



**Review of the operation of section
329 of the *Crime and Corruption Act*
2001**

Report No. 104, 56th Parliament

Parliamentary Crime and Corruption Committee

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Parliamentary Crime and Corruption Committee

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Abbreviations

ACLEI	Australian Commission for Law Enforcement and Integrity
ACT	Australian Capital Territory
Committee	Parliamentary Crime and Corruption Committee or one of its predecessor committees
CC Act	<i>Crime and Corruption Act 2001</i>
CCC or Commission	Crime and Corruption Commission
CEO	Chief Executive Officer, Crime and Corruption Commission
CJ Act	<i>Criminal Justice Act 1989</i>
CJC	Criminal Justice Commission
CM Act	<i>Crime and Misconduct Act 2001</i>
CMC	Crime and Misconduct Commission
DPP	Director of Public Prosecutions
Fitzgerald Inquiry	Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, Report of a Commission of Inquiry pursuant to Orders In Council
IBAC	Victorian Independent Broad-based Anti-corruption Commission
NSW ICAC	New South Wales Independent Commission Against Corruption
NSW Inspector	New South Wales Inspector of the NSW ICAC
NT ICAC	Northern Territory Independent Commissioner Against Corruption
Parliamentary Commissioner	Parliamentary Crime and Corruption Commissioner
PCCC	Parliamentary Crime and Corruption Committee
PCJC	Parliamentary Criminal Justice Committee
PCMC	Parliamentary Crime and Misconduct Committee
SA ICAC	South Australia Independent Commissioner Against Corruption
SA Reviewer	South Australian Reviewer of the SA ICAC
UPA	Unit of Public Administration
WA CCC	Western Australian Corruption and Crime Commission

Chair's foreword

This report presents a summary of the Parliamentary Crime and Corruption Committee's (the Committee) review of the operation of section 329 of the *Crime and Corruption Act 2001* (CC Act).

The Committee of the 55th Parliament commenced this inquiry following its work on the statutory review of the Crime and Corruption Commission (CCC) in 2016. The former Committee did not finalise its inquiry prior to the dissolution of the 55th Parliament. Accordingly, the current Committee resolved to continue with the inquiry in the 56th Parliament.

All public agencies have a duty to report suspected corrupt conduct to the CCC. Similarly, the CCC has a duty to notify suspected improper conduct, including corrupt conduct, to the Committee under section 329 of the CC Act.

The most significant amendment to section 329 occurred in 2014 when the threshold for reporting the suspected conduct of commission officers was broadened. At the time of the former Committee's 2016 statutory review of the CCC, it considered that it was too early to assess the effectiveness of the new section.

This Committee has had the benefit of reviewing the evidence gathered during the inquiry and has gained valuable operational knowledge of the provision since the Committee was formed in February 2018.

The Committee's view is that there is no compelling reason, at this stage, to amend section 329 of the CC Act. The Committee will, however, work with the CCC and the Parliamentary Crime and Corruption Commissioner to amend the protocols for notifying suspected improper conduct to the Committee to facilitate the efficient administration of the notification process, while ensuring that the CCC remains accountable to the Committee.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions. I also thank the Committee's secretariat, the Parliamentary Crime and Corruption Commissioner and the CCC.

I commend this report to the House.



Mr Tim Nicholls MP

Chair

Recommendations

Recommendation 1 **1**

The Committee recommends that the House notes the contents of this report.

Recommendation 2 **26**

The Committee recommends that section 329 of the *Crime and Corruption Act 2001*, which places a duty on the Crime and Corruption Commission to notify the Committee of suspected improper conduct by commissioners or commission officers, not be amended.

Recommendation 3 **30**

The Committee recommends that the House notes the Committee will work with the Crime and Corruption Commission and Parliamentary Crime and Corruption Commissioner to review the protocols governing notifications made under section 329 of the *Crime and Corruption Act 2001* and to make the amendments outlined in this report.

1. Introduction

1.1 Role of the Committee

The Parliamentary Crime and Corruption Committee (PCCC or Committee) is an all-party committee of the Queensland Legislative Assembly established under section 291 of the *Crime and Corruption Act 2001* (CC Act).

The Committee's functions under the CC Act are to:

- monitor and review the performance of the Crime and Corruption Commission's (Commission or CCC) functions
- report to the Legislative Assembly on matters relevant to the CCC, or the performance of its functions or exercise of its powers where appropriate, including matters referred to the Committee by the Legislative Assembly
- examine the CCC's annual report and other reports and report any matters to the Legislative Assembly
- participate in the selection, and removal from office, of the CCC Chairperson, Commissioners and Chief Executive Officer
- conduct five yearly reviews of the activities of the CCC and report to the Legislative Assembly
- periodically review the structure of the CCC and report to the Legislative Assembly, and
- issue guidelines and give directions to the CCC, as provided for in the CC Act.¹

It is through the Committee that the CCC is accountable to the Parliament and the people of Queensland.

