies and the adoption of a "cloud-first" approach. Significantly, transitioning critical systems and data to a cloud environment has helped the CCC to build and sustain organisational resilience during the threat of the COVID-19 pandemic. These enhancements, together with a rapid deployment of a mobile device fleet, enabled CCC staff to mobilise to a working from home model (i.e. to work from any location within a secure network), without compromise to service delivery.

From 1 July 2020, DWP includes a data analytics work stream focused on positioning data as a strategic asset and improving capability across the agency. The CCC's investment in this area will deliver a cloud-based data warehouse (to support effective reporting and predictive analysis of operational data in the future), and staff training and development in analytical tools and technologies to increase internal capability.

The DWP will continue throughout the 2020–21 financial year.

## Digital Governance, Risk and Compliance (GRC)

In early 2020, a new digital Governance Risk and Compliance (GRC) system was implemented to improve the coordination, reporting and management of risks, incidents and broader compliance obligations, with electronic workflow functionality and easy access to policies and forms.

The GRC is intended to automate (and thereby, increase the accuracy and efficiency of) much of the work associated with the documentation and reporting of compliance activities and risk management that are most closely associated with the CCC's corporate governance and business objectives.

The key functions of GRC platform software are illustrated below and include:

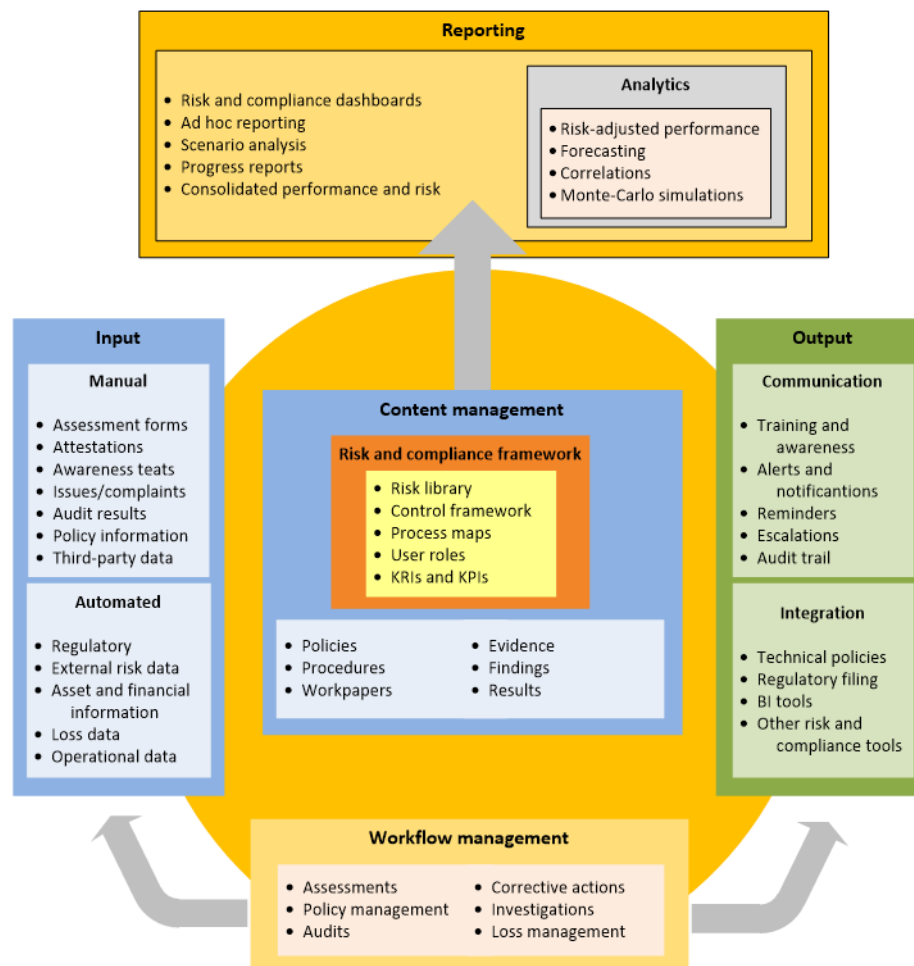
- **Policy management** features that include a specialised form of document management that enables the policy lifecycle from creation to review, change and archiving of policies; mapping of policies to mandates and business objectives in one direction, and risks and controls in another, as well as the distribution to, and substantiation by, employees and business partners
- **Compliance management** functions that support compliance professionals with the documentation, workflow, reporting and visualisation of control objectives, controls and associated risks, surveys and self-assessments, testing and remediation. At a minimum, compliance management will not only include financial reporting compliance, but can also support other types of compliance, such as legislation, industry specific regulation (e.g. AS/NZS ISO 9000) and compliance with internal policies and procedures
- **Risk management** functions that support risk management professionals with the documentation workflow assessment and analysis reporting visualisation and remediation of risks (as defined in



AS/NZS ISO31000). This component focuses generally on risks and incidents follow-up but may also collect data from risk analytics tools to provide a consolidated view of risks

- **Audit management** functions that support internal auditors in managing work papers, and scheduling audit-related tasks, time management and reporting

**Figure 1 – GRC Platform Functional Model**



The GRC will enable the CCC to pursue a systematic, organised approach to governance, risk and compliance strategies. Instead of data being “siloes”, the CCC can use a single framework to monitor and enforce compliance obligations and procedures.

The implementation of the system will allow the CCC to effectively and efficiently manage organisational policy and procedures, compliance activities and risk. In doing so, it supports the CCC’s strategic objective to “Build our organisational capability”.



## Strategy development – CCC Futures

During the process of redefining the Operating Model, the CCC recognised that further work was needed to better position the CCC to achieve its operating and strategic objectives and understand the CCC's critical capabilities for current and future service delivery. Ten critical capabilities were identified as priorities.

CCC Futures was established to build the CCC's capabilities where there is greatest need. Three of the ten prioritised critical capabilities (workforce planning, analytics (insights), and innovation) are enabled by the digital and technology capabilities. Together, these capabilities formed the focus of CCC Futures.

CCC Futures (Phase One) commenced in January 2020 and set out to define a unified ambition for the future (2025) and a clear, practical pathway for the CCC to continue to modernise, then evolve its business to improve service delivery, increase efficiency and effectiveness, and better achieve organisational objectives.

Phase one of CCC Futures was completed in April 2020 and delivered a cohesive suite of five-year organisational strategies and preliminary roadmaps covering Workforce, Digital and Insights, and a workforce planning tool. The roadmaps provide a practical pathway to achieve a:

- CCC workforce that is enabled by solutions and informed by insights, with enabled skills and personal attributes, diverse experience and adaptability – a change-ready “workplace”.
- Digitally enabled CCC that is connected and resilient, with the ability to deliver new and existing services in simpler and smarter ways.
- CCC informed by insights, effectively leveraging research, intelligence, data, analytics and external partnerships, to empower employees, enhance agency performance and embed an insights driven culture.

## Strategic Workforce Strategy

The five-year Strategic Workforce Strategy considers the changing nature of the work, the worker and the workplace, and how the CCC can adapt to these changes in order to have the right people, skills and capabilities in the right place at the right time. The workforce strategy was co-designed combining desktop research and benchmarks with insights gained through a series of workshops, interviews and surveys with CCC officers at all levels.

The workforce strategy defines the current state and future state of the workforce. The roadmap of initiatives required to achieve those targets provides clarity around human capital investment to best support the strategic objectives of the CCC.

The goals of the CCC's workforce strategy are to:

- Ensure our people are undertaking outcome-focused work enabled by insights, digital technology and innovation.
- Employ a diverse, engaged and adaptable workforce with the right mix of experience, specialist skills and personal attributes.
- Foster a “great place to work” differentiated from other public sectors, underpinned by a strong performance culture and robust workforce planning and management.
- Opportunities for improvement were identified across aspects of the talent lifecycle, leadership capability and contemporary ways of working, which, if addressed appropriately, will support the achievement of our workforce ambition.



The key initiatives for 2020–21 include:

- Embedding the Strategic Workforce Planning Model in organisational strategy and business planning processes
- Review the HR policy suite to simplify, differentiate and tailor entitlements to the needs of the CCC
- Define the requirements for a future, integrated HR data and technology solution, including business case

During the period 2022–25, the CCC will focus on:

- Developing and implementing a Strategic Workforce Planning Framework (SWPF) that defines the “whole of organization” approach and plan
- Developing future leadership performance management framework to define and encourage the type of leadership expected from our leaders at all levels
- Defining the CCC employee value proposition for each workforce segment and embedding all aspects of the value proposition into our everyday experience.

## Digital Strategy

Building on the significant progress made by the DWP since 2016–17, the CCC continues to develop its digital capability to enhance the CCC’s resilience and improve its ability to efficiently and effectively deliver services to reduce the incidence of crime and corruption. Digital technologies are increasingly enabling crime and corruption, increasing in the frequency, scale, severity, complexity and sophistication of the threats to which the CCC responds.

The Digital Strategy will transform the CCC’s digital capability to improve resilience, and allow existing services to be delivered in new, simpler and smarter ways.

The digital transformation will be phased over five years, improving digital maturity through the design and delivery of twelve digital initiatives across the future state opportunity focus areas – resilience, connectivity, automation (efficiency) and augmentation (effectiveness).

The focus for 2020–21 includes the ongoing delivery of initiatives to support the program of work that has been progressed by the DWP since 2016–17 (e.g. transition to Cloud and Office 365, digital GRC), with the phased introduction of the feasibility and proof-of-concept phases for other critical “must do” initiatives, if capacity allows.

Delivering initiatives and improving the CCC’s digital maturity will be achieved either through partnering with external organisations to develop internal capability, acquiring a mature capability externally, or developing the capability internally with the available talent.

Overall the transformation will follow a two-speed approach: (1) where foundational initiatives will be delivered that renew and refine the CCC and achieve early cost efficiencies (in order to ultimately self-fund the later years of the transformation program), and (2) where advanced and sophisticated initiatives are trialled in order to refine and redesign service delivery.



## Insights Strategy

The CCC has access to a significant amount of data, but that data is of limited value in the absence of a strategy that converts this data into meaningful and actionable information or “insights”. The CCC’s Insights Strategy provides the roadmap to achieve this and seeks to embed insights capability across the agency, breaks down information siloes and produces insights that inform strategic decision making.

Research, intelligence, data, analytics and external partnerships will be leveraged to:

- empower the CCC’s staff and stakeholders with relevant, timely and accessible information and insights
- enhance agency performance and operational efficiency, maximising the CCC’s return on investment
- embed and celebrate an insights-driven culture that enables innovative solutions
- to better target crime and corruption strategic initiatives for the benefit of the Queensland community.

The Insights Strategy prioritises the following strategic areas:

- Enhancing early detection, understanding and categorisation of crime and corruption risks and opportunities
- Improving the quality and efficiency of internal operations to maximise return on investment.

In 2020–21, the focus will be on establishing the new insights operating model, including refining the use case driven approach to build insights capabilities.

## Changes to operational processes – Crime

### Strategy review

In March 2018 a review of the CCC strategy and approach to combating and reducing major crime commenced.

The scope of the review considered the role of the CCC in combating and reducing major crime and how the CCC should position (or reposition) its strategy, develop and maintain its capability to best perform that role in delivering on its strategic vision for *safe communities supported by fair and ethical public institutions*.

The review included an analysis of:

- the profile of serious and organised crime in Queensland, how that profile has changed over time and how it might look in the future
- the history of the CCC’s involvement in combating and reducing serious and organised crime and the various strategies that have been engaged over time by the CCC to achieve that purpose
- the wider law enforcement response to criminal paedophilia in Queensland, both at the State and Commonwealth level; and
- options available to the CCC for a meaningful role in combating and reducing serious and organised crime that represents.



The review resulted in the following recommendations:

That the CCC's role in combating and reducing major crime be more concisely defined and that the specific purpose of that role be articulated and explained in its key strategy documents.

That the CCC messages supporting internal and external engagement be revised to include a perspective on the complexities and challenges of its roles as a crime and corruption commission and what that means for the CCC "way of working" and its engagement with stakeholders.

That the documents supporting the CCC's strategic performance framework be reviewed to ensure its objectives, strategies and performance measures for its major crime work are consistent, aligned and meet their intended purpose.

That approach of the CCC to achieving its major crime objective be refocused. That those activities that do not align closely with its specific role and purpose as Queensland's crime commission be discontinued, and that distinct strategies for its major crime role be identified to make clear those it will prioritise as having most value and impact for its success.

That a Case Categorisation and Prioritisation Model (CCPM) be developed and approved for the CCC's crime work so that it is able to be effective in prioritising its resources in line with its strategic priorities.

That an Organisational Capability Framework be developed and approved to identify, assess and ensure the ongoing capability and fitness of the CCC to succeed in the strategic objective for its crime work.

### **Matter prioritisation model**

The Matter Prioritisation Model (MPM) is used in connection with the governance and oversight processes represented in the CCC Operating Model. The MPM ensures our role and strategic areas of focus translate into our assessment and review processes, that our case and project selection is consistent and transparent, takes into account stakeholder value and is supported by a sound public interest rationale.<sup>30</sup>

The MPM criteria are considered holistically but there must always be a sound public interest rationale for the CCC's involvement in a matter.

### **Stakeholder engagement strategy**

In 2019–20 the Crime division developed a stakeholder engagement strategy, arising from recommendation 4 above. The stakeholder engagement strategy was developed to enable and sustain meaningful engagement with those organisations that affect, or could be affected by, the CCC's activities, products, services and performance. The strategy is to integrate stakeholder engagement into decision-making at all levels to ensure that the Crime division:

- Understands and responds appropriately to stakeholder issues and concerns in order to improve transparency and accountability for the CCC's performance
- Manages strategic risk

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30 Crime Division Position Statement – p 3.



- Learns from stakeholders to identify opportunities for improvement, barriers to success and identify solutions
- Works with stakeholders to achieve outcomes which could not be achieved alone.

The strategy identifies who the stakeholders are, and how and why the CCC engages with them.

## Changes to operational processes – Corruption

### Complaint Categorisation and Prioritisation Model (CCPM)

In 2014–15, the CCC introduced a complaint categorisation and prioritisation model designed to focus resources on more serious and systemic corruption.<sup>31</sup> The assessment of the more serious or systemic corruption allegations was essentially the responsibility of an operational committee, then known as the Matters Assessment Committee, comprised of a group of senior officers from the Corruption Division. Most meetings of the Matters Assessment Committee were attended by the Chairperson.

Following the implementation of the Operating Model, in April 2018 the Executive Leadership Team (ELT) took over responsibility from the former Matters Assessment Committee for the assessment of serious or systemic corruption allegations which might require investigation by the CCC, and other more serious matters categorised as “High” under the CCPM. The CCPM was revised to meet the ELT’s requirements under the Operating Model and Operational Framework, and triaging guidelines were also introduced.

High category matters are those that meet two or more of the criteria set out for High category corruption matters under the CCPM.

The CCPM sets out four high-level criteria for High category corruption allegations. Generally speaking, the CCPM involves an assessment of the allegation and whether it is: of high importance to Queensland; or may require an immediate response by the CCC; or may have a critical impact for the public sector; or involves other matters of importance as set by the Commission<sup>32</sup> and informed by the CC Act.

The triage process for High category matters involves the Remainder of High Complaints Committee (ROHC Committee) with assessing all complaints categorised as High that are not referred to the ELT.<sup>33</sup>

The ROHC Committee (a group of senior officers from the Corruption Division) has responsibility for ensuring that all High categorised matters which have not been referred to the ELT for assessment are appropriately assessed having regards to the CCPM and the relevant parts of the CC Act.<sup>34</sup> The ROHC Committee is not able to refer a matter for CCC investigation.

All matters assessed by the ROHC Committee are available for perusal by the ELT.