1.2 Inquiry process

On 4 September 2017, the former Committee resolved to conduct an inquiry into the operation of section 329 of the CC Act, and the associated protocols (the Inquiry). The current Committee resolved, on 6 March 2018, to continue with the Inquiry and report to the Legislative Assembly.

Section 329 of the CC Act provides that the CCC must notify the Committee and Parliamentary Crime and Corruption Commissioner (the Parliamentary Commissioner) of suspected improper conduct by commissioners and commission officers. The Inquiry's terms of reference are:

- the definition of *improper conduct*, as defined at section 329(4) of the CC Act
- the operation of section 329 of the CC Act with respect to notifications received by the Committee and Parliamentary Commissioner, and
- other matters the Committee considers appropriate.

On 11 September 2017, the former Committee called for written submissions from members of the public and invited stakeholders. Submissions closed on 16 October 2017. The former Committee received 7 submissions (see **Appendix A**). On 8 June 2018, the Committee held a public hearing in Brisbane (see **Appendix B**).

Recommendation 1

The Committee recommends that the House notes the contents of this report.

¹ *Crime and Corruption Act 2001*, section 292.

2. History of the notification of improper conduct to the Committee

This section summarises the history which led to the notification requirements under current section 329 of the CC Act and the protocol for notifying improper conduct to the Committee.

2.1 The Fitzgerald Inquiry

In recommending the creation of the Criminal Justice Commission (CJC), the *Report of a Commission of Inquiry pursuant to Orders In Council, Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Fitzgerald Inquiry) emphasised the need for a body that was independent, but accountable.

This was to occur through the formation of a parliamentary committee to oversight the CJC; the CJC would be independent of the executive, however through the committee, accountable to the Parliament and the electorate.

Mr Fitzgerald stated that the standing parliamentary committee would provide a necessary, effective and sufficient oversight of the CJC's operations, methods and priorities 'against the background of the CJC's constitution and reinforced by the checks and balances within it'.² The report stated the committee should:

- have the power to:
 - formulate policies and guidelines to be obeyed by the CJC, and
 - direct the CJC to initiate and pursue investigations or to report to the Parliament
- be entitled to be informed of the basis on which any investigation or category of investigation is being undertaken, however
- not have the power to:
 - prevent or hinder any investigation by the CJC (or any of its organs or officers), or
 - do more than require the CJC to review a decision to carry out an investigation.³

2.2 Criminal Justice Act 1989

The *Criminal Justice Act 1989* (CJ Act) established the Parliamentary Criminal Justice Committee (PCJC) and set out its functions and powers 'to monitor and review the discharge of the functions of the Commission as a whole and of the Official Misconduct Division in particular...'.⁴ The Commission was obligated to report to the PCJC:

- (a) on a regular basis, in relation to the Commission's activities;
- (b) when instructed by the Parliamentary Committee to do so with respect to that matter, in relation to any matter that concerns the administration of criminal justice;
- (c) when the Commission thinks it appropriate to do so with respect to that matter, in relation to any matter that concerns the administration of criminal justice.⁵

2.3 Complaints about the CJC and its officers

The PCJC published a number of reports during the 1990s identifying concerns with the effectiveness of the accountability provisions as they applied to reporting matters to the Committee relating to complaints about the CJC and its officers.

² Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry pursuant to Orders In Council*, 3 July 1989, p 309.

³ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry pursuant to Orders In Council*, 3 July 1989, p 309.

⁴ *Criminal Justice Act 1989*, section 4.8(a).

⁵ *Criminal Justice Act 1989*, section 2.14(2).

After its commencement, the CJC established a mechanism to address complaints against CJC officers. Complaints were investigated by a Senior Crown Prosecutor (nominated by the Director of Prosecutions (DPP)) and senior police officers (nominated by the Police Commissioner). The appointed prosecutor and officer/s then provided a report to the Chairman of the CJC, the Attorney-General and the Minister for Police and Emergency Services (Police Minister).⁶ This mechanism, which was in place until amendments were made to the CJ Act in 1997, did not include a requirement to report complaints or concerns about CJC officers to the Committee.

2.3.1 PCJC Reports No. 20 and 25

In 1993, after the CJC did not advise the Committee of their investigation into the leaking of an intelligence report to the *Courier-Mail*, the Committee instructed the CJC to 'inform the Committee, in detail, every time it is necessary to institute an internal investigation'.⁷ Despite this instruction, the CJC failed to inform the Committee when an investigation was commenced in 1994 after media releases about confidential CJC matters appeared in *The Australian* and the CJC could not locate two copies of a monthly report provided to the Committee.⁸