In March 2020 the CCC commenced a process where the following people – the Chairperson, Chief Executive Officer, the Senior Executive Officer Corruption and the Executive Director(s) Corruption Operations and Integrity Services meet on an ad hoc basis as a group, known as the Early Assessment

31 CCC submission to the 2016 PCCC Review of the Crime and Corruption Commission, dated July 2015.

32 The Commission annually publishes its Strategic Plan identifying areas of focus for the performance of the corruption function: [https://www.ccc.qld.gov.au/search?search\\_api\\_fulltext=strategic+plan](https://www.ccc.qld.gov.au/search?search_api_fulltext=strategic+plan).

33 Charter — Remainder of High Complaints Committee.

34 Ibid.



Briefing Group, to consider High complaints which because of their nature need decisions made quickly; this means that the use of investigative strategies that require a timely implementation can be commenced.

## Monitoring QPS corruption investigations

During the period leading up to and following the commencement of *the Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019* on 31 October 2019, the CCC, in collaboration with the QPS, trialled and implemented a framework to advance and improve the timeliness of QPS corruption investigations subject to the CCC's monitoring function.

The CCC and the QPS Ethical Standards Command (ESC) hold face-to-face meetings via the Joint Assessment and Moderation Committee (JAMC). The JAMC meetings reduce the time delay between tasking and action, which results in the timely investigation of matters.

The JAMC process was reviewed by CCC researchers who commenced consultation with stakeholders in January 2019. The evaluation aimed to measure the effectiveness and efficiency of the JAMC as a component of the police complaints and discipline process. Two evaluations were conducted: a process evaluation and an outcome evaluation. The report of the evaluation was finalised in June 2019.

As a result, the JAMC process has been restricted to provide a two-tiered system to provide two separate forums with different membership, frequency and function.

JAMC Tier 1 matters are all complaints against police which the CCC has assessed and referred to the QPS for investigation subject to CCC monitoring by way of merit and compliance review (MCR) or public interest review (PIR). Assessment and complaints officers from the CCC and QPS regularly meet to manage these matters with a view to consistently determining the appropriate process for resolution and promoting professionalism through guidance and education.

The Investigation Consultation Process (ICP) is the second tier (Tier 2) of the JAMC process. ICP or Tier 2 matters are identified through the CCC's monitoring process of matters under investigation for which there is an issue in, or outcome arising from, the investigation process, or contentious or complex matters which are noted for relevant discussion or action. Senior officers from the CCC and QPS, including the CCC Chairperson and the Chief Superintendent or Detective Superintendent of the ESC, attend to identify any issues of concern or public interest so as to focus the investigation and reduce disagreements and unnecessary delays. Topics for discussion may include opportunities for collaboration between the QPS and the CCC on contemporary investigative methodologies. Additionally, the QPS can raise issues that have arisen in the course of an investigation that are contentious or that impact on resources and the CCC can make clear its expectations regarding investigations and outcomes. Due to recent refinements the ICP now only sits when it is mutually beneficial to both agencies.

## The Preliminary Investigation Team

The Preliminary Investigation Team (PIT) was first established on 6 July 2015 to conduct preliminary investigations (inquiries) in relation to complaints of serious and/or systemic corruption to facilitate more informed decisions about whether the complaint should be investigated by the CCC. The purpose of the PIT was, among other things, to relieve some of the workload of the assessment team in Integrity Services (IS), improve the timeliness and quality of assessments of complaints of serious or systemic corruption, facilitate and improve the communication of significant corruption issues between IS and Corruption Operations, and to assist scoping the investigation of any matter transferred from the PIT to Corruption Operations for investigation.



Following a restructure of Integrity Services (IS) in July 2018, the PIT no longer reported to the Director IS but instead to the Director, Office of the Senior Executive Officer Corruption (OSEOC). The Manager PIT continued to contribute to the management of IS to promote efficient and effective collaboration concerning the assessment of High category complaints.

As part of an early sprint in the CCC Transform project, in April/May 2019, the PIT was moved to Corruption Operations and became Team 6. Team 6 generally undertakes feasibility activities for new Corruption investigations. Feasibility involves undertaking activities in the nature of a preliminary investigation whether by way of collecting evidence or information, undertaking enquiries, or examining or considering existing or additional material, to determine or assure that the investigation (including the scope of the investigation) is required or justified and is technically feasible and cost-effective.

### **Review of complaint assessment process**

The Assessment Unit in IS undertook a project to review its processes utilising the LEAN methodology. It involved an in-depth analysis of the purpose and value of each step in the complaint assessment process. This analysis identified redundant processes and time efficiencies. The project was interactive and inclusive with assessment unit staff engaged in each stage of the review and its implementation.

Following the review, further enhancements to IS procedures were implemented in relation to secure transfer of information between certain public sector agencies without the need to print off large volumes of documentation for hard copy files. This has now enabled IS to work primarily via electronic files.

### **Increase in intelligence resourcing for IS**

The CCC Transform project also resulted in more intelligence resources being allocated to IS (an increase from 0.5 full-time equivalent (FTE) staff to 2 FTEs). This has increased the capacity of IS to prepare matters (particularly High matters) for assessment on a timely basis.

Changes in operational processes have assisted the CCC to meet its assessment timeliness target (85% of matters to be assessed within 30 days) for the first time since 2013/14, with 87% of assessments being finalised within 30 days.



## Chapter 5 – Performance

### Service Delivery Standards measures

#### Percentage of targeted criminal entities which are disrupted as a result of CCC Crime Investigations

Target	95%
2019-20	100%
2018-19	100%
2017-18	87%
2016-17	83%
2015-16	98%

#### Percentage of corruption investigations resulting in significant outcomes

Target	75%
2019-20	87%
2018-19	91%

Note: New measure introduced in 2018–19.

#### Percentage of referred crime investigations finalised within six months

Target	90%
2019-20	93%
2018-19	73%

Note: New measure introduced in 2018–19.

#### Percentage of coercive hearings that add value to a referred crime investigation

Target	95%
2019-20	100%

Note: This is a new measure introduced as an SDS in 2019-20.



**Percentage of investigated matters finalised within 12 months**

Target	85%
2019-20	51%
2018-19	80%
2017-18	63%
2016-17	92%
2015-16	91%

**Average cost per referred crime investigation**

Target	Less than \$40,000.00
2019-20	\$30,880.00
2018-19	\$31,307.00

**Note:** New measure introduced in 2018–19.

**Average cost per assessment of corrupt conduct/police misconduct complaints**

Target	Less than \$1,000.00
2019-20	\$852.00
2018-19	\$817.00

**Note:** New measure introduced in 2018–19.



## Other performance measures

### Crime investigations finalised

<b>2019-20</b>	<b>32</b>
2018-19	37
2017-18	85
2016-17	48
2015-16	59

### Corruption investigations finalised

<b>2019-20</b>	<b>53</b>
2018-19	65
2017-18	56
2016-17	71
2015-16	57

### Value of assets restrained (\$ million)

<b>2019-20</b>	<b>\$8.995M</b>
2018-19	\$28.249M
2017-18	\$9.712M
2016-17	\$21.12M
2015-16	\$19.05M

**Note:** Target for 2014-15 to 2016-17 was \$18M; 2017-18 to 2019-20 was \$18.5M.

### Value of assets forfeited (\$ million)

<b>2019-20</b>	<b>\$7.181M</b>
2018-19	\$13.652M
2017-18	\$9.454M
2016-17	\$8.99M
2015-16	\$10.01M

**Note:** Target for 2014-15 to 2016-17 was \$7M; 2017-18 to 2019-20 was \$7.25M.



**Crime hearing days**

<b>2019-20</b>	<b>178</b>
2018-19	208
2017-18	259
2016-17	313
2015-16	334

**Corruption hearing days**

<b>2019-20</b>	<b>42</b>
2018-19	36
2017-18	63
2016-17	29
2015-16	5

**Corruption allegations received**

<b>2019-20</b>	<b>8726</b>
2018-19	8329
2017-18	8862
2016-17	7898
2015-16	6091

**Corruption complaints received**

<b>2019-20</b>	<b>3327</b>
2018-19	3109
2017-18	3098
2016-17	3041
2015-16	2674



## Crime Performance

The key performance measures for Crime Division services are linked to the CCC's strategic objectives and focus areas. The Crime Division's performance measures aim to demonstrate how strategies for combating and reducing the incidence of major crime are delivering worthwhile outcomes and having an impact over time.

While quantitative measures are used for key activities as well as qualitative reporting, we continually investigate, develop and test ways to better measure the effectiveness of our focus and service delivery, demonstrate our impact, and to provide insights, assist longer-term strategic decision-making and support new initiatives and resourcing. The Crime Division draws on contemporary research, peer agency examples and experience, and engage innovation to identify useful measures of value for our crime work.

With the change in Crime strategy focus in recent years, the Crime Division has reviewed and updated its key performance measures to align with the current areas of operational focus for the Crime Division:

- Illicit markets of high value or high impact;
- crimes involving loss of life or serious injury to a person; and
- crimes against children and vulnerable victims.

The business objectives of our Crime Division are to:

- defeat organised crime
- make serious crime not pay
- help prevent and solve major crime
- shape effective responses to major crime

in order to reduce the impact of major crime on Queenslanders.

### Major crime

We aim to ensure that our interventions and disruptions for organised crime are timely, efficient and impact critical organised crime capabilities by targeting enablers and exploiting criminal network vulnerabilities to neutralise their advantage.

Our hearings add value to major crime and intelligence operations, and we contribute to effective operational strategies that are able to withstand scrutiny. We aim to have 95 per cent of our hearings add value to referred crime investigations.

Our performance in major crime over the last five years is summarised in Table 4 on the following page.



**Table 4:** Performance in major crime 2014–15 to 2019–20

	Target	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
Percentage of targeted criminal entities which are disrupted as a result of CCC crime investigations	95%	100%	98%	83%	87%	100%	100%
Percentage of coercive hearings that add value to referred crime investigations	95%	100%	100%	100%	100%	97%	100%
Percentage of targeted criminal entities which are disrupted as a result of CCC crime investigations	95%	100%	98%	83%	87%	100%	100%
Percentage of coercive hearings that add value to referred crime investigations	95%	100%	100%	100%	100%	97%	100%

### Criminal paedophilia

An organisational review of the CCC by former Australian Federal Police Commissioner Mr Mick Keely AO noted the potential duplication of work between the QPS and the CCC in the area of criminal paedophilia investigation. While the work undertaken by the two agencies covered different areas of criminal paedophilia, this was an issue that was considered to determine whether the model remained appropriate to achieve the best outcomes in combating this criminal activity. The issue was revisited again in 2015 in the Organised Crime Commission of Inquiry, and then again by the Queensland Sentencing Advisory Council in 2017 in their report on sentencing and related issues for child exploitation offences.

Following the CCC's strategy review for its crime work in 2018–19, the CCC shifted its focus from those areas which overlapped with the work of Taskforce Argos to a focus on supporting QPS criminal paedophilia investigations through the use of its hearings powers.

### Criminal proceeds confiscations

We aim to ensure that our civil confiscation actions are successful and efficient, and Queensland's criminal proceeds confiscation scheme is effective. Our current target is to obtain annual forfeiture orders of \$9 million with 55% of assets which are restrained being forfeited to the State of Queensland. Our achievements over the last five years are detailed above in Table 4.



## Focus on facilitators

A focus of the CCC's major crime work over the past five years has been on targeting criminal wealth and illicit markets of high value. This has included a particular focus on investigations into those who facilitate organised crime, assist criminal figures to conceal the proceeds of that activity, and seek to themselves benefit through supporting criminal networks.

A number of these investigations have involved the activities of professionals, including accountants, financial advisers and planners, and in particular, members of the legal profession.

The CCC has undertaken several investigations in recent years into lawyers, law firms and law firm staff, exploring their facilitation of, and involvement in, criminal activity. This has ranged from tax evasion and money laundering, to drug supply, fraud and obstruction of justice offences including perjury.

These investigations are complex, protracted, and utilise a diverse range of skillsets and expertise. Such investigations highlight the value of the CCC's model of using multidisciplinary teams, where at different stages of the investigation, different professional disciplines will come to the fore to progress the investigation. These investigations frequently rely on a combination of experienced investigators, lawyers, forensic accountants, forensic computing specialists, and intelligence analysts, all of whom bring their different skills to bear to progress the investigation.

The CCC's coercive hearings powers are regularly utilised in such investigations, to overcome the "code of silence" which permeates mutually beneficial corrupt relationships. Where a criminal derives a benefit from having their criminal proceeds laundered, and the corrupt professional derives a benefit by being paid those funds (or a share of them), they are unlikely to reveal this information voluntarily. In such circumstances all parties have a vested interest in withholding relevant information. Strategic use of coercive hearings powers have broken this "wall of silence" by identifying and exploiting weaknesses in the criminal bonds between these parties.

These investigations are targeted at disrupting organised crime business models by targeting the mutually beneficial relationships between criminals and criminal networks, and corrupt professionals who use their skills to subvert financial and legal systems intended to protect the community. By disrupting these business models, it is intended to make the underlying criminal activity more difficult and, crucially, less profitable.

The investigations which the CCC has undertaken in relation to professional facilitators highlights the unique mix of skills and powers which the CCC can bring to bear in combating organised crime.

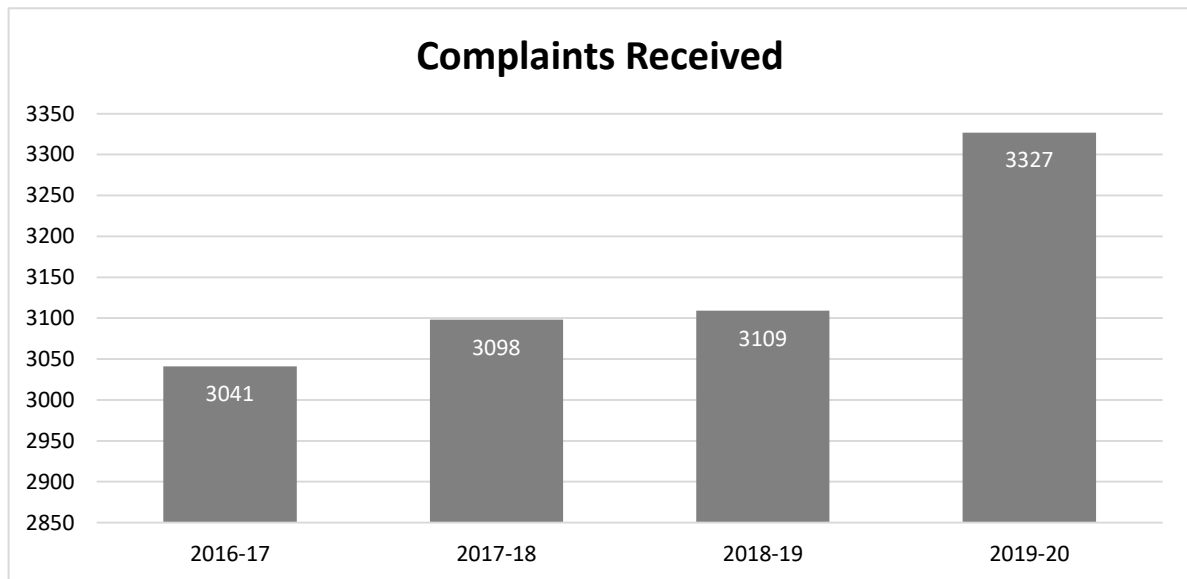


## Corruption Performance

### Complaints assessment

In 2019–20, the CCC received 3,327 complaints, involving 8,726 separate allegations of corruption (one complaint may consist of a number of allegations). Of these, 43 per cent related to police, and 57 per cent related to public sector agencies (including local government). Figure 2 shows the number of complaints received by the CCC over the past four financial years.