While the Fitzgerald Inquiry report had recommended that the Committee be given the power to formulate policies and guidelines that the CJC be required to obey, this was not included in the CJ Act. Consequently, while the Committee could issue policies and guidelines, there was no obligation under the CJ Act requiring the CJC to follow those policies, guidelines, or in this instance, instructions. The loss of the reports was investigated under the arrangement between the CJC, Attorney-General and Police Minister. However, the Committee was also concerned with this arrangement, not least because it excluded the Committee which was the statutory body with the function of monitoring and reviewing the operations of the CJC.⁹

As a result, the Committee's inquiry into the loss of the monthly reports recommended that an express statutory obligation be included in the CJ Act requiring the CJC 'to report to the Parliamentary Committee in detail when it becomes necessary to conduct an [internal] investigation.'¹⁰

2.3.2 PCJC Report No. 26 – Three yearly review of the CJC

The PCJC's report on its three yearly review of the CJC, tabled in 1995, referred to the Committee's ongoing concern about the CJC's arrangement with the Attorney-General and Police Minister to investigate complaints against CJC officers. The report noted the provision of a report to the Attorney-General and Police Minister under the arrangement was contrary to the accountability process proposed in the Fitzgerald Inquiry report, which 'emphasised the need for the Commission to be divorced from executive government'.¹¹

The PCJC considered that it was the appropriate body to consider complaints against the CJC and recommended that the CJ Act be amended to include a formalised structure to handle complaints against the CJC. The PCJC also reiterated a previous recommendation that had not been implemented,

⁶ Criminal Justice Commission (CJC), *Annual Report 1989-1990*, p 12.

⁷ Parliamentary Criminal Justice Committee (PCJC), *Report of a Review of the CJC's use of its power under section 3.1 of the Criminal Justice Act 1989. Part B – Report, Conclusions and Recommendations*, Report No. 20, 23 September 1993, p lxxvii.

⁸ PCJC, *Report on the Inquiry into the CJC's failure to account for two copies of the November 1993 monthly report to the PCJC and related matters*, Report No. 25, 5 August 1994, pp 39-40.

⁹ PCJC, *Report on the Inquiry into the CJC's failure to account for two copies of the November 1993 monthly report to the PCJC and related matters*, Report No. 25, 5 August 1994, p 45.

¹⁰ PCJC, *Report on the Inquiry into the CJC's failure to account for two copies of the November 1993 monthly report to the PCJC and related matters*, Report No. 25, 5 August 1994, p 46.

¹¹ PCJC, *Report of a review of the activities of the Criminal Justice Commission pursuant to section 118(1)(f) of the Criminal Justice Act 1989*, Report No. 26, 6 February 1995, p 203.

that the CJC should be obligated under the Act to report to the Committee in detail whenever a complaint of misconduct was made against the CJC or CJC officers.¹²

The PCJC recommended that the term misconduct should have the same definition as provided in the CJ Act. The CJC's role included investigating alleged or suspected 'misconduct' by the police and 'official misconduct' by persons holding appointments in other units of public administration (UPA). Official misconduct was defined under the CJ Act, however, misconduct was not otherwise defined.¹³

2.3.3 Protocol between PCJC and CJC

At a meeting between the CJC and the PCJC on 17 May 1996, it was agreed that a protocol would be settled and published in related policy and procedure documents. The protocol would provide for the CJC to advise the Committee about an allegation requiring an internal investigation at the same time it was being referred to the DPP under the existing arrangement.¹⁴

The CJC's Annual Report for 1995-96 noted the amended arrangement, however also stated that a 'retired judge or person of similar standing may be engaged to conduct any preliminaries required.'¹⁵

2.3.4 PCJC Report No. 38 – Accountability of the CJC to the PCJC

The PCJC expressed concerns in 1997 with the CJC conducting preliminary activities before notifying it of an investigation into a CJC officer.¹⁶ It was noted that the CJC had not discussed this preliminary step with the Committee, and after obtaining clarification from the CJC, the Committee expressed its dissatisfaction with the process. Not least, because:

- under the existing arrangements the Committee may never be advised of an internal investigation undertaken by the CJC in circumstances where a decision was made not to refer the matter to the DPP, and
- it placed the responsibility on the CJC itself to determine whether an allegation reasonably raises a suspicion of misconduct requiring an investigation (giving rise to questions about the independence of that assessment).¹⁷

The report also expressed dissatisfaction with other arrangements that the CJC had put in place in June 1995 to manage allegations relating to the disclosure of confidential information.¹⁸ These matters were not subject to the existing arrangements which applied to allegations of misconduct, but rather, were to be referred to a retired judge or person of similar standing to determine if further investigation was required, and if so, to conduct that investigation.¹⁹ A report would be provided to the Committee after the investigation.

¹² PCJC, *Report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the Criminal Justice Act 1989*, Report No. 26, 6 February 1995, p 206. Note: The term 'misconduct' was not used in the previous recommendation.

¹³ A definition of *misconduct* was included in the *Police Service Administration Act 1990*.

¹⁴ PCJC, *Report on the accountability of the CJC to the PCJC*, Report No. 38, 9 May 1997, pp 55-56.

¹⁵ CJC, *Annual Report 1995-1996*, p 87.

¹⁶ PCJC, *Report on the accountability of the CJC to the PCJC*, Report No. 38, 9 May 1997, pp 54-57.

¹⁷ Concerns were also raised as to whether the CJC had the authority to undertake this assessment depending on the nature of the 'preliminaries'. Section 2.20(2)(e)(ii) of the CJ Act (later section 29), appears to restrict the ability of the CJC to investigate official misconduct of its staff, as it applies to investigations of persons holding an appointment in other UPAs. The CJC also advised the Committee that they did not constitute a UPA under the CJ Act (see Report on the Inquiry into the CJC's failure to account for two copies of the November 1993 monthly report to the PCJC and related matters, Report No. 25, 5 August 1994, pp 24-29).

¹⁸ PCJC, *Report on the accountability of the CJC to the PCJC*, Report No. 38, 9 May 1997, pp 57-59.

¹⁹ CJ Act contained an express provision at section 6.7 (later section 132) relating to the disclosure of confidential information, separate from the misconduct provisions.

The Committee recommended that the existing system of the CJC assessing and investigating complaints against the CJC and CJC officers should be amended to require that all complaints be reported to the Committee in the first instance, and immediately when an allegation was made. The Committee would refer the complaint to the DPP for preliminary assessment.

The DPP could:

- investigate the matter, if it involved misconduct or official misconduct
- refer the matter to the CJC to investigate on the DPP's behalf, if it related to minor misconduct, or
- refer it back to the CJC to investigate, if it was a breach of discipline matter.

Once finalised, the DPP would advise the Committee of the outcome.²⁰

The Committee made its recommendation subject to modification in the event that a separate recommendation establishing the Parliamentary Commissioner role was adopted.

2.4 Criminal Justice Amendment Act 1997

In reference to the recommendation arising from the Committee's 1995 three yearly review (as noted at section 2.3.2), the Attorney-General and Minister for Justice stated:

*I propose in the Criminal Justice Legislation Amendment Bill to amend the Criminal Justice Act to give effect to this recommendation and establish a formal role for the PCJC in dealing with complaints about the Commission.*²¹

In 1997, amendments to the CJ Act resulted in:

- the establishment of the Parliamentary Commissioner role to conduct investigations of the CJC and complete other oversight functions
- the insertion of section 118A that stated guidelines issued by the Committee must be complied with by the CJC, and
- the insertion of section 118F into the CJ Act relating to the referral of concerns by the Committee.²²

The insertion of section 118F provided a legislative basis for the Committee to receive and consider complaints against the CJC and its officers, and formalised the structure for handling such complaints. However, the new provision did not require the referral of matters to the Committee which did not arise through a complaint.

2.4.1 Protocols for dealing with misconduct complaints against CJC officers

In September 1999, the Committee noted with reference to the 1997 amendment to the CJ Act that:

*... despite the significant changes made by that amending legislation, several issues remained unresolved in respect of the manner in which complaints against the CJC and its officers were to be handled, including most importantly, the CJC's obligations in respect of the assessment and investigation of such complaints and the provision of information to the committee regarding such assessment and investigation.*²³

²⁰ PCJC, *Report on the accountability of the CJC to the PCJC*, Report No. 38, 9 May 1997, pp 59-60.

²¹ Ministerial response to the PCJC reports numbered 34, 38 and 39, 8 October 1997, p 34.

²² The provisions commenced 8 December 1997. Note, section 118F was the precursor provision to section 295 of the CC Act.

²³ PCJC, *Report on protocols for dealing with misconduct complaints against personnel of the Criminal Justice Commission*, Report No. 48, 17 September 1999, p 2.

As a result, the first protocols were developed between the Committee and the CJC for dealing with misconduct complaints against CJC officers. The protocols were not tabled as formal guidelines made under section 118A of the CJ Act, with the Committee instead determining to monitor the operation and effectiveness of the protocols.²⁴

The protocol required the CJC to inform the Committee as soon as practicable of all complaints against its staff, particularly where there was a reasonable suspicion of misconduct. Misconduct was defined to include official misconduct as well as conduct that:

- (a) *is disgraceful, improper or unbecoming an officer; or*
- (b) *shows unfitness to be or continue as an officer; or*
- (c) *does not meet the standard of conduct the community reasonably expects of an officer (including any failure by an officer of the CJC to act independently, impartially, fairly and in the public interest).*²⁵

The protocol:

- provided that when notifying the Committee, the CJC was to outline its assessment, any required steps proposed or taken immediately to preserve or obtain evidence, and whether the CJC proposed to use coercive or intrusive statutory powers to further a preliminary inquiry
- set out the powers of the Committee under section 118F of the CJ Act after being notified, and the approach where the Parliamentary Commissioner undertook the investigation
- stated the CJC was required to keep a register of complaints containing any complaint of misconduct (including those which did not raise a reasonable suspicion of misconduct, were considered to be frivolous, and/or lacked substance or credibility when made anonymously), and
- stated the register was to be provided to the Committee on a weekly basis and was to be made available for the Parliamentary Commissioner's inspection or audit.²⁶