**Figure 2:** Overall complaints numbers, 2016-17 to 2019-20



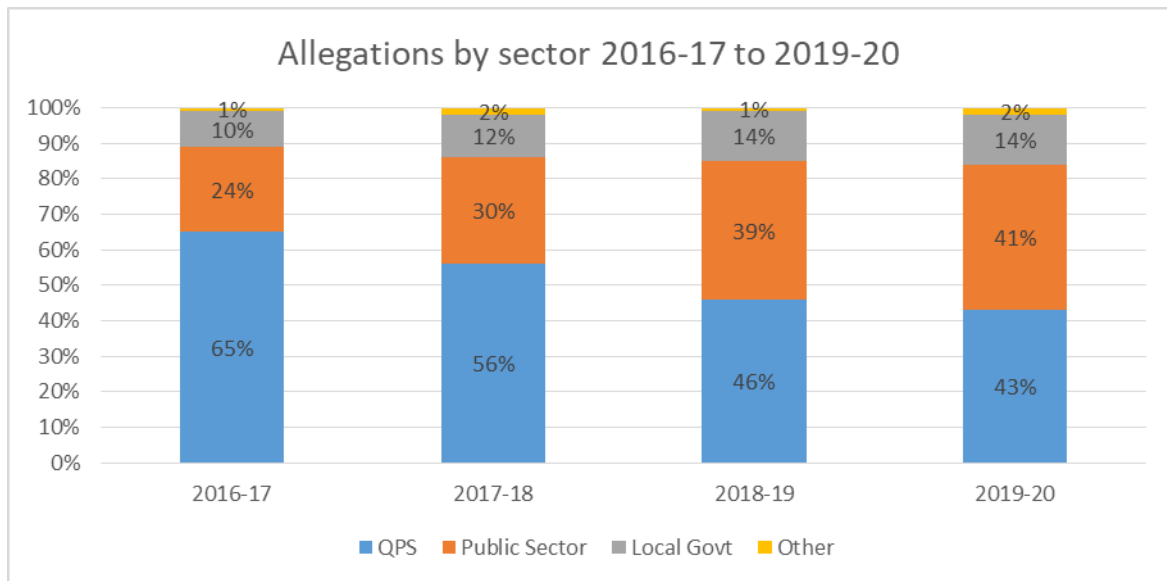
Complaints received in 2019-20 represents a seven per cent increase in comparison to 2018-19 and a nine per cent increase when compared to 2016-17. Following a significant decrease in complaints in 2014–15, mainly as a result of amendments to our jurisdiction in July 2014, the numbers of complaints have slowly been increasing each year.

The total number of complaints against police received in 2019–20 was 1,398. These complaints contained 3,735 allegations. The most common allegation types were duty failures, assault/use of excessive force, unprofessional personal conduct and misuse of information.

The total number of public sector complaints (including local government) received in 2019–20 was 1,998<sup>35</sup>. These complaints contained 4,991 allegations. The most common allegation types were misuse authority, misuse of information, duty failure and misappropriation or unauthorised use of resources.

<sup>35</sup> The number of complaints by sector may be higher than total complaints received as one complaint may relate to multiple sectors.



**Figure 3:** Breakdown of allegations by sector, 2016–17 to 2019–20**Table 5:** Matters assessed, 2016–17 to 2019–20

	2016–17	2017–18	2018-19	2019–20
Matters assessed	2821	3602	3381	3435
Percentage assessed within 4 weeks	48% (Target 85%)	39% (Target 85%)	76% (Target 85%)	87% (Target 85%)

To improve the efficiency of the assessment component of corruption investigations, this year we reviewed our processes utilising the LEAN methodology. This analysis identified redundant processes and time efficiencies.

Following the review, further enhancements to Integrity Services procedures were implemented in relation to secure transfer of information between certain public sector agencies without the need to print off large volumes of documentation for hard copy files. This has now enabled Integrity Services to work primarily via electronic files.

These business process improvements have assisted the CCC to meet its assessment timeliness target for the first time in a few years, with 87 per cent of assessments being finalised within 30 days.



## Oversight role

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

The CCC continues to provide independent oversight of the QPS response to, and investigation of, police-related deaths and other significant events involving police officers to ensure that any investigation withstands public scrutiny. Table 6 shows the number of police-related deaths and significant events reported to the CCC during the review period.

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 or exercise its statutory monitoring function.

Where the CCC has determined to exercise its statutory monitoring function then these matters are managed via the Joint Assessment and Moderation Committee (JAMC), whose functions and processes are discussed above.

If the ESC reach an impasse in their inquiries, or if the CCC feels that a matter is not being dealt with appropriately, then the matter can be referred to Tier 2 of JAMC – the Investigation Consultation Process (ICP). As part of the ICP, the progress of matters and the CCC's expectations regarding investigations and/or criminal, disciplinary and managerial processes are tabled. In addition, the QPS can raise issues that are contentious or that impact on their resources so that an effective resolution may be achieved. The ICP does not meet on every matter – only when there is a stakeholder necessity or public interest in gaining a joint commitment to processes that will meet stakeholder expectations.

**Table 6:** Police-related deaths and other significant events, 2016–17 to 2019–20

Year	Type reported	Incident type
2016–17	10 police-related deaths 36 significant events	Incidents involving self-harm by citizens, suicides and fatalities following police contact
2017–18	13 police-related deaths 19 significant events	Fatalities following police contact, self-harm by citizens, suicides, police shootings and incidents involving police watch-houses
2018–19	14 police-related deaths 56 significant events	Self-harm by citizens, police shootings, suicides and fatalities following police contact
2019–20	18 police-related deaths 40 significant events	Incidents involving police shootings, suicides, car pursuits and traffic fatalities

### Corruption matters monitored by the CCC

In our regular reports to the Committee we have addressed the number of matters reviewed during each reporting period for the police, public sector and local government. Table 7 shows the matters reviewed by the CCC during the period.

Our reviews focus on complaints that are referred to agencies after having been assessed as involving allegations of serious and/or systemic corruption. While matters are referred back to optimise resourcing and capability-building, these matters require close monitoring by the CCC, for reasons that may include consideration of assuming responsibility for an investigation in order to maintain public confidence.



**Table 7:** CCC reviews, 2016–17 to 2019–20

	2016-17	2017-18	2018-19	2019-20
Matters reviewed	143	210	325	308
% satisfactory investigation	76%	94%	94%	94%

### Issues in referred investigations

In public sector reviews, the most common deficiency identified continues to be the failure to undertake sufficient inquiries to support the findings of investigations. For instance, some regional councils failed to interview relevant witnesses and undertake thorough investigations into allegations of corrupt conduct.

The CCC also identified a failure by some agencies to provide the CCC with investigation reports in the format outlined in the CCC's publication *Corruption in Focus*. The CCC has identified a failure of some agencies to identify or consider criminal conduct and refer matters to the Queensland Police Service (QPS) for investigation. There has also been a lack of good record-keeping by some agencies, which has impacted on the quality of investigations and led to delays in the completion of investigations.

Timeliness of reporting to the CCC remained an issue for some of the government departments. In 2019, we implemented a process of providing a monthly list of overdue reports to those agencies that have been identified as failing to adhere to timeframes. This process has led to a significant improvement in the timely provision of reports by agencies during investigation so that we can ensure matters are being dealt with appropriately.

In a number of instances the CCC was not satisfied with the extent of the inquiries undertaken by the QPS. These concerns were discussed at a JAMC meeting and, on most occasions, the QPS agreed to undertake further inquiries as requested by the CCC.

There has been an improvement in the quality of the reports provided to the CCC by the QPS and a significant improvement in the adherence to reporting timeframes by the QPS. However, some recent investigations have been undertaken hastily, which may be due to the short timeframes imposed by the new discipline system. This has occasionally led to a failure to ensure there is sufficient evidence provided in support of conclusions reached.

There is not always sufficient oversight of regional investigations by ESC to ensure they are dealt with appropriately. As a result, it has been observed that investigations undertaken at a regional level are not of the quality of those undertaken by investigators within the Ethical Standards Command (ESC).

### Corruption investigations

Given that the number of complaints we receive far exceeds our investigative capacity, the CCC focuses its resources on those matters of serious and systemic corrupt conduct.

In 2019–20, the CCC completed 53 investigations. Table 8 shows the number and percentage of investigations completed within our timeliness benchmark of 12 months.



**Table 8:** Investigations completed, 2016–17 to 2019–20

	2016–17	2017–18	2018-19	2019–20
<b>Investigations completed within 12 months:</b>				
<b>Number</b>	71	56	65	53
<b>Percentage</b>	<b>92%</b>	<b>63%</b>	<b>80%</b>	<b>51%</b>

**Table 9:** Outcomes of investigations, 2016–17 to 2019–20

	2016–17	2017–18	2018-19	2019–20
People charged (number)	24	38	23	22
Charges laid (number)	196	176	192	112
Recommendations for disciplinary action:				
people (number)	29	7	10	11
number of recommendations	59	19	17	17
Prevention recommendations	90	125	107	126

Areas identified as “high risk” have been the focus of many investigations conducted since the last review to reduce the incidence of corruption in the public sector. Some examples are outlined below.

### Local government / elected officials

Elected officials must act with integrity and should put the interests of the public ahead of their own personal interest. Failure to demonstrate accountability and transparency in decision making can severely erode public confidence.

Each year, the CCC receives hundreds of complaints of corrupt conduct relating to elected officials, with many complaints comprising multiple allegations. Of these complaints, only a small proportion result in investigations by the CCC. However, the CCC’s investigations into local government have exposed a number of significant and systemic corruption risks in the local government sector.

#### Operation Belcarra

In October 2017 the CCC published its report, *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*, which made 31 recommendations to strengthen transparency and integrity in local government throughout Queensland. This report was the outcome of the CCC’s investigation into the conduct of candidates involved in the 2016 local government elections for the Gold Coast City Council, Moreton Bay Regional Council, Ipswich City Council and Logan City Council.

As a result of Operation Belcarra, the CCC found widespread non-compliance with legislative obligations relating to local government elections and political donations. The government endorsed all 31 recommendations, supporting some in full and others in principle.

Operation Belcarra brought about substantial reform in the local government sector. In May 2018, stage 1 legislative reforms were introduced, prohibiting donations from property developers, and setting out a new regime for dealing with conflicts of interest in local government.



The Office of the Independent Assessor (OIA) was established in 2018–19 to investigate and assess complaints about councillor conduct. The OIA also provides advice, training and information about dealing with alleged or suspected inappropriate conduct, misconduct or corrupt conduct to councillors, local government employees and the public, and prosecutes misconduct offences via the Councillor Conduct Tribunal. The OIA was introduced as part of an integrated councillor complaints framework.

In October 2019, the stage 2 legislative reforms were introduced, including mandatory candidate training, a requirement for transparent candidate bank accounts, and expanded transparency regarding council funds and expenditure.

Further legislative reforms have continued in light of subsequent developments and activity.

Following Operation Belcarra, the CCC received new allegations about the conduct of elected officials and employees. The CCC began a number of investigations, including pursuing allegations of corruption at Ipswich City Council (Operation Windage), Logan City Council (Operation Front) and the Gold Coast City Council (Operation Yabber).

### **Operation Windage**

In October 2016, the CCC commenced Operation Windage to investigate allegations of corruption related to the Ipswich City Council. As at 30 June 2020, 16 people, including council employees, two mayors, two Chief Executive Officers (CEOs) and one Chief Operating Officer, have been charged with over 100 criminal offences.

As well as the matters that resulted in criminal charges, Operation Windage found evidence of a wide spectrum of governance and integrity failures, from inappropriate workplace interactions to consistent breaches of policy.

On 14 August 2018, the CCC tabled a report entitled *Culture and corruption risks in local government: Lessons from an investigation into Ipswich City Council (Operation Windage)*. The report was intended to inform councillors and council staff of the corruption risks that arise when governance, legislative and disclosure obligations pertaining to local government are ignored, and to remind public and elected officials of the importance of transparency and accountability.

On 21 August 2018, the Ipswich City Council was dismissed by the State Government and an administrator was appointed.

To date, six people have been sentenced to terms of imprisonment for corruption offences, with many more charges still before the Courts.

### **Operation Front**

Operation Front commenced in November 2017 after evidence relating to the Mayor of Logan City Council was uncovered during Operation Belcarra.

The investigation focused on allegations of reprisal, bullying, misuse of authority and misuse of council funds.

In April 2018, the CCC charged the suspended Mayor with four criminal offences. Following further investigation, in April 2019 the CCC charged seven serving councillors and the Mayor with further criminal offences, totalling 14 serious criminal offences to date.



## Operation Yabber

The investigation into the allegations of corruption within the Gold Coast City Council identified the risks involved when political staff/advisors, whether at the urging of a mayor or councillor or on their own initiative, inappropriately interfere in council business.

To ensure stricter governance and accountability in local government, the CCC recommended amendments to the *Local Government Act 2009* to clarify the responsibilities of mayors and councillors for the management of their staff/advisors and their adherence to codes of conduct. The CCC also recommended amendments to ensure that mayoral directions cannot be used to undermine the authority of chief executive officers to carry out their responsibilities.

No criminal charges resulted from Operation Yabber. The CCC has referred some matters relating to the Mayor of the Gold Coast City Council to the Office of the Independent Assessor. It is important to note that no adverse inference should be made about these matters whilst they remain unresolved.

The CCC also recommended the Gold Coast City Council CEO consider matters relating to the Mayor's Chief of Staff.

## Misuse of confidential information

Improper access to, and disclosure of, confidential information by public sector employees has been one of the CCC's key areas of focus since 2016.

Queensland public sector agencies collect and store a wide range of private, confidential and sensitive information that employees use to carry out their duties. This information is held in trust for both the individuals concerned and the Queensland community generally. Public sector agencies must ensure that such information is protected against unauthorised access, use, modification or disclosure.

The CCC focuses on the misuse of confidential information because the security and privacy of sensitive data is of great concern to the community, and it is a significant corruption issue facing the Queensland public sector. The CCC deals with the issue of misuse of confidential information through investigations, reviews and audits, and by providing public sector agencies with corruption prevention materials and advice.

In 2019–20 a total of 1,495 allegations relating to the misuse of confidential information were received by the CCC, representing 17 per cent of all corrupt conduct allegations received, with 394 of those allegations related to QPS officers. Allegations against other public sector officers (including local government) have continued to increase (from 767 allegations in 2018–19 to 1101 allegations in 2019–20).

## Operation Impala

Operation Impala examined confidential information management practices and procedures across the Queensland Police Service, the Department of Transport, Queensland Corrective Services, Department of Education, Queensland Health and two hospital and health services.



In November 2019, the CCC held a public hearing to examine:

- Factors which facilitate misuse of information within the Queensland public sector by examination of the technical, human, and systems components of information management within the Queensland Police Service, Queensland Corrective Services, Department of Education, Department of Health (including two Hospital and Health Services – Gold Coast HHS and Mackay HHS) and the Department of Transport and Main Roads
- Features of the legislative, policy and operational environment within each agency that may enable corrupt conduct to occur or are vulnerable to corrupt conduct
- Reforms to better prevent, detect and deal with corrupt conduct relating to misuse of information within the identified agencies, and lessons that can be extrapolated to the broader Queensland public sector.

The nine days of public hearings led to the tabling of a report in Parliament in February 2020. The report contains 18 recommendations designed to assist individual agencies strengthen their practices as well as improve consistency across the wider public sector.

Since publishing the report, the CCC has produced other resources designed to assist public sector agencies and employees reduce risks associated with the misuse of confidential information.

### **Officers prosecuted for computer hacking**

In September 2017, a QPS officer was found guilty of 23 charges relating to computer hacking and other offences. The officer was fined \$4000 with no conviction recorded.

In January 2019, a former senior probation and parole officer pleaded guilty to one charge of computer hacking and misuse (section 408E (1) and (2) of the *Criminal Code*) for conduct between June 2012 and November 2017. The officer received an \$8000 fine with a conviction recorded.

In October 2019, a Senior Constable of police pleaded guilty to charges of Computer Hacking and Misuse, and was sentenced to two months imprisonment, wholly suspended.

### **Operation Wurtz**

In April 2016, Operation Wurtz investigated the activities of two General Duties officers stationed at Mackay Police station who were alleged to have inappropriately conducted searches of the Queensland Police Records and Information Management Exchange System (QPrime) database. The searches were conducted to gain information on suspected drug offenders who were current targets of operations being run by Maryborough Criminal Investigation Branch and State Crime Command.

At the conclusion of the investigation, a QPS officer pleaded guilty to possession of a restricted drug and charges of computer hacking. He was fined \$6,500.

### **Excessive use of force**

Excessive use of force by a public sector employee against a member of the public constitutes a serious abuse of power. The CCC continues to investigate and closely monitor allegations of excessive use of force within the Queensland public sector. Allegations of excessive force are most commonly received about police officers and other officers working in corrections and youth detention.

Police have a unique and challenging role in protecting the Queensland community. The public expects that the QPS models the highest ethical and professional standards.



Use of force by law enforcement officers becomes necessary in specific circumstances and is permitted under the law. In these circumstances law enforcement officers should only use the required amount of force needed to make an arrest, de-escalate an incident and protect themselves and the community from harm. When the amount of force is excessive or continues after the suspect is compliant, this may constitute a serious abuse of power and in some cases, amount to criminal conduct.

In 2019–20 the CCC received 862 use of force allegations accounting for 10 per cent of all corrupt conduct allegations received. Excessive use of force complaints account for 14 per cent of allegations received in relation to the QPS and seven per cent of allegations in relation to the broader public sector, including complaints against correctional officers, teachers and hospital and health service staff.

The number of allegations received in 2019–20 increased slightly by 3 per cent when compared to 2018–19. In terms of police conduct, assault or excessive use of force continues to be one of the most common allegations made to the CCC. In 2019–20, a total of 505 allegations relating to excessive use of force by the police were received by the CCC.

Excessive use of force was no longer a primary area of focus in 2019–20, however trends in this area continue to be monitored. Further, sanctions imposed on officers for excessive use of force are increasingly reflecting the gravity of the misconduct.

### **Officers dismissed over use of force**

In 2019, two officers were dismissed from the Queensland Police Service over separate instances of excessive force. Another officer unsuccessfully sought to review a post-separation disciplinary declaration that, but for his resignation, he would have been dismissed for his use of excessive force.

In one instance an officer applied excessive force to a heavily intoxicated Indigenous man in the Toowoomba region, and six months later, criminally assaulted a member of the public while that person was leaving the watch-house. That officer challenged the finding that the tasering was inappropriate in QCAT. QCAT upheld the allegation of misconduct,<sup>36</sup> and is proceeding to determine the officer's review as to the appropriateness of his dismissal.

The second officer was dismissed after inappropriately using a "choke hold" restraint on an Indigenous juvenile in a watch-house. He had initially sought to challenge his dismissal in QCAT, but later withdrew that application.

As noted above, QCAT also delivered a decision upholding a post-separation disciplinary declaration for an officer who had resigned from the QPS after being convicted for assaulting a motorist during a traffic stop.<sup>37</sup>

### **Taskforce Flaxton**

In 2018, a CCC operation titled Taskforce Flaxton found there were significant risks of corruption in Queensland corrective services facilities and corruption risks were not being effectively prevented, detected or dealt with by existing anti-corruption frameworks.

Taskforce Flaxton consisted of a simultaneous public hearings program and covert investigation. The hearings focused on 14 adult prisons and work camps in Queensland, including the two privately run facilities at Arthur Gorrie Correctional Centre and Southern Queensland Correctional Centre, and the investigation focused on five correctional facilities.

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<sup>36</sup> *Lewis v Deputy Commissioner Lindford & Anor* [2020] QCAT 98.

<sup>37</sup> *Flanagan v Gee & Anor* [2020] QCAT 36.



On 14 December the CCC tabled its report *Taskforce Flaxton: An examination of corruption risks and corruption in Queensland prisons* in Parliament, making 33 recommendations to address corruption and corruption risks.

Investigation outcomes included 11 Corrections Officers being charged with 23 offences ranging from disclosure of confidential information to trafficking in dangerous drugs. The *Corrective Services and Other Legislation Amendment Bill 2020* was presented to Parliament in May 2020, implementing a number of recommendations contained in the Taskforce Flaxton report.

## **Fraud**

Risks of serious fraud in the Queensland public sector and within local government is as high as ever and of significant concern to the CCC. The speed with which transactions occur through electronic means/systems, and the complexity associated with locating funds once they have been stolen, can result in those funds being unrecoverable. Often, the reputational damage sustained by an organisation as a result of fraud or corrupt acts can far outweigh the financial value of those losses and can last for many years afterwards. The Queensland community expects public funds to be managed responsibly, and that the agencies responsible for those funds have appropriate safeguards in place to prevent, detect and respond to instances of fraud.

The exploitation of public sector resources has the potential to adversely impact all Queenslanders. The types of conduct in this area of focus include misappropriation (fraud), stealing and like offences.

The CCC investigates allegations of serious fraud, reviews other agency investigations, conducts audits and develops prevention and guidance material for units of public administration (UPAs). In 2019–20 a total of 675 allegations relating to fraud were received by the CCC.

### **Investigations into Queensland's Chief Scientist**

In August 2016, the CCC commenced an investigation into Professor Suzanne Miller – a respected scientist from the United Kingdom who was appointed CEO of the Queensland Museum Network and Queensland Chief Scientist. The investigation commenced after the CCC received an anonymous public interest disclosure concerning financial irregularities with the museum, primarily involving Professor Miller's corporate credit card.

The CCC investigation examined a variety of documents and interviewed over 20 witnesses to confirm that Professor Miller had fraudulently used Queensland Museum funds to pay for private health insurance, international travel and accommodation for her family, overseas mortgage repayments, household furniture, an electric scooter and other electrical items, expensive clothing and theatre tickets. Overall, despite her \$350,000+ salary, Professor Miller defrauded the organisation by more than \$80,000.

Professor Miller was convicted of fraud and in May 2020 she was sentenced to three years imprisonment to be suspended after three months and ordered to repay the Queensland Museum just over \$75,000.

The CCC also made multiple procedural recommendations regarding financial controls and an ethical framework and training are to be implemented across the Arts Queensland portfolio.



## Strategic intelligence, prevention and audits

### Corruption Strategic Intelligence

The corruption strategic intelligence capability was created in 2019 as part of the CCC Transform restructure. The Corruption Strategic Intelligence Unit (CSIU) is proactive and provides insight into emerging threats and factors which influence and enable corrupt activity in Queensland, and plays a key role in prioritising CCC corruption resource allocation.

### Corruption risks

The Corruption Strategic Intelligence Unit (CSIU) has undertaken an environmental scan to assess the risks and enablers influencing the corruption landscape in Queensland. This assessment has supported the development of an Issues Paper which discusses the key features of the corruption environment in Queensland, highlights current significant trends and risks, examines factors which drive or enable corrupt conduct and makes recommendations about future areas of focus for the CCC. A summary of the report was drafted into a "Prevention In Focus" paper which aims to alert senior decision-makers to current and emerging corruption risks associated with the changing public sector landscape.

### Investigation Batten

During the period January to June 2020, the CSIU conducted Investigation Batten which examined corruption risks associated with senior executive turnover in local government. The investigation examined the turnover of 698 senior executive employees between 1 January 2012 and 31 December 2019. The premise for the report was that corruption risks arise when senior executives are terminated, forced to resign or do not have their contracts renewed if they uncover or report suspected wrongdoing or raise concerns about adherence to council policy and procedure. Aspects of this behaviour were identified in investigations into Logan, Ipswich, and Moreton Bay councils.

The purpose of the investigation was not to investigate individual matters, but rather to examine systemic risks across the sector. Findings from this investigation led the CCC to write to the Department of Local Government, Racing and Multicultural Affairs with recommendations for legislative reform which will mitigate the corruption risks identified during this investigation.

Under the auspices of Investigation Batten, the CSIU has also conducted a survey of local government employees from the 77 councils in relation to their perceptions of corruption. The survey has now been finalised and the outcomes will assist to drive the future focus of prevention strategy in the local government sector.

### Corruption Prevention

From 1 July 2014, no corruption prevention function existed under the CC Act. Prevention officer resources were withdrawn from investigation teams and from the corruption business unit in general.

Upon restoration of the corruption prevention function in May 2016, the CCC re-established a number of previous resources to provide ready access for those seeking information about specific corruption risk areas without the need to speak to a CCC officer. However, the reintroduction of this function was made without any additional funding for this purpose.

In 2020, the CCC finalised its prevention and intervention strategy for the next 12 months. A cornerstone of this strategy is to ensure that prevention is embedded into the everyday work of all corruption officers. It emphasises that all corruption officers should look for and apply prevention initiatives during investigations, reviews and assessments, rather than this being the responsibility of a dedicated prevention officer.



## Publications

During 2016 and 2017, the CCC revised and reissued its Advisory series, which are topical documents dealing with twelve discrete corruption risk areas.

Similarly, the CCC updated its *Fraud and Corruption Control Best Practice Guide* in 2018. This is a keystone document which provides comprehensive assistance to those in UPAs who want to design and implement purpose-built corruption prevention controls within their existing corporate and personnel structures.

Recently, we have produced a tailored “Prevention in Focus” series to raise awareness about workplace behaviours that can involve several instances of corrupt conduct. These documents are generally led by case studies which seek to inform people about the range of corruption events that can coalesce around the actions of a person or group who seek to perpetrate corrupt activities. It is anticipated that these examples will educate our stakeholders to recognise and report corrupt conduct. We have produced 17 of these documents since December 2017.

## Corruption Capability Development Program

In March 2018, the CCC commenced a Corruption Capability Development Program in partnership with several public sector agencies. This project aimed to raise the standards of integrity in those agencies by improving staff capabilities in investigations and to identify and implement prevention measures. As chair of the Corruption Capability Working Group, the CCC brought together ethics and integrity subject matter experts and practitioners from those agencies. The project concluded in May 2020 and culminated with two frameworks to support capability, developed by the working group:

- a standard capability framework for officers working within an ethical standards unit or similar role, and
- a workplace rotation learning and development framework.

In addition, to improve efficiency and effectiveness across the sector, an “Ethics Hub” was recommended as a tool for sharing resources and learning, alongside the development of an overarching training program focusing on critical ethical standards areas.

The work of the group continues through the Community of Practice for Ethical Behaviour forum. Initially established by the Public Service Commission, this forum is now chaired on a rotating basis by various government departments and is succeeding in bringing practitioners together to share information, advice and best practice.

This has created an environment where responsibility for corruption prevention capability is engendered within and through the group. In this way, the CCC is working effectively through agency partnership arrangements to disseminate corruption prevention initiatives and capability. This provides the CCC with more time to work strategically to identify corruption risks.

## New Technologies

We have also adopted new technologies to improve our messaging and stakeholder engagement, as a way of better communicating the CCC’s work. This is crucial to improving public sector integrity by ensuring that information is communicated to relevant stakeholders by the most effective means possible.

In addition, the CCC’s emerging data analytics capability is intended to assist in identifying high-risk and emerging corruption threats.



## Engagement with Peers

The CCC continues to engage with our peers in the integrity agencies of other jurisdictions. Since 2018 we have participated in two Corruption Prevention Practitioner meetings per year with those professionals tasked with providing corruption prevention services within their respective agency to a broader stakeholder group. These meetings provide valuable opportunities for us to share the knowledge gathered from our success stories and also to benefit from the experiences of others.

## Corruption audits

Under section 34 of the CC Act, the CCC has a lead role in helping agencies to design and implement effective corruption prevention strategies and internal control systems, and promoting public confidence in the integrity of public administration.

The CCC's Corruption audits involve:

- Preparing a two-year corruption audit program
- Auditing agencies' dealings with allegations of corruption and their prevention framework
- Making recommendations and providing reports on the outcome of audits
- Providing advice to CCC officers including advice to assist public hearings
- Consulting and recommending prevention measures.

In 2015, the CCC recruited an Audit Manager to develop and implement best practice audit methodology and quality processes as relevant to compliance and performance audits within the corruption audit program. The Audit Manager has been actively building the capability of the CCC's staff to meet current and future demands through effective coaching, mentoring and implementing professional development strategies.

## Corruption audit program

Over the past five years we have prepared three sets of corruption audit plans:

- Plan one: 2016–17 (one-year plan)
- Plan two: 2017–19 (two-year plan)
- Plan three: 2019–21 (two-year plan).

The corruption audit plans are based on the following four principles:

<b>Risk</b>	By targeting emerging, entrenched, systemic <sup>38</sup> , or otherwise significant threats, the CCC audit program aims to assess and provide recommendations on high-risk issues in the public sector that are research-based, realistic, and relevant to the public interest.
<b>Value</b>	The audits add value by providing advice on reframing procedural gaps and aid in addressing corruption risks and controls efficiently, effectively and appropriately.
<b>Method</b>	By engaging in frequent research, internal review, and interagency collaboration, the CCC's audit program engages in continuous improvement and innovation of the audit process, ensuring that all audits are conducted to best practice methodology.

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38 Systemic means instances of corrupt conduct (which may or may not constitute serious corrupt conduct) that reveal a pattern of corrupt conduct in the agency.



**Scope** By engaging in research into allegation trends, remaining aware of areas of public interest, and remaining vigilant for possible auditable complaints, the CCC's audit planning process ensures that the topics, agencies and sectors assessed during audits are high-risk, sufficiently broad, and effectively fulfil the goals of the program.

These audit plans were developed to enable the CCC to reprioritise to ensure the plans incorporate emerging corruption risks identified and continue to be responsive to areas of public interest throughout the years. The CCC has not made any significant change to these plans, which is testament to the effective audit engagement processes (including extensive stakeholder consultations) to identify audit topics and areas of focus.

From 1 July 2016 to 30 June 2020, the CCC undertook 15 audits relating to:

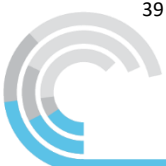
- the capacity of agencies to capture complete and accurate records of their assessment decisions (section 40A of the CC Act)
- managing corruption risks associated with timesheet and leave activities
- reducing the risk of research fraud: lessons from an audit of governance, internal controls and corruption prevention measures at three Queensland universities
- how to classify matters of corrupt conduct pursuant to section 40 directions
- probity in councillors' use of councillor discretionary funds
- how appropriately the Department of Education and the QPS have responded to allegations of corruption relating to failure of duty<sup>39</sup>
- integrity in procurement decision making in Queensland public health agencies
- assessing complaints of corruption: the effectiveness of the QPS's policies and practices
- managing corruption risks associated with secondary employment
- managing the security risk associated with chemicals of security concern
- conflicts of interest in the local government sector
- effectiveness of Queensland public sector corruption risk assessments
- theft in the Queensland public health system
- recruitment and selection processes in departments and statutory bodies
- a review of complaints-handling against police.

The CCC plans to complete a further three audits in 2020-21 which are discussed further below.

The diverse audit topics illustrate that fraud and corruption can occur in a wide range of business processes. It is important that the CCC addresses those risks to the public sector. These audits were driven by the number of allegations of corruption received by the CCC, however consideration was also given to the fact that much corrupt conduct goes unreported due to the nature and complexities of the business processes. Identifying these "unknown cases" remains a priority for corruption work.

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<sup>39</sup> Failures to comply with legal, policy or reporting obligations or failures to execute duties to an appropriate standard.



## Results from the audits

At the end of each audit, the results and recommendations are communicated to participating agencies. These recommendations are designed to address any gaps identified in current practices or policies, and improve how agencies strengthen accountability, improve transparency, and deal with corruption matters.

While responsibility for implementing recommendations is devolved to the relevant agencies, the CCC has received notification from the majority of agencies that they have implemented the relevant recommendations. The CCC verifies the implementation of recommendations to ensure they continue to be effective to prevent corruption. The CCC has generally been satisfied with the way recommendations have been implemented across the public sector.