2.5 Crime and Misconduct Act 2001 and duty to notify Committee of improper conduct

In October 2001, the Crime and Misconduct Bill was introduced. During the second reading debate the then Premier stated:

*To date, the CJC has been the only public agency that has not been subject to the requirements of the Criminal Justice Act 1989. There is a need to remedy this. Like any other unit of public administration, the commission and individual officers within the commission should be held accountable for misconduct or official misconduct. To date the CJC has reported such matters to the parliamentary committee pursuant to an agreed protocol. This arrangement is now given legislative force, requiring the commission to report to its committee all conduct of a commission officer that the chairperson suspects may involve improper conduct.*²⁷

²⁴ PCJC, *Report on protocols for dealing with misconduct complaints against personnel of the Criminal Justice Commission*, Report No. 48, 17 September 1999, pp 9-10.

²⁵ PCJC, *Report on protocols for dealing with misconduct complaints against personnel of the Criminal Justice Commission*, Report No. 48, 17 September 1999, p 8.

²⁶ PCJC, *Report on protocols for dealing with misconduct complaints against personnel of the Criminal Justice Commission*, Report No. 48, 17 September 1999, pp 11-17.

²⁷ Hon. P. D. Beattie MP, Premier, Queensland Parliament, Record of Proceedings, 16 October 2001, p 2821.

Consequently, the *Crime and Misconduct Act 2001* (CM Act) included section 329 (commencing on 1 January 2002), which placed a duty on the Chairperson of the Crime and Misconduct Commission (CMC) to notify the Committee, in the required manner and time set by the Committee, of 'all conduct of a commission officer that the chairperson suspect involves, or may involve, improper conduct'.²⁸

A commission officer included former officers, and improper conduct meant disgraceful or improper conduct in an official capacity or in a private capacity (where the conduct seriously and adversely reflects on the CMC), or conduct that would be official misconduct if the officer were an officer in a UPA.²⁹

Official misconduct was defined in section 15 of the CM Act as conduct, if proved, which could be a criminal offence or a disciplinary breach providing reasonable ground for terminating a person's services where they are or were the holder of an appointment.³⁰

2.5.1 Parliamentary Crime and Misconduct Committee reviews

In November 2003, the Parliamentary Crime and Misconduct Committee (PCMC) noted satisfaction with the new procedures under section 329.³¹ In its three yearly review of the CMC in 2004, the PCMC further noted that the requirements under section 329 provided a safeguard against the risk of CMC officers not dealing with allegations of misconduct against other CMC officers appropriately.³² It further stated:

*... the effectiveness of the section 329 process depends on a culture within the organisation which encourages concerns or allegations of improper conduct to be promptly brought to the attention of senior officers and the Chairperson. In the Committee's experience, such a culture generally exists. Under the current Protocols for Dealing with Misconduct Complaints against personnel of the Criminal Justice Commission any complaint of misconduct received by the CMC Officer must be referred immediately to the Director, Complaint Services, who in turn must refer the complaint to the Chairperson for consideration.*³³

The report indicated that the protocols, which were agreed to before the introduction of CM Act, were under review at that time.³⁴

From this time through to 2013, the PCMC indicated that it was satisfied with the operation of section 329 and that it was receiving 'frank and prompt advice from the CMC Chairperson concerning conduct of CMC officers which the Chairperson suspects involved, or may involve, "improper conduct"'.³⁵

²⁸ *Crime and Misconduct Act 2001*, section 329(1).

²⁹ *Crime and Misconduct Act 2001*, section 329(2).

³⁰ *Crime and Misconduct Act 2001*, section 15.

³¹ Parliamentary Crime and Misconduct Committee (PCMC), *Report on Activities*, Report No. 63, 25 November 2003, pp 4-5.

³² PCMC, *Three Year Review of the Crime and Misconduct Commission*, Report No. 64, 15 March 2004, pp 13-14.

³³ PCMC, *Three Year Review of the Crime and Misconduct Commission*, Report No. 64, 15 March 2004, p 14.

³⁴ An amendment to section 329 was recommended in the review to clearly apply to former officers of the Queensland Crime Commission (QCC) and the CJC, to reflect that former commission officers would include those from the two organisations which had been combined to form the CMC (Three Year Review of the Crime and Misconduct Commission, Report No. 64, 15 March 2004, pp 106-107).

³⁵ PCMC, *Annual Report 2011-12*, Report No. 88, p. 4. See also the Committee's annual reports for the years 2003-04 to 2010-11. Note, the 2012-13 Annual Report (Report No. 94) also stated that 'at present' the Committee received frank and prompt advice at page 4, however, it also notes the outcome of the inquiry into the release and destruction of the Fitzgerald Inquiry documents at pages 2 and 3.