The CC Act does not contain any provisions which enable the CCC to compel agencies to provide information to be used in corruption audits. In its 2015 PCCC review submission, the CCC recommended that the CC Act be amended to give the CCC these powers. The PCCC made this recommendation in its June 2016 report<sup>40</sup>, and the recommendation was subsequently accepted by the Queensland Government<sup>41</sup>. However, these provisions have not been enacted.<sup>42</sup>

The monitoring role of the CCC under sections 47 and 48 is limited to how agencies deal with complaints of corruption – for example, related to specific complaints or specific cases of corruption. The CCC has legislative power under sections 23 and 24 of the CC Act to conduct audits as part of its prevention function, and to use information that agencies voluntarily provide to the CCC.

Over the last five years, the CCC has received the full support of agencies in conducting its audits and commends the cooperation agencies have displayed in voluntarily providing the information sought by the CCC to use during its audit processes.

The CCC noted that following previous audits' recommendations, agencies continue to improve, or have improved, their investigation and prevention capabilities. This was a commendable step by the agencies, and shows the value of the audit processes, as lessons learned from audits are implemented.

## Summary audit reports (public version)

While not all CCC audit reports are made available to the public or other agencies who did not participate in the relevant audits, summary audit reports, containing concise results of our findings and recommendations, have been produced to promote public confidence in the integrity of public administration.

These reports were developed to build capacity of public sector agencies to respond to similar issues.

## Surveys

In order to gain information on the effectiveness of our audit reports from agencies across the CCC's jurisdiction, the CCC conducted a number of surveys with our CCC liaison officers (in 2016, 2017 and 2019).

40 Parliamentary Crime and Corruption Committee, Review of the Crime and Corruption Commission, Report No. 97, June 2016, recommendation 20.

41 Queensland Government response to the Parliamentary Crime and Corruption Committee Review of the Crime and Corruption Commission, December 2016.

42 See discussion of recommendation 20 in chapter 2 above.



The first survey occurred after the completion of our first audit into confidential information by officers in the public sector, and the release of a paper entitled *Confidential Information: unauthorised access, disclosure and the risks of corruption in the Queensland public sector* (May 2016). The survey indicated that:

- 94 per cent of respondents felt the paper was somewhat or very relevant to them
- 34 per cent of respondents have updated agencies' policies and processes
- 45 per cent of respondents have enhanced education and awareness about fraud prevention
- 39 per cent of respondents have implemented additional internal controls.

In the second survey, we received very similar results to the first survey. Of note was the increase in agencies updating their governance, risk management and internal control activities (42 per cent). This survey focused on two audits: theft in the Queensland public health agencies and recruitment activities in various public sector agencies.

The third survey of CCC liaison officers in February 2019 identified that 51 per cent of the respondents have found the audit reports *useful*, and in addition, 27 per cent *sometimes shared* across their agency and 40 per cent *often shared*. This illustrates the value of the audits to agencies. The liaison officers were also most concerned about timesheet or leave fraud, which reflected the effectiveness of the CCC's strategic audit planning as we have included an audit of timesheet and leave fraud in 2019–20 with a number of prevention guides developed.

Overall, our audit outputs have resulted in positive outcomes for the Queensland public sector and by extension, the Queensland public.

## Future audits

We are in the second year of the current two-year audit plan (July 2020 to June 2021). The CCC anticipates completing three audits:

- **Local Government Procurement Audit** – To assess if local government entities have effective procurement processes and practices in place to manage procurement/corruption risks. This will include conflict of interest management and contracting decisions by local government officers and councillors. Indigenous local government entities will be included in the audit.
- **Assessment of Corrupt Conduct Audit** – To evaluate the effectiveness of agencies' assessment of complaints about corruption, including the recording of any decisions not to notify the CCC of these matters. The audit will include whether the QPS has been appropriately making the assessment decision not to take any action because the matter is "interwoven with court".
- **Gifts and Payments from Industry Audit** – To assess the effectiveness of Health Services' management controls and transparency reporting over gifts and payments made by pharmaceutical companies to Queensland Government healthcare professionals.

The CCC continues to assess the key risk and value factors for these audits. Factors include current and emerging corruption risks, potential for us to have an impact and the potential for us to address matters of public interest.

One of the relevant factors includes the coronavirus (COVID–19) outbreak which is having a dramatic effect on the way public sector functions are performed in Queensland. A number of corruption risks relating to this situation include improper procurement processes, theft and fraud. The routine practices of managing finances and public officers in an office environment become challenging when many officers are working remotely from home, or the need arises to quickly purchase goods/services to deliver extra services to the communities. The agencies may have had little choice but to depart from normal levels of controls and supervision.



The CCC believes that the next three audits address our legislative obligations while remaining responsive to areas of public interest, including the current and post-pandemic integrity (probity) activities.

### **Future corruption audit plans**

Next April/May 2021, the CCC will conduct strategic planning to develop proposed program of audits for the next two years (1 July 2021 to 30 June 2023).

The CCC considers that a two-year maximum audit plan enables it to respond to current and emerging corruption risks, as well as being responsive to areas of public interest.

The CCC will continue to identify potential corruption audit topics through a wide range of environmental and risk scanning, and consultations with internal and external stakeholders.



## Conclusion

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The CCC has changed significantly over the last five years in response to the PCCC's 2016 recommendations, other reviews and recommendations, and a shifting landscape. These changes have been positive and resulted in improved capabilities across the entire agency. Moving forward, the CCC remains committed to constant improvement, and is well positioned to work at the highest standard to promote public integrity in Queensland over the next five years.



## Annexure 1 - The CCC's corporate governance and independence

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### Overview

The CCC's corporate governance structure is largely unchanged since the previous review. The CCC maintains the view that its corporate governance arrangements should be informed by three principles. These are that the organisation must:

- be independent
- be subject to strong checks and balances
- ensure that it operates to best practice standards.<sup>43</sup>

The place which the CCC occupies in Queensland's integrity landscape requires strong internal governance, and robust external oversight. Having both of these systems functioning properly serves to ensure that the CCC achieves its objectives, and maintains the confidence of the public in its work and its outcomes.

While the CCC's high-level governance has not changed substantially since the previous review, since 2018 the CCC has undertaken a substantial revision of its corporate structure and processes. This has involved an organisational restructure at a divisional level to better align its work processes with its core functions, as well as a revision of its operating model, and the introduction of a comprehensive operations manual. These reforms are intended to ensure that the CCC's practices and processes are robust, accountable, and fit for purpose.

### The Commission

The Commission is comprised of the Chairperson, a part-time Commissioner who is the Deputy Chairperson, and three part-time ordinary Commissioners. The CCC also has a Chief Executive Officer, who may attend Commission meetings, but is not entitled to vote.<sup>44</sup>

### Chairperson

The Chairperson is the effective head of the CCC, and is delegated most of the Commission's powers (under section 269 of the CC Act).

As noted in the CCC's submission to the previous review, the Chairperson is expressly not subject to the direction of the Commission.<sup>45</sup> This position is different from that which obtained under the previous CM Act.

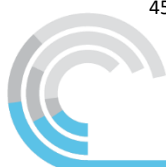
The previous five-yearly review submission suggested that there may be value in this situation being revisited as the status quo could permit the unilateral exercise of powers by the Chairperson in operational matters without reference to the Commission. It has been observed that such an arrangement may result in arbitrary operational and strategic decisions being taken without the appropriate level of independent scrutiny of the other Commissioners (the Board).

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43 Consistently with the obligation placed on the Minister to ensure the CCC's performance under s. 260(1) of the CC Act.

44 CC Act, s. 262.

45 CC Act, s. 252(3).



While there may remain some merit in reviewing this situation, the CCC's view is that the present arrangement works satisfactorily.

Under section 228 of the CC Act, the Chairperson, Deputy Chairperson, Ordinary Commissioners and the Chief Executive Officer may only be nominated for the approval of the Governor-in-Council if they have the bipartisan support of the parliamentary committee.

## Commissioners

The Commission comprises the Chairperson, Deputy Chairperson and three ordinary Commissioners. Under the previous *Crime and Misconduct Act*, the Commission comprised five Commissioners, being the Chairperson and four ordinary part-time Commissioners.

The *Crime and Misconduct Act* was more prescriptive as to the qualifications required for appointment as a Commissioner, with one a practising lawyer with a demonstrated interest in civil liberties, and the other three to possess relevant social science or community service backgrounds.<sup>46</sup>

The current form of the Act<sup>47</sup> is less prescriptive about the requirements for appointment as a Commissioner. The Chairperson and Deputy Chairperson are both required to have served as, or be eligible for appointment as, a judge – that is, they must be a practising lawyer of at least five years' standing.<sup>48</sup> Ordinary Commissioners are required to have "qualifications, experience or standing appropriate to assist the CCC to perform its functions".

In the previous five-yearly review submission, it was 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."

The current legislative criteria for eligibility as an ordinary Commissioner are satisfactory to achieve this goal. The broad criteria provide sufficient flexibility for the appointment of ordinary Commissioners who have the necessary skills and experience to provide appropriate oversight of the CCC's performance.

## Chief Executive Officer

The CEO is a statutory appointment and, like the Chairperson and Commissioners, requires bipartisan approval of the PCCC. By virtue of the statutory delegations,<sup>49</sup> the CEO is responsible for the efficient operation of the CCC. This includes the power to appoint all senior officers including senior executives.

As noted above, the Chief Executive Officer is not a member of the Commission and is expressly accountable to the Commission for the administration of the CCC.<sup>50</sup>

46 *Crime and Misconduct Act*, ss225 and 227(3).

47 Introduced as part of significant legislative change in 2014.

48 CC Act, s. 224.

49 CC Act, s. 269(1)(a).

50 CC Act, s. 253.



## Accountability and oversight

### Internal accountability and governance

As noted above, the operating model places operational governance responsibility on the ELT in the first instance.

The ELT's day-to-day oversight of operational matters is, in turn, overseen by the Commission in performance of its statutory function.

These primary spheres of governance are supplemented with other committees, which have been streamlined as part of the organisational reforms undertaken over the last several years.

### Formal governance committees

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

*Budget Management Committee:* assists the Commission in its responsibilities related to financial management. The Committee provides independent advice to the Commission through its reporting structure but does not replace existing lines of authority or reporting.

*Executive Leadership Team:* as noted above, the ELT considers strategic priorities, resource allocation and operational performance to ensure the efficient, effective and economical management of the organisation.

*Organisational Safety and Wellbeing Committee:* monitors the CCC's performance in providing a safe and healthy environment for its employees.

*Strategic Programs Board:* provides governance of strategic programs, which ensures their direction, management, delivery and progress reporting is sufficient and appropriate.

### 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 CCC. Other bodies or groups that support the work or operations of the CCC include the:

- Business Continuity Committee
- Human Research Ethics Advisory Panel
- Police Resource Committee
- Crime Pre-Assessment Committee
- Remainder of High Complaints Committee
- CCC Consultative Forum
- Witness Protection Advisory Committee.



## Internal audit

The CCC's internal audit function evaluates systems and processes which underpin the CCC's activities, independent of those areas it reviews. It assesses whether these activities are operating efficiently, effectively and economically. All audits are risk-based, and involve financial compliance audits, performance audits, and audits of information technology, with a particular focus on areas of highest risk.

The Internal Auditor has a direct reporting relationship to the CEO and the Audit and Risk Management Committee. The annual audit plans are endorsed by the ARMC 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 codes of ethics for internal audits, and with due regard to the Queensland Treasury's Audit Committee Guidelines.

## Financial and Performance Management

Senior managers are responsible and accountable for ensuring that organisational objectives are achieved within approved budget allocations.

As noted above, the Budget Management Committee assists the CCC in its responsibilities in relation to financial management, but this assistance is in addition to, rather than supplanting, the responsibilities of senior managers to ensure goals are achieved within budgets.

We also report on our performance through:

- strategic, operational and business planning
- service delivery statements
- annual report
- internal budget reporting.

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

## Legislative compliance

### Legal Risk and Compliance business unit

In July 2020, the CCC established the Legal Risk and Compliance (LRC) business unit by consolidating the corporate legal and corporate governance business units. The LRC business unit is led by the Executive Director, Legal, Risk and Compliance (formerly the Executive Director, Corporate Legal) and consolidates the responsibilities for corporate legal, governance, risk and compliance.

### Right to Information and Information Privacy

The *Right to Information Act 2009* (RTI Act) provides a mechanism by which individuals or entities may seek access to information in possession of the CCC. The *Information Privacy Act 2009* (IP Act) also provides individuals with some rights to access and seek amendment to information held about them by the CCC.

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.



Similarly, the IP Act sets out the Information Privacy Principles, which regulate how agencies collect and handle information about individuals. These principles have some, but limited, application to the CCC and its activities, as the principles have no application to specified covert investigative techniques, and further non-compliance is allowed where it is reasonably necessary for performing law enforcement activities.

Matters arising under both the IP Act and the RTI Act are administered by the LRC business unit.

## External accountability and oversight

The CCC reports on strategic and operational performance through the annual report, reports requested by the PCCC, various publications and the CCC website. The reporting includes both qualitative and statistical information and updates to the PCCC on projects and activities.

There are several external stakeholders to whom the CCC reports, or who have a role in oversight of the performance of the CCC's functions.

The CCC's 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.

The CCC's annual financial statements are audited by the Queensland Audit Office and are published in the Annual Report. The CCC also participates in the Parliamentary Estimates Committee proceedings.

### Minister

The CCC falls within the justice portfolio, and its budget is allocated by the Minister. The CCC reports to the Minister on a six-monthly basis.<sup>51</sup> The Minister is also involved in selection of the Chairperson, Commissioners and CEO, and approves senior officer appointment conditions.

### Parliamentary Crime and Corruption Committee

The Parliamentary Crime and Corruption Committee (PCCC) is the external body primarily responsible for monitoring and overseeing the CCC's performance of its functions. The PCCC is a seven-member, all-party parliamentary committee.

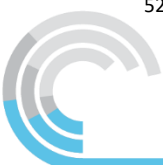
In addition, the PCCC reviews CCC reports, including the annual report and research reports. It may request reports on matters that have come to the CCC's and/or PCCC's attention. The PCCC may direct the Speaker of parliament to table certain types of CCC reports and, if so directed, the Speaker must cause those reports to be tabled or published.<sup>52</sup>

It may receive and consider complaints against the CCC and its officers, and deal with issues concerning the CCC as they arise. Under section 329 of the CC Act, the CEO (or, if the suspicion relates to the CEO, the Chairperson) must notify the PCCC and the Parliamentary Commissioner of suspected improper conduct of its officers. The PCCC may then determine how such notifications are to be investigated or otherwise dealt with. The PCCC recently conducted a review of the notifications

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51 The obligation to report to the Minister is set out in s260 of the CC Act, which requires reporting at a frequency determined by the Minister. At present, these reports are provided on a six-monthly basis.

52 CC Act s. 69.



protocols under section 329.<sup>53</sup> The notification threshold contained in section 329 provides substantial oversight and scrutiny of the activities of the CCC and its officers.

### Parliamentary Crime and Corruption Commissioner

The Parliamentary Crime and Corruption Commissioner (the Parliamentary Commissioner) assists the PCCC in its oversight and monitoring of the CCC's activities.

The Parliamentary Commissioner investigates complaints against the CCC or its officers, either at the direction of the PCCC, or in some cases on their own initiative. The Parliamentary Commissioner's powers include compelling CCC officers and others to give evidence at a hearing, and the power to require the production of records, files and other documents.

The Parliamentary Commissioner also conducts reviews of the CCC's activities, and inspections and audits of its records (either as mandated by legislation, or at the PCCC's direction).<sup>54</sup> The Parliamentary Commissioner submits reports on the results of its inspections to the PCCC. These inspections represent an important check on the CCC's activities, as they involve a review "after the fact" of the exercise of covert powers by the CCC.

The Parliamentary Commissioner may also be tasked by the PCCC to investigate allegations of suspected improper conduct under section 329, or perform other functions as considered necessary or desirable by the PCCC.

### Public Interest Monitor

The Public Interest Monitor (PIM) is a statutorily appointed officer<sup>55</sup> who is responsible for monitoring applications for, and the use of, particular types of warrants (covert search warrants, surveillance warrants and TI warrants) obtained by the CCC under the *Police Powers and Responsibilities Act 2000* or the CC Act.<sup>56</sup>

The PIM's primary responsibility is to appear on applications for the exercise of covert powers, and to make submissions about, and test the appropriateness of, the warrants sought.<sup>57</sup>

The PIM is also responsible for monitoring the use of these covert powers, and to report where appropriate regarding identified issues of non-compliance. The PIM is also responsible for gathering statistical information about the use and effectiveness of surveillance and covert search warrants.

### Public Interest Advocate

Legislative amendments to the telecommunications interception legislative regime introduced by the Commonwealth in 2015, and amended in relevant respects since, regulated the circumstances in which law enforcement and security agencies may obtain telecommunications information in relation to journalists and media organisations ("journalist information warrants").

Applications for journalist information warrants are considered and tested by the Public Interest Advocate – a statutorily appointed officer who exercises a similar role in respect of such applications as does the Public Interest Monitor in other applications by the CCC.

53 PCCC report no. 104 – Review of section 329 of the *Crime and Corruption Act 2001*.

54 The Parliamentary Commissioner is the inspecting entity, for example, in relation to the CCC's compliance with its obligations in relation to records for covert activities undertaken under the *Police Powers and Responsibilities Act*, and the *Crime and Corruption Act*.

55 See s. 324 CC Act.

56 Note that the PIM exercises the same functions for the QPS for its applications for warrants for these covert powers also.

57 CC Act, s. 11.



## Supreme Court

Many of the CCC's coercive powers, and powers for compulsorily obtaining information, are exercisable only with the approval of a Supreme Court judge. These include applications for covert searches, surveillance devices, monitoring and suspension orders for financial institutions, and notices for witnesses to immediately attend a hearing.

Further, the Supreme Court exercises an oversight role in respect of certain activities by the CCC. A person may apply to the Supreme Court for a review of the CCC's investigation where they believe the investigation is proceeding unfairly.<sup>58</sup> Further, the Supreme Court is responsible for determining claims of privilege and reasonable excuse raised by persons subject of the CCC's compulsory powers.

## Crime Reference Committee

The Crime Reference Committee is established under the CC Act, and has the following functions:<sup>59</sup>

- to refer major crime to the CCC for investigation
- to authorise the CCC to undertake specific intelligence operations
- to review general referrals
- to coordinate investigations into major crime conducted by the CCC with another entity.

The reference committee may also give the CCC directions imposing limitations on a crime investigation, including limitations on the exercise of the CCC's powers for the investigation, and may direct an investigation to end in certain circumstances.<sup>60</sup> It may also exercise these powers in respect of a particular investigation commenced under a general referral.<sup>61</sup>

## Controlled Operations Committee

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 Chairperson of the CCC. The committee is 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.

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58 See the recent decision of *PRS v Crime and Corruption Commission* [2019] QCA 255.

59 CC Act s. 275.

60 CC Act, s. 29.

61 CC Act, s. 29A.



## Major crime

### Our functions and powers

One of the CCC's 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
- 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 primarily achieves these purposes by undertaking the statutory functions given to it in the CC Act.<sup>62</sup>

In addition to the CCC's responsibility to combat major crime, the CCC also has responsibility for restraining and recovering suspected proceeds of crime, and administers Queensland's witness protection program. The CCC is both an enforcement agency and a standing commission of inquiry of more than 30 years in operation, and is the only agency of its type in Australia with such a broad remit.

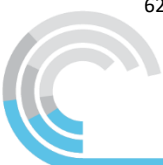
The CC Act gives us investigative powers that are not available to police or any other Queensland government agency. Our hearing power enables us to compel witnesses to attend and give evidence, even where that may require them to incriminate themselves in the commission of an offence. Our civil confiscation power enables us to obtain court orders for the forfeiture of suspected proceeds of crime even though a person has not been convicted of the relevant crimes.

The special nature of these capabilities requires us to balance the tension between public interest vulnerability and public benefit and value. This is an important reason these powers are vested in an independent agency such as the CCC.

The Crime Division of the CCC is responsible for the day-to-day delivery of the CCC's crime work, operations and projects. While the CCC has broad capacity to investigate major crime and undertake proceeds confiscation, research, prevention and intelligence activities, we do not have primary responsibility for law enforcement and crime prevention efforts in Queensland.

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62 CC Act s. 26.



## Our services and service areas

### Crime Operations

The Crime Division is responsible for undertaking day-to-day delivery of the crime activities, operations and projects.

The current areas focus for the Crime Division are:

- **Illicit markets of high value or high public impact**  
Illicit markets concern the exchange of illegal goods or services, or the exchange of those things in unlawful ways. The CCC is concerned with illicit market activity that enables or involves the commission of serious and organised criminal offending, produces significant financial returns for those involved and delivers the most devastating impacts on Queenslanders, their families and community.
- **Crimes involving loss of life or serious injury to a person**  
The unlawful killing of another is the most serious offence in Queensland, attracting a maximum life sentence of imprisonment, which is mandatory in the case of murder. Offences causing death, or serious and permanent injury or disability, visit enormous grief on victims, and their families, and are detrimental to the wellbeing and sense of safety of the community. They include serial or premeditated, violent sexual offending. Loss of life or serious injury as a result of terrorist activity unfortunately remains a real threat for Queenslanders.
- **Crimes against children and vulnerable victims**  
Serious crimes against children and persons vulnerable by reason of old age, or physical or mental impairment are a priority for the CCC, and our coercive hearing powers may be engaged by the QPS to solve or prevent these crimes. They include homicide and grievous bodily harm, whether through violence, maltreatment or neglect, torture and crimes involving serious or organised child sexual exploitation.

The Crime Division uses four key service lines to deliver the CCC major crime work:

**Crime Operations** — Undertakes major crime and intelligence operations. The unit's multi-discipline teams collaborate with and support law enforcement investigations into organised offending, contributing specialist financial and business analysis capabilities.

**Proceeds of Crime** — Undertakes non-conviction based and serious drug offender confiscation of criminal proceeds and unexplained wealth. The unit's financial investigation teams assess and develop potential civil confiscation opportunities and take appropriate action to restrain, forfeit and recover criminally acquired wealth.

**Crime Hearings and Legal** — Provides operational legal advice and advocacy. The unit's lawyers work with investigators to assess whether a CCC hearing may advance and help solve serious crimes, provide strategic or tactical intelligence about suspected organised criminal activity, or help prevent or investigate incidents that threaten public safety.

**Crime Strategy** — Provides strategic intelligence and insights to improve operational effectiveness and identify crime prevention opportunities. The unit's analysts and advisors consult and work with key stakeholders, gather and interpret data from a wide range of sources to produce crime information reports, strategic and other business performance assessments.



## Referral process

The CCC does not have a standing crime jurisdiction for its investigation activities. It only has a crime jurisdiction for investigations by way of referrals or authorisations made or approved by the Crime Reference Committee (CRC). The CRC is a committee established under Part 2 of Chapter 6 of the CC Act to oversee the general conduct of the performance of the CCC's functions in relation to major crime or a specific intelligence operation.

CRC Referrals are of two types:

- **General Referral** — a jurisdictional authority under which a particular investigation may be approved in accordance with the terms of the general referral. A general referral will identify a general area of major crime in respect of which the CCC may undertake particular investigations.
- **Specific Referral** — a jurisdictional authority that identifies a specific QPS investigation (already in existence but that has not been effective) that the CRC has now approved the CCC to undertake.

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.

Currently, the CCC has the following general referrals:

- Serious Crime (Sexual Offences) General Referral 2015 (confirmed 28 July 2020)
- Serious Crime (Homicide) General Referral 2018 (made 24 April 2018)
- Serious Crime (Vulnerable Victims) General Referral 2013 (confirmed 27 November 2018)
- Terrorism General Referral (confirmed 25 February 2020)
- Organised Crime General Referral (confirmed 23 March 2020)
- Criminal Paedophilia General Referral (confirmed 25 May 2020)

The CCC's submission to the last five-yearly review of the CCC that the distinction between "general" and "specific" referrals in relation to major crime should be abolished because:

- there was a lack of clarity between "major crime" (as required to be identified under a General Referral) and a "specific incident of major crime" (as required to be identified under a Specific Referral)
- the conditions that must be met for a Specific Referral (a police investigation carried out has not been effective) did not allow timely and effective response to assist homicide investigations, which constituted the majority of Specific Referrals.

The 2016 Parliamentary Crime and Corruption Committee's Report No 97 recommended the Government give consideration to the implications of moving to a simple "referral only" system and removing the "ineffective investigation" condition. The Queensland Government responded in support of the recommendation<sup>63</sup> and indicated that the Government would give consideration to the historical reasons for the current system of referrals as well as the way in which other Australian jurisdictions enliven the special investigative powers of their equivalent bodies.

The CCC will assist the Queensland Government with its consideration of the issue, as required. In the meantime, however, the issue is no longer a priority for the CCC because the CCC has a system of practice of periodically reviewing its general referrals, to ensure that they reflect current CCC strategy

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63 Queensland Government Response to Recommendation 2 of Report No 97 Review of the Crime and Corruption Commission



and focus areas, and are responsive to government priorities and contemporary stakeholder issues and concerns, particularly the QPS. As a result, most of the CCC's work is now undertaken under its general referrals and this may continue efficaciously without the need for a review of the referrals system.

### **Intelligence operations**

In 2013 the CC Act was amended to give the CCC the power to conduct intelligence operations, including the use of coercive hearings powers for intelligence purposes. These powers were used initially in response to OMCG activity in Queensland, in response to the dominant organised crime threat at the time of the introduction of the laws.

This initiative was funded initially on a periodic basis, before four-year funding to continue this work between 2016 and 2020, which was extended in 2020 to continue that work.

In the first three financial years of the 2016 funding initiative, 10 intelligence operations were commenced to investigate the criminal activities of criminal organisations and participants operating in Queensland. In that period, 105 criminal organisation participants or associates were examined by the CCC over 110 hearing days, and as a result of those operations and associated hearings, 642 intelligence reports were produced, 266 of which were disseminated to QPS, other state and Commonwealth law enforcement agencies.

The intelligence reports produced were of both tactical and strategic value enabling other law enforcement intelligence to be forensically tested, confirmed or evaluated, and intelligence gaps identified or filled.

### **Immediate response powers**

The immediate response powers were introduced into the CC Act in 2014, initially as part of the suite of legislative reforms directed towards combating organised crime-related threats to public safety. As for the intelligence powers, these provisions are tied to the jurisdictional requirement that the public safety threat involve a participant in a "criminal organisation".

The immediate response powers allow the CCC to convene an investigation in relation to an incident that threatens, has threatened, or may threaten, public safety. These provisions allow for investigative powers to be deployed, including conducting hearings. Where hearings are conducted under these provisions, the usual requirement for an "immediate attendance notice" requiring approval of a Supreme Court judge are dispensed with, allowing a more rapid response to the situation.

In 2016 the suite of legislative reforms introduced in 2014 was reviewed by the Taskforce on Organised Crime Legislation (chaired by the Hon Alan Wilson QC) 2016. And in 2016 legislative amendments were made consequent upon the recommendations of that Taskforce. The Taskforce noted that, despite the powers not having been used since their introduction, there were sound reasons for their retention.

The CCC has submitted previously that these powers (like the intelligence operations powers) should not be tied to the jurisdictional requirement of a "criminal organisation". Nevertheless, these powers remain available for use should such a threat to public safety arise.

### **Criminal proceeds confiscation**

As referred to above, the CCC is responsible for the investigation and recovery of the proceeds of crime in Queensland.



The CCC's proceeds of crime confiscation jurisdiction involves both civil confiscation and confiscation arising after conviction for serious drug offences.

The civil confiscation jurisdiction involves restraint and forfeiture of property where there is a reasonable suspicion of someone having engaged in serious crime-related activity. The ultimate forfeiture of the property to the State may be ordered by the court, by way of a proceeds assessment or an unexplained wealth order.

The serious drug offender confiscation jurisdiction involves confiscating the assets of a person where a court has made a serious drug offender confiscation order against them because they were convicted of a specific qualifying offence. Assets may be confiscated in these circumstances, even where the assets may have been lawfully acquired.

The CCC employs a number of specialists (in particular a team of forensic accountants) who identify, investigate, and pursue the proceeds of criminal activity.

The Director of Public Prosecutions is the solicitor of record in relation to court proceedings for the confiscation of proceeds of crime. This position has been the subject of previous submissions and recommendations to bring all of the confiscation activities within a single agency. The CCC supports that recommendation.

## Corruption

### Our functions and powers

One of the CCC's 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, the CCC investigates allegations of serious and systemic corruption. The CCC 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.



## Key areas of activity

The content below addresses the following areas of activity:

- Receipt and assessment of complaints
- Oversight role
- Corruption investigations
- Strategic intelligence, audits and prevention
- Research.

## Receipt of complaints

The main avenues by which the CCC is made aware of suspected corruption are through complaints made to the CCC or through mandatory notification 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.

## Assessing and reporting on complaints

At the start of 2020, an inquiry was commenced by the PCCC to examine how the CCC assesses complaints of corrupt conduct, and how it reports on such work. The submission provided by the CCC to the PCCC on 28 January 2020 considered 10 specific questions posed by the PCCC Committee. It is included at Annexure 2 to this submission.

The decision as to whether, when and how to report on the outcome of a CCC assessment or investigation is one which will be informed by a variety of factors. This decision may be different in different circumstances, depending on the context of the matter. The decision about what to report and how to report it is informed primarily by the CCC's core functions, and the considerations in section 57 of the CC Act.

In order to determine how best to communicate in relation to a particular matter, regard must be had to the intended purpose and message, the proposed audience, and the desired outcomes. There is little utility in writing a long and complicated report where there is a discrete issue with simple facts. Similarly, where an investigation is limited or foreclosed by jurisdictional limitations, or where the fact pattern revealed allows for a clear assessment, the public interest may be best served by communicating succinctly and expeditiously by a media release rather than a lengthier report.

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

## Oversight role

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

The CCC is informed of police-related deaths, as well as significant events involving police, and may elect to attend an incident if there is a public interest concern (for example, where a police officer has discharged their firearm, regardless of whether there have been injuries or death).



The CCC's role is to:

- provide independent oversight of the QPS investigative response
- assess the probity and sufficiency of the initial investigation
- (with respect to police-related deaths) determine, together with the State Coroner, if there is a likelihood of any corrupt conduct or police misconduct that would warrant the CCC's further involvement, including assuming control of an investigation if considered necessary
- (with respect to significant events) determine if there is a likelihood of any corrupt conduct or police misconduct that would warrant the CCC's further involvement, including assuming control of an investigation if considered necessary.

Where the CCC has deemed further investigation is warranted, these matters have been referred accordingly.

### **Monitoring**

The CCC monitors how agencies handle complaints by various mechanisms, including:

- overseeing an agency's investigation while it is taking place
- reviewing interim reports as an investigation progresses
- reviewing an agency's finalised investigation report before any disciplinary or other managerial action is taken
- reviewing an agency's finalised investigation report after all matters including disciplinary or other managerial action is taken
- reviewing the outcomes of all misconduct disciplinary hearings conducted by the QPS and exercising our review or appeal rights, as necessary
- auditing the way an agency or agencies have dealt with a general or specific type or class of complaint.

Serious types of allegations of corrupt conduct that are not investigated by the CCC are monitored to ensure they are dealt with appropriately by conducting a Merit and Compliance Review (MCR) or a Public Interest Review (PIR). Both types of review require regular reporting to the CCC at specified intervals.

Factors determining whether a matter is subject to review include the level of seriousness and/or the systemic nature of the allegation, whether the nature of the allegation is an area of focus for the CCC and an agency's capability of managing an investigation.

We have introduced a range of strategies to ensure the timely completion of our reviews. We have streamlined our processes, reduced "red tape" and implemented information technology solutions so we can receive and review voluminous investigation reports and associated material in a timely manner.