The PCMC also noted that while a decision in regard to disciplinary action rested with the CMC Chairperson, the Committee monitored the CMC's processes and was kept informed at all times of the Chairperson's intended actions.³⁶

The three year reviews published in 2006, 2009 and 2012 did not identify any concerns with the operation of section 329.³⁷ Additionally, an inquiry conducted by the Committee into the CMC's investigation of suspected improper conduct of a CMC employee in January 2013 did not identify any concerns with the notification of the matter to the Committee under section 329.³⁸

The updated *Protocols governing the investigation of improper conduct complaints against officers of the Crime and Misconduct Commission*³⁹ that applied during this period set out:

- the circumstances in which an officer had to refer a complaint of improper conduct to the Director, Integrity Services, when the Director was to refer a matter to the Chairperson, and, when the Chairperson was to notify the Committee under section 329
- what information the Chairperson had to include in a notification, including the steps that had or would be taken to preserve/obtain evidence or preserve the integrity of the CMC's operations (no other actions could be taken by the CMC until the Committee responded to the notification)
- the obligations of the Committee, including responding to a notification as soon as practicable, and outlining any actions the Committee proposed be taken
- how the Parliamentary Commissioner may be involved in a complaint, and
- the requirements for a register, which is to record the complaints considered by the Chairperson for notification under section 329 (including those not referred) and is to be made available for inspection and/or audit by the Parliamentary Commissioner.⁴⁰

2.6 Release and destruction of Fitzgerald Inquiry documents

In March 2013, the CMC advised the Committee that there had been a public release of confidential Fitzgerald Inquiry documents and that other original confidential inquiry documents, which were required to be held in perpetuity, had been destroyed. The Committee subsequently conducted an inquiry into the release and destruction of the documents.

The Chairperson of the CMC was advised of the public release of the Fitzgerald Inquiry documents in May 2012. There was no internal investigation or report into the release in accordance with the CMC's governance policies and procedures, and no mention of the release of the documents was made to the Committee until March 2013, including during joint meetings. The destruction of Fitzgerald Inquiry documents was identified in March 2013 and it was after this discovery that the Committee was advised of both the release and destruction of the documents.

³⁶ PMC, *Annual Report 2011/2012*, Report No. 88, p. 4. See also the Committee's annual report for 2010-11.

³⁷ PCMC, *Three Year Review of the Crime and Misconduct Commission*, Report No. 71, 9 October 2006, *Three Year Review of the Crime and Misconduct Commission*, Report No. 73, 20 April 2009 and *Three Year Review of the Crime and Misconduct Commission*, Report No. 86, 10 May 2012.

³⁸ PCMC, *Report on the Crime and Misconduct Commission's investigation of suspected improper conduct of a Crime and Misconduct Commission employee*, Report No. 89, 29 January 2013.

³⁹ *Protocols governing the investigation of improper conduct complaints against officers of the Crime and Misconduct Commission*, November 2010. The Protocols were initially approved on 4 December 2006.

⁴⁰ *Protocols governing the investigation of improper conduct complaints against officers of the Crime and Misconduct Commission*, November 2010, pp 2-5.

The report into the investigation did not find any concerns with the procedural mechanisms in place to manage risks relating to the reporting of matters to the Committee. However, it was noted that the mechanisms were not effective, if matters are not reported to the Committee under the protocol.⁴¹

The Committee noted that section 329 required the Chairperson of the CMC to report to the Committee on a matter where they suspect the conduct of an officer involves or may involve improper conduct, and that this was a question which was ultimately left to the Chairperson to consider.⁴² In this respect, the Chairperson indicated the circumstances did not result in him considering that the release of the documents should be reported under section 329.⁴³ The Committee did not agree with the Chairperson, concluding that the 'Chairperson of the CMC failed to report this matter to the Committee under either section 329 of the *Crime and Misconduct Act 2001* or under his general reporting obligations to assist the Committee in its oversight of the CMC.'⁴⁴

As a result of the failure of the CMC to advise the Committee, the Committee determined that section 329 was inadequate. In this respect, the Committee considered:

- there was no guidance as to what amounted to 'disgraceful or improper conduct' in an official or private capacity, neither term was defined and the assessment was left to the Chairperson
- while improper conduct could be official misconduct which was defined under the CM Act, and if proved, based on a question of fact and law, would constitute a criminal offence, where the conduct may constitute a disciplinary breach that might provide reasonable grounds for terminating a person's services, this was a matter of assessment, and
- the obligation was to report 'conduct' requiring the Chairperson to undertake initial investigations to ascertain if there has been the relevant conduct; it would be more appropriate for the requirement to report to occur once an allegation of conduct was made.⁴⁵

The Committee concluded:

Section 329 in its current form leaves too much dependent upon the value assessments by the Chairperson. It is only upon assessment by the Chairperson that an obligation arises to report to the Committee.