### **Police Discipline Matters – reviewable decisions and appeals**

Under Chapter 5, Part 2 of the CC Act, the CCC or a subject officer 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.



## Corruption investigations

We continue to conduct timely and effective investigations into more serious or systemic corrupt conduct — affecting Queensland public sector agencies (units of public administration, or UPAs). This corrupt conduct can come in many forms but often involves using position, information, funds or property for personal gain.

Our investigations are conducted independently, or in conjunction with, other government agencies, such as the Department of Education, Corrective Services or the QPS. Our investigations utilise a number of traditional investigative methodologies, such as search and seizure, and extraordinary powers available only to the CCC, such as 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.

Our investigations are conducted by multi-disciplinary teams and rely on the skills of investigators, financial investigators, intelligence analysts and lawyers. Our investigations are often complex and protracted in nature, and generally result in significant outcomes.

Since the last review period our focus has included matters associated with a number of high risk areas:

- Local government/elected officials
- Misuse of confidential information
- Use of force
- Corrective Services facilities, and
- Exploitation of public sector resources/fraud.

## Strategic intelligence, audits and prevention

Preventing corruption is fundamental to the CCC's vision for safe communities supported by fair and ethical public institutions. The CCC's corruption intelligence, audit and prevention functions help public sector agencies identify and prevent corruption through capability development, and delivery of information and content on corruption risks and best practice. Our prevention efforts focus on serious and systemic public sector corruption and police misconduct.

Following an organisational structural review in 2019, the CCC's corruption strategic intelligence, audit and prevention functions were brought together into a single business unit. This was to achieve improvements in our strategic capability to identify and respond to existing and emerging corruption risks.

### Audit program

The CCC has maintained its Audit program across the review period.

The CCC Audit program promotes public confidence in reducing corruption in the Queensland public sector (including the QPS). The CCC conducts audits to assess:

- the appropriateness of any agency's framework of systems, policies and procedures for dealing with complaints about corruption
- whether an agency has dealt with complaints about corruption according to the requirements of the Act and other relevant standards (e.g. our *Corruption in focus* guide)
- how effectively an agency, or group of agencies, responds to classes of complaints or corruption risk identified by the CCC.



## Corruption Strategic Intelligence

In late 2019, the CCC created the Corruption Strategic Intelligence Unit (CSIU). The CSIU was created to provide an understanding of the current corruption threats, their nature, extent, and characteristics with a view to driving informed and effective programs of prevention and disruption. The CSIU draws together information from an extensive range of sources to provide analysis and insight into corruption risks.

Other intelligence officers continue to support the other corruption functions by embedding intelligence officers in the corruption assessment unit and the corruption investigation teams.

The intelligence analysts working as part of the complaints assessment team provide further initial assessment of complaints to ensure more rigorous assessment of high-risk matters. The role also involves the assessment of complaints to identify potential emerging trends and strategic issues for advice to the CSIU.

## Research and Insights

In its submission to the previous PCCC 5-year review, the CCC reported on its review of the Corruption Allegation Data Framework (CADF), for recording and coding of corruption allegations. The CADF was reviewed again in 2018, resulting in a program of work to improve user experience and the usefulness, consistency and quality of corruption allegations data. This body of work included:

- employing a data governance manager and beginning development of a data governance framework
- investigating the feasibility, costs and benefits of broadening data holdings to include data about matters allocated as “refer no further advice” (RNFA) from units of public administration (UPAs) and
- investigating and identifying optimal settling periods for data to minimise the impact of changeable data.

Research and Insights has also continued its investment into understanding and responding to corruption. The division has:

- biannually published two different corruption allegation data dashboards — one for internal CCC stakeholders, and one for external CCC stakeholders — to aid understanding in trends and patterns in corruption allegations, and to assist in data-driven decision making (ongoing since 2015)
- trialled the development of measures to assist with understanding corruption risk, including:
  - a corruption harm index, which would enable comparison of disparate types of corruption (2017); and
  - a method to identify corruption risk in the health sector, where risk is based on a broader range of measures than “corruption allegations” alone (2018);
- trialled predictive analytics techniques (machine learning) to corruption allegations, to predict matter and allegation level information (2018) and
- produced reference tables for identifying QPS officers with significant complaints histories (ongoing since 2016), to assist in identifying whether or not a given QPS officer’s complaints history is expected, compared to QPS officers of the same rank, work location or years of service.

The Research and Insights division has also invested in understanding the needs and experiences of the CCC’s key stakeholders though:



- partnering with Transparency International and Griffith University to deliver the 2018 *Global Corruption Barometer* and investigate experiences and perceptions of the CCC and corruption by public officials; and
- surveying CCC Liaison Officers about their experiences with the CCC and perceptions of prevention materials.

Researchers also contributed to other key Corruption operations and projects, such as:

- *Taskforce Flaxton*, which examined corruption and possible systemic issues giving rise to corruption risks in Queensland corrective service facilities, tabling a report to Parliament, and making 33 recommendations (2018)
- *Operation Belcarra*, to determine whether candidates from the 2016 local government elections committed offences under the Local Government Electoral Act 2011 that could constitute corrupt conduct and examined practices that may have given rise to actual or perceived corruption, or otherwise undermine public confidence in the integrity of local government. The report tabled to Parliament made 31 recommendations within a more stringent regulatory framework (2017)
- an examination of the use of force by police in Queensland watch-houses, detailing six recommendations and reporting the response to those recommendations by the QPS (2017)
- an examination of whether it is in the public interest to publicise allegations of corrupt conduct by calling for submissions and holding a public forum, tabling a report to Parliament which made one recommendation (2016).

## Other functional areas

Following the organisational restructure in 2019, there are three other divisions which provide support for the operations of the CCC. They are Corporate Services, Operations Support, and Strategy, Innovation and Insights.

### Corporate Services

#### Structure, purpose and activities

As a result of CCC Transform, Strategic and Corporate Services was amalgamated into the Corporate Services division, a multidisciplinary unit. The General Manager, Corporate Services reports directly to the CEO. Its primary purpose is to enable and support the CCC's operational functions and is central to the core business units' performance.

Corporate Services comprises the following business units and services:

- Legal, Risk and Compliance
- Finance, Procurement and Operations Support Administration
- Human Resources
- Information Services
- Corporate Communications
- Security and Facilities Management.



## Performance, reporting and governance

The CCC's Corporate Governance functions and reporting responsibilities sits within the responsibility of Corporate Services which is addressed at length in Chapter 2.

## Telecommunication Interception Powers

The CCC has intercepted telecommunications since October 2009 following the introduction of the *Telecommunications Interception Act 2009* (Qld) (TI Act Qld). The CCC is also able to use powers under the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act) to access, use and disclose stored communications and telecommunications data.

Since 2009, the CCC has had a dedicated legal team dealing with telecommunications interception, stored communications and telecommunications data. This team is situated in the Legal, Risk and Compliance area of the CCC and its role is ongoing, providing legal advice and ensuring the CCC's compliance with legislative requirements under both the TI Act Qld and the TIA Act.

The CCC reports regularly to both the Queensland Attorney-General, and Commonwealth Department of Home Affairs.

### State

An annual report is provided on the effectiveness of telecommunications interception warrants and the cost of executing these. Reports are also required within three months of a telecommunications interception warrant ceasing to be in force which details the use and communication of information obtained under the warrant. These reports are provided under the TI Act Qld.

### Commonwealth

Annual reports on:

- the effectiveness of telecommunications interceptions warrants and the cost of executing these warrants
- access to and destruction of stored communications and domestic preservation notices
- access to and use of telecommunications data
- (the above three under the TIA Act)
- the use of the powers under the *Surveillance Devices Act 2004* (Cth)
- the use of the Industry Assistance Regime under the *Telecommunications Act 1997* (Cth).

As part of its obligations under the TIA act, the CCC provides a quarterly report to the Commonwealth Minister detailing all telecommunications interception warrants that fall within the reporting period, that are not expected to result in criminal proceedings. In addition, the CCC provides a report within three months after a named person telecommunications interception warrant has ceased to be in force.

### Audits

The Commonwealth Ombudsman conducts yearly inspections of both the CCC's stored communications and telecommunications data records under the TIA Act.

The Queensland Parliamentary Crime and Corruption Commissioner inspects the CCC's telecommunications interception records twice a year to ensure compliance with legislative requirements under the TI Act Qld.



## Operations support

### Structure

Operations Support underpins the CCC's operational activities, and provides services which directly impact Queensland community. It plays a key role in building operations capabilities to support Crime and Corruption service lines. Operations support comprises seven major work groups:

- Witness Protection
- Technical Surveillance Unit
- Physical Surveillance Unit
- Forensic Computing Unit
- Electronic Collections Unit
- Intelligence Support Unit
- Property Management.

Electronic collections, property control and intelligence support were transitioned to Operations Support during CCC Transform in 2019. Aligning these units under Operations Support reflects a simplified governance structure and reporting lines, clarifies accountabilities and increases centralisation enabling significant efficiencies in the delivery of support services to Crime and Corruption operations.

Staff members from a number of disciplines comprise the Operations support team, including serving police officers, forensic computer investigators, technical officers, property officers and administrative staff. The General Manager, Operations Support reports directly to the CEO.

### Purpose

Operations support provides specialist services such as surveillance, forensic computing services, intelligence support and property control to operational areas and investigations being carried out across the CCC. Operations support also maintains the Electronic Collections Unit which is responsible for managing the CCC's technical ability to intercept telecommunications. The technical services provided by the units within Operations support are integral to the CCC's operational areas and the success of investigations undertaken in pursuit of the Crime and Corruption functions.

### Witness protection

Witness protection is a specified function of the CCC and an essential component of the Queensland criminal justice system.

The Witness Protection Program has been operating in Queensland since 1987, assisting and protecting witnesses or those that may be in danger due to providing evidence about criminal or corrupt activity to law enforcement agencies or the courts. The CCC witness protection activities include personal protection, court security, secure relocation, management of welfare needs and identity changes.

The CCC is the only independent commission in Australasia with responsibility for the state's witness protection program. Elsewhere in Australia and New Zealand, witness protection programs are managed by state, territory and federal policing bodies.



The Witness Protection Advisory Committee (WPAC) assists the Chair and has a monitoring and review function which ensures witness protection is provided in accordance with the *Witness Protection Act 2000* (Qld).

## Performance

With respect to maintaining the safety of protected persons, the CCC has maintained a 100 percent success rate in keeping and maintaining the safety of witnesses of more than 1800 protected persons since its inception. The Witness Protection Program ensures a rapid and effective response to applications and has committed to providing interim protection within 48 hours to any eligible applicant within Australia. The Witness Protection Program provides full protection, interim protection and also short term protection for court security.

Between the financial years 2015–2020, the Witness Protection Program has provided services to 148 protectees and expended a median 3198 hours per year on close personal protection as detailed in Table 10 below.

**Table 10:** Yearly figures associated with the Witness Protection Program

2015–16		
Number of Operations	Interim offers of protection	11
	Full offers of protection	10
	Number of Protectees [Full and Interim]	40 persons
	Court [short term protection]	24 operations
Close personal protection		7188 hours

2016–17		
Number of Operations	Interim offers of protection	14
	Full offers of protection	9
	Number of Protectees [Full and Interim]	36 persons
	Court [short term protection]	27 operations
Close personal protection		4024 hours

2017–18		
Number of Operations	Interim offers of protection	10
	Full offers of protection	8
	Number of Protectees [Full and Interim]	35 persons
	Court [short term protection]	8 operations
Close personal protection		2445 hours



2018–19		
Number of Operations	Interim offers of protection	10
	Full offers of protection	5
	Number of Protectees [Full and Interim]	18 persons
	Court [short term protection]	13 operations
Close personal protection		2462 hours

2019–20		
Number of Operations	Interim offers of protection	10
	Full offers of protection	3
	Number of Protectees [Full and Interim]	19 persons
	Court [short term protection]	6 operations
Close personal protection		3193 hours

## Strategy, Innovation and Insights

### Structure

The Strategy, Innovation and Insights (SII) division was created in April 2019 as part of the CCC Transform restructure. SII subsumed the Policy and Research division and elements of the Strategic and Corporate Services Division being strategy, innovation, and program and project delivery.

SII is staffed by an interdisciplinary team including strategists, research officers, data scientists, project managers, project delivery professionals, digital and IT professionals, and administrative officers. The General Manager SII reports directly to the CEO.

### Purpose

SII is a service-led division, creating value for Queenslanders by driving innovation, generating and turning insights into action, building critical capabilities, and implementing transformational change within the CCC's core service divisions. Projects and programs implemented by SII have been focused on streamlining work practices, mitigating agency risks and enhancing critical frontline services. An integral element of the project work has been providing CCC employees with integrated, intuitive and sustainable digital systems that allow for cohesion of work practices, a mobilised workplace and the safe retention of data through the adoption of a "cloud-first" approach.

SII is comprised of three business units and service areas:

### Strategy & Innovation

The Strategy & Innovation business unit is responsible for integrated strategic planning, portfolio management, innovation and digital strategy.

Throughout 2019–20, the Strategy & Innovation business unit:

- assisted in the agency-wide restructure, CCC Transform. CCC Transform was a project that delivered a simplified, service-led structure for the agency aligned with the CCC's operating model and strategic requirements, and



- developed and led CCC Futures, a project aimed at building our organisational capability in three critical areas: workforce planning, digital and analytics (insights).
- CCC Futures identified a pathway for the CCC to continue to modernise then evolve its business to improve service delivery, increase efficiency and effectiveness, and better achieve organisational objectives through the following goals:
- Workforce: purpose-led, the CCC workforce is enabled by solutions and informed by insights, with enabled skills and personal attributes, diverse experience and adaptability – a change- ready workplace
- Digital: a digitally enabled CCC that is connected and resilient, with the ability to deliver new and existing services in simpler and smarter ways
- Insights: a CCC informed by insights, effectively leveraging research, intelligence, data, analytics and external partnerships, to empower employees, enhance agency performance and embed an insights-driven culture.

### Research and Insights

Research and Insights generates high quality knowledge, advice and insights to identify innovative ways to address issues and questions related to CCC functions. Under section 52 of the *Crime and Corruption Act 2001*, the CCC has broad research functions to undertake research into criminal activity, policing and criminal justice issues. The work undertaken by Research and Insights:

- supports CCC functions, programs and operations
- provides an evidence base for the CCC's contribution to public policy issues, including recommendations for legislative, policy and practice change, and
- contributes to public debate and shapes reform in the areas of public sector ethics and integrity, crime, criminal justice and policing.

The Research and Insights work program is driven by internal requests for support for CCC functions, operations and investigations, and by matters referred by the Minister.

### Data analytics

The CCC continues to progress its strategic objective to leverage data and information to become an insights-driven agency. By doing so, the CCC will be better able to examine core issues, predict patterns, identify risks and respond in real time to emerging issues.

During 2019–20, the CCC has:

- continued to analyse corruption trends to inform strategic planning activities, and produced public and internal dashboards that allow stakeholders to interactively explore corruption allegations data
- continued to enhance and embed HR and Finance business intelligence reporting to support improved administrative efficiency and effectiveness.

### Transformation Office

The Transformation Office is responsible for program governance, transformation programs and projects, business analysis, solution architecture, and change management. The scale and scope of individual projects varies depending on emerging business needs and strategic priorities.

The Strategic Programs Board (SPB) provides governance of strategic programs to ensure their direction, management, delivery and progress reporting is sufficient and appropriate. Other project boards are created, as required, to actively monitor project performance and achieve resource and opportunity optimisation.



Current programs and projects delivered by the Transformation Office are focused on modernising the CCC's assets, systems, processes and workplace, in alignment with the CCC's strategic objectives. A high-level summary of significant strategic programs/projects is included below.

### **Nexus project**

In 2016–17, the CCC received funding of \$4.3 million over two financial years for a case management system. Earlier, the Keelty Review (2013) had made a series of recommendations to establish contemporary investigations work practices and case management facilities.