*This section should be amended so that it places a clear duty on the CMC Chairperson to notify the Committee of improper conduct or conduct that might amount to improper conduct. The definition should also expressly include conduct that amounts to, or might amount to, serious maladministration.*⁴⁶

Drawing on advice provided by the Acting Parliamentary Commissioner,⁴⁷ the Committee recommended that the reporting obligation to the Committee be extend to:

⁴¹ PCMC, *Inquiry into the CMC's release and destruction of Fitzgerald Inquiry documents*, Report No. 90, 5 April 2013, p 56.

⁴² PCMC, *Inquiry into the CMC's release and destruction of Fitzgerald Inquiry documents*, Report No. 90, 5 April 2013, p 58.

⁴³ PCMC, *Inquiry into the CMC's release and destruction of Fitzgerald Inquiry documents*, Report No. 90, 5 April 2013, p 59.

⁴⁴ PCMC, *Inquiry into the CMC's release and destruction of Fitzgerald Inquiry documents*, Report No. 90, 5 April 2013, p 60.

⁴⁵ PCMC, *Inquiry into the CMC's release and destruction of Fitzgerald Inquiry documents*, Report No. 90, 5 April 2013, p 89.

⁴⁶ PCMC, *Inquiry into the CMC's release and destruction of Fitzgerald Inquiry documents*, Report No. 90, 5 April 2013, p 89.

⁴⁷ Davis, Peter J SC, *Re Inquiry into the Release of Fitzgerald Inquiry documents (and other matters): the width and operation of section 329 of the Crime and Misconduct Act 2001*, 28 March 2013, p 3.

- allegations of unauthorised disclosure of information/material that is confidential whether or not the disclosure breaches legislation
- instances where a register is not up to date or complete, or required documents are not on file or filed incorrectly
- inadvertent or deliberate exercise of a power without required authorisation
- inadvertent or deliberate failure to strictly comply with a policy or procedural guidelines of the CMC
- allegations of an improper use of a power, and
- any significant matters (as defined under the CMC's Corporate Governance Framework).⁴⁸

Further, the Committee considered that section 329 should be inclusive of all definitions so that reference to another external document was not required, such as the CMC's Code of Conduct or another Act.

The Government supported the Committee's recommendation.⁴⁹

The Parliamentary Commissioner also raised a concern that section 329, as it read, assumed that the CMC officer was identified and there may be instances where the identity of the person was unknown. The Commissioner noted that such conduct should also be reported to the Committee in order for it to determine what action should be undertaken.⁵⁰ This matter was not addressed in the Committee's report.

2.6.1 PCMC Report No. 93 – Report on the CMC's handling of suspected improper conduct

In September 2013, the Committee reported on a CMC investigation into a section 329 matter.⁵¹ The Committee requested that the CMC conduct the investigation in September 2010. The CMC did not report back to the Committee until May 2013 (after the Committee followed up twice).

The Committee's report expressed dissatisfaction with the CMC's delay in conducting the investigation and stated:

*The report provided lacked information and was not sufficient for the Committee to satisfy itself that the CMC had investigated this matter properly, thoroughly or appropriately. Further, the Committee considered that the CMC report did not adhere to the agreed protocols governing the CMC's investigation of improper conduct complaints.*⁵²

The Committee also expressed significant concerns that information contained in the CMC's investigation report contained information relevant to Committee's inquiry into the release and destruction of the Fitzgerald Inquiry documents, which had not been provided during that inquiry. These conclusions were supported by a Parliamentary Commissioner's report, however, the Committee made no recommendations in this regard in the report.

⁴⁸ PCMC, *Inquiry into the CMC's release and destruction of Fitzgerald Inquiry documents*, Report No. 90, 5 April 2013, p 90.

⁴⁹ Queensland Government Response, *Parliamentary Crime and Misconduct Committee – Inquiry into the Crime and Misconduct Commission's release and destruction of Fitzgerald Commission of Inquiry documents and Review of the Crime and Misconduct Act 2001 and Related Matters by the Honourable Ian Callinan AC and Professor Nicholas Aroney*, p 16.

⁵⁰ Davis, Peter J SC, *Re Inquiry into the Release of Fitzgerald Inquiry documents (and other matters): the width and operation of section 329 of the Crime and Misconduct Act 2001*, 28 March 2013, p 4.

⁵¹ PCMC, *Inquiry into the Crime and Misconduct Commission's handling of suspected improper conduct*, Report No. 93, 11 September 2013.

⁵² PCMC, *Inquiry into the Crime and Misconducts Commission's handling of suspected improper conduct*, Report No. 93, 11 September 2013, p 4.

2.7 2014 amendments to the Crime and Corruption Act 2001

The Government undertook to implement a number of the recommendations in the Committee's report on its inquiry into the release and destruction of the Fitzgerald Inquiry documents, as well as those arising from a review of the CM Act and related matters undertaken by the independent advisory panel.⁵³ This culminated in the *Crime and Misconduct and Other Legislation Amendment Act 2014* being passed on 7 May 2014.