The Nexus case management solution is a new IT operating system (software and associated database) that will provide case management capabilities across all operational areas of the CCC. Nexus will streamline and automate operational processes, and support a consistent and integrated approach to case management practices across the agency. Nexus will deliver other efficiencies including system automation and workflow functionality (replacing some manual processes and activities), and it will become the single point of truth for operational performance reporting.

Nexus will be used by the majority of staff working at the CCC involved in investigations and operational projects. It will be a primary tool for investigators, lawyers, intelligence officers, support staff and management to access operational data and manage information. The CCC's additional financial investment in Nexus is estimated at \$1.36 million (up to 30 June 2021), including ongoing costs for which CBRC funding was not received.

Nexus delivery is expected by the end of 2020. The project is currently meeting its performance targets including agreed timeframes, budget and scope. It is intended to deliver staff training activities across September and October 2020 and a "go-live" date is scheduled in early November 2020.

The delivery of Nexus was previously within the scope of Program Unify. Program Unify was a medium-term program focused on improving organisational performance and investigation outcomes, and included delivery of the Operations Manual which defines how the CCC operates (i.e. its operational policies and procedures). The Operations Manual was finalised in February 2020.

Program Unify concluded on 30 June 2020 when the data analytics work stream transitioned to the agency's Digital Workplace Program. The transition occurred in order to ensure the agency could continue to evolve its data analytics capability by leveraging recent investments in cloud-based technologies.

### **Digital Workplace Program**

From 1 July 2018, the CCC received funding of \$16.3 million over four financial years (and approximately \$3.9 million ongoing funding per year) to address a range of organisational ICT risks and invest in new technology and digital tools.

The Digital Workplace Program (DWP) was subsequently established to deliver enhancements to the CCC's organisational resilience (through transitioning to cloud services), forensic computing processes and technologies, and online intelligence gathering processes and security. Outcomes are focused on:

- anywhere, anytime access to the CCC network on CCC devices with internet connection
- heightened security and alignment with Whole-of-Government ICT policies, and
- data-driven decisions powered by cloud-based artificial and business intelligence tools.

The CCC's approach to contemporary digital infrastructure aligns with the Whole-of-Government ICT policies and the adoption of a "cloud-first" approach. Significantly, transitioning critical systems and data to a cloud environment has helped the CCC to build and sustain organisational resilience during the threat of the COVID-19 pandemic. Recent enhancements have allowed CCC staff to mobilise to a



working from home model (i.e. to work from any location within a secure network), without compromise to service delivery.

DWP has also delivered a new digital Governance Risk and Compliance (GRC) system to improve the coordination, reporting and management of risks, incidents and broader compliance obligations, with electronic workflow functionality and easy access to policies and forms.

From 1 July 2020, DWP includes a data analytics work stream focused on positioning data as a strategic asset and improving capability across the agency. The CCC's investment in this area will deliver a cloud-based data warehouse (to support effective reporting and predictive analysis of operational data in the future), and staff training and development in analytical tools and technologies to uplift internal capability.

The Digital Workplace Program will continue throughout the 2020–21 financial year.



## **Annexure 2 – Submission: Inquiry into the Crime and Corruption Commission's performance of its functions to assess and report on complaints about corrupt conduct**

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**Crime and Corruption Commission**

**QUEENSLAND**



## Submission

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

January 2020



GPO Box 3123  
Brisbane QLD 4001

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

Tel.: **07 3360 6060**  
Toll-free: 1800 061 611  
(in Queensland outside  
Brisbane)

Fax: 07 3360 6333

mailbox@ccc.qld.gov.au  
www.ccc.qld.gov.au

ABN 32 164 714 360



Our Reference: AD-19-1034

28 January 2020

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

Dear Mr Nicholls,

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

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

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

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

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

Sincerely,

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

**A J MacSporran QC**  
Chairperson



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## Background to the submission

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

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

They are:

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

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

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



## Overview

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

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

### The CCC's corruption function

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

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

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

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

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

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

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1 s4, CC Act

2 s5(3), CC Act

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

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

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



## Assessment and prioritisation

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

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

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

## Reporting and disclosure of information

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

### The CCC may report in performing its functions.<sup>11</sup>

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

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

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

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6 s46, CC Act

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

8 s57, CC Act

9 s60, CC Act

10 s49, CC Act

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



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

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

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12 s4, CC Act



## Specific questions posed by the Committee

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

#### **The statutory distinction**

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

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

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

#### **35 How commission performs its corruption functions**

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

### **4.1.2 Assessment process for corruption matters**

#### **Assessment of corruption matters other than notification of significant events**

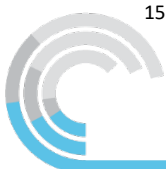
There are two steps in the assessment of a corruption matter:

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

#### **Preliminary assessment of corruption matters other than notification of significant events**

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

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



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

### **Jurisdiction**

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

### **Categorisation and Allocation**

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

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

### **Assessment of corruption matters categorised as High**

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

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

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

### **Referral to ELT for an assessment decision**

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

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

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

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

### **Referral to RoHCC for an assessment decision**

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



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

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

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

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

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

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

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

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

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

### **Assessment of corruption matters categorised as Medium or Low**

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

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

### **Medium matters**

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

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

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

### **Low matters**



The responsible officer undertakes the appropriate action.

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

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

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

### ***Step 1 – matter is received***

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

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

### ***Step 2 – Preliminary assessment***

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

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

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

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

<sup>16</sup> This consideration arises under s46(2)(g)

<sup>17</sup> See IM03 Appendix B – general assessment criteria for corruption investigations



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

### ***Step 3 – Categorisation of matter***

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

The factors for classifying a matter include:

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

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

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

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

### ***Step 4 – The assessment decision***

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

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

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



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

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

### ***Step 5 – Implementation***

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

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

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

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

The investigation is then undertaken as set out in MM01.

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

### **Not all investigative actions require statutory powers**

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

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

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



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

## Specific powers

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

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

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

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

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

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

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



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

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

## Statutory provisions

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

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

## Policies and procedures

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

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

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

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

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

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



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

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

As a general proposition, s60 of the CC Act governs the dissemination of information in the CCC's possession.<sup>22</sup> This section was recently amended to consolidate two previous sections<sup>23</sup> dealing with disclosure of information by the CCC, so as to streamline and clarify the process. Section 60 allows the CCC to give information to any entity the CCC considers appropriate.

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

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

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

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

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

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

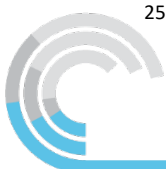
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22 Noting also that s49 requires, where an investigation has been conducted by the CCC and the matter is to be referred to another entity for prosecution or disciplinary action to be taken, that any such report be accompanied by all relevant information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

23 Section 60 and the now-repealed s62

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

25 PCCC public meeting transcript, 18 October 2019, p13



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

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

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

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

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

Section 60 of the CC Act provides:

##### **60 Use and disclosure of information, document or thing**

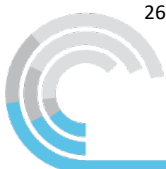
- (1) The commission may use any information, document or thing in the commission's possession in performing the commission's functions.
- (2) The commission may give intelligence information or other information to any entity the commission considers appropriate, including, for example—
  - (a) a unit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

*Note—*

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

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<sup>26</sup> PCCC public meeting transcript, 18 October 2019, p12, 1st par



Section 60 of the CC Act is a facilitative provision. Section 60(1) allows the CCC to make use of information in its possession in performing its functions. Section 60(2), allows the CCC to disclose to an entity information which the CCC considers appropriate. Section 60 in its present form consolidates the former ss60 and 62.<sup>27</sup> In its prior iteration, section 60 allowed dissemination of information in the CCC's possession to a law enforcement agency to investigate a potential offence, or to a unit of public administration if the commission considered that the unit had a proper interest in the information for the performance of its functions. The former section 62 allowed the commission to use and communicate information in its possession in the performance of its functions, and otherwise only disclose information with its express written consent. As stated previously, the amendment to s60 in November 2018 had the effect of consolidating and streamlining these two provisions.

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

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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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

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

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

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

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

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

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

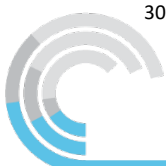
Order 8(2) provides that the Speaker is the representative of the House and its powers, rights and immunities and is to preside over its proceedings and maintain order in the House and the parliamentary precinct. The Clerk of the Parliament is the principal officer of the House<sup>29</sup> and, *inter alia*, is the custodian of the records of the House.<sup>30</sup>

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

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29 Standing Order 17

30 Standing Order 19



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

### **4.1 General principles**

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

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

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

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



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

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

These considerations are replicated in the Communications policy & procedure.

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

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

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

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

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

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<sup>37</sup> A copy of the media release is attached at Annexure A to this submission.

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

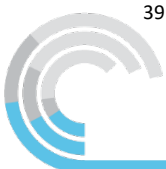
MMO1 of the Operations Manual details the requirement for the conduct and planning of a CCC investigation including the development of external publications as part of the delivery stage of a matter. Section 4.2.3 states that the delivery stage for a CCC investigation involves the organisation of information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

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

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

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<sup>39</sup> See above at footnote 17



## 4.3 Planning and approval

### 4.3.1 Planning

The external communication of information should be considered:

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

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

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

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

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

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

### 4.3.2 Approval to prepare a report or publication

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

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



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

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

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

## 4.4 Product delivery

### 4.4.1 Content development

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

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

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

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

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

### 4.4.2 Content review and approval

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



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

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

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

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

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

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

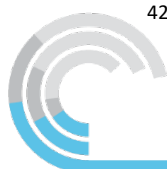
It should be noted that the issuing of lengthier and more explanatory media releases has not meant that the CCC has stopped or reduced the publication of detailed reports such as Operation Belcarra.

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

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

42 Again, see footnote 17 regarding this issue.



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

The above matters were all set out in evidence given by the Chairperson on 19 October 2018.<sup>48</sup>

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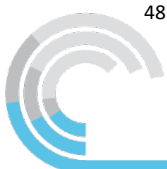
44 s46(2)(g)

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

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

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

48 PCCC public meeting transcript, at pp7-8



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

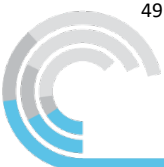
***10. The statutory basis for, and purpose of, the 'preliminary investigative stage or a feasibility study' referred to in evidence to the Committee at its public meeting on 18 October 2019***

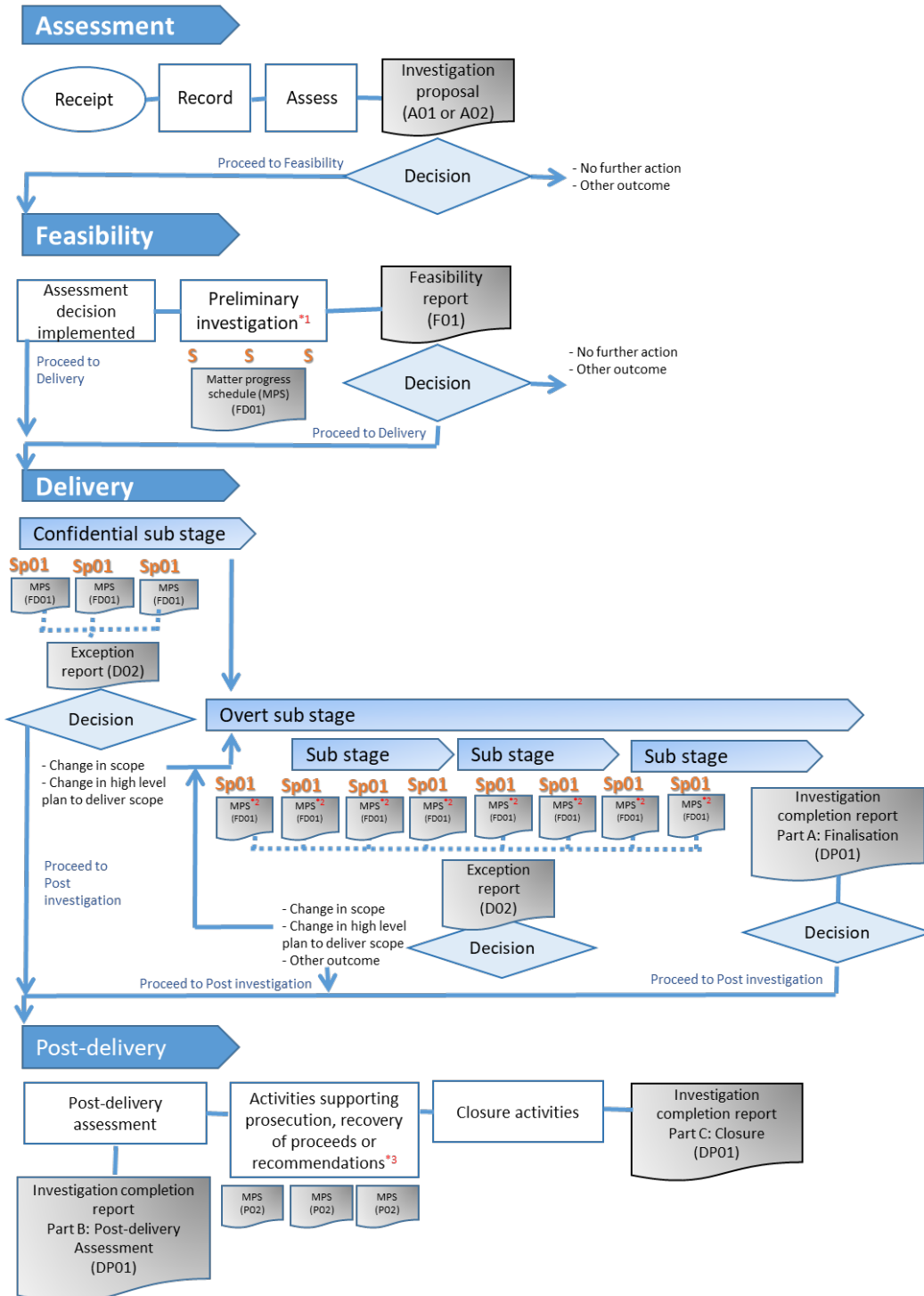
In evidence before the Committee at its public meeting on 18 October 2019, the Chairperson referred to '... a hybrid area which is a preliminary investigative stage or feasibility study' where 'further inquiries' may be made but before the 'investigation phase'.<sup>49</sup>

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

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49 p10

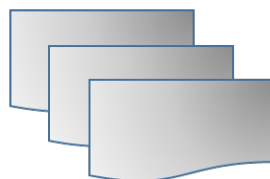




**Sprint action plan (Sp01)**



**Supporting documentation**



**Matter progress schedule**

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



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

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

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

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

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

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

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

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

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



## Annexure A

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### Media release: CCC finalises assessment of complaint by Mr Robbie Katter MP<sup>50</sup>

**Date published:** 27 September 2018

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

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

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

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

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

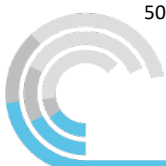
Corrupt conduct as it relates to parliamentarians is limited to conduct that would amount to a criminal offence.

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

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

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



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

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

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

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

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

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

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

**ENDS**

**Press Conference Details:**

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

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

**Who:** CCC Chairperson Alan MacSporran QC

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





## Crime and Corruption Commission

QUEENSLAND

### Contact details

✉ Crime and Corruption Commission  
GPO Box 3123, Brisbane QLD 4001

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

☎ 07 3360 6060 or  
Toll-free 1800 061 611  
(in Queensland outside Brisbane)

07 3360 6333

### More information

🌐 [www.ccc.qld.gov.au](http://www.ccc.qld.gov.au)

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### Contact details

✉ Crime and Corruption Commission  
GPO Box 3123, Brisbane QLD 4001

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

☎ 07 3360 6060 or  
Toll-free 1800 061 611  
(in Queensland outside Brisbane)

📄 07 3360 6333

### More information

🌐 [www.ccc.qld.gov.au](http://www.ccc.qld.gov.au)

@ [mailbox@ccc.qld.gov.au](mailto:mailbox@ccc.qld.gov.au)

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