The *Crime and Corruption Act 2001* (the CC Act) included an amended section 329 which commenced on 1 July 2014. The amended section included the additional types of improper conduct recommended in the Committee's Report No. 90 (except for the requirement to notify the Committee of any significant matters as defined under the CMC's Corporate Governance Framework).

The responsibility for notifying the Committee shifted from the Chairperson alone to include other persons depending on the subject officer (including where the section 329 matter relates to the Chairperson), and required that a matter be reported regardless of the intention of the person who engaged in the notifiable conduct. Notification was also required to be made to the Parliamentary Commissioner as well as the Committee, with the Parliamentary Commissioner being given an own motion investigation power under section 314 of the CC Act.

In September 2014, updated *Protocols governing the reporting of improper conduct complaints against officers of the Crime and Corruption Commission* were agreed by the Committee and the CCC. The new protocols generally updated the previous version of the protocols agreed in November 2010. The updates included how the protocol operates where the Parliamentary Commissioner decides to commence an own motion investigation and reflected an additional power provided to the Parliamentary Commissioner under the amendments to the CC Act.⁵⁴

2.8 Committee's 2016 statutory review of the CCC

The Committee's 2016 statutory review of the CCC noted that the amendments to section 329 led to a significant increase in notifications to the Committee. The Committee further stated '[g]iven the changes to the notification requirements are still relatively new, the Committee considers that it is too early to make an assessment as to whether there ought to be any refining of this provision'.⁵⁵

3. Protocols for notifying the Committee

As noted above, the Committee and the CCC (and the respective predecessor bodies) have agreed to protocols setting out the approach to notifying the Committee of matters relating to the conduct of CCC officers. The first protocol was established in 1999 between the then PCJC and CJC.⁵⁶

⁵³ Queensland Government Response, *Parliamentary Crime and Misconduct Committee – Inquiry into the Crime and Misconduct Commission's release and destruction of Fitzgerald Commission of Inquiry documents and Review of the Crime and Misconduct Act 2001 and Related Matters by the Honourable Ian Callinan AC and Professor Nicholas Aroney*, tabled 3 July 2013.

⁵⁴ *Protocols governing the reporting of improper conduct complaints against officers of the Crime and Corruption Commission*, 9 September 2014, p 4.

⁵⁵ PCCC, *Review of the Crime and Corruption Commission*, Report No. 97, 30 June 2016, p 108. Note that other related amendments to the Act were recommended to ensure a Commission officer who makes a public interest disclosure does not engage in improper conduct under section 329.

⁵⁶ PCJC, *Report on protocols for dealing with misconduct complaints against personnel of the Criminal Justice Commission*, Report No. 48, 17 September 1999.

The protocols have been revised a number of times since 1999 largely to take into account amendments to the legislation. The latest version of the protocols were agreed to in April 2017.⁵⁷ Broadly, all versions of the protocols have included:

- a requirement to report a suspicion of misconduct and/or improper conduct
- a requirement on the notifier to:
 - assess the information and make a determination as soon as practicable, and
 - if satisfied the matter is notifiable, to report the matter to the Committee and Parliamentary Commissioner as soon as practicable; the notice is to include advice as to any steps taken and/or proposed to preserve evidence, obtain evidence that would otherwise not be obtainable without immediate action or preserve the integrity of the CCC's operations
- reference to:
 - what matters the Committee can consider in determining next steps (as submitted by the notifier), and
 - what steps the Committee can take after receiving a notification in accordance with section 295 of the CC Act (formerly section 118F)
- the role of the Parliamentary Commissioner if they undertake an investigation (and what support is required)
- the role of the CCC if it undertakes an investigation (and what support/information is to be provided, including back to the Committee), and
- the requirements with regard to maintaining a register, including specified information about all conduct considered by a notifier (whether notified to the Committee and Parliamentary Commissioner or not) and the circumstances in which the register is to be made available to the Committee or Parliamentary Commissioner.

Since the 2006 protocols were agreed, the protocols have also expressly stated that the CCC may take no further action in relation to a matter notified until the Committee provides a response, other than action to preserve evidence, to obtain evidence otherwise not obtainable without immediate action or to preserve the integrity of the CCC's operations.⁵⁸

⁵⁷ *Protocols governing the investigation of improper conduct complaints against officers of the Crime and Misconduct Commission*, 4 December 2006; *Protocols governing the reporting of improper conduct complaints against officers of the Crime and Corruption Commission*, 9 September 2014; and *Protocols governing the reporting of improper conduct complaints against officers of the Crime and Corruption Commission*, April 2017.

⁵⁸ See section 6.6 of the 4 December 2006 Protocols; section 2(B)(a) of the September 2014 Protocols; and section 10 of the April 2017 Protocols. See also Crime and Corruption Commission, submission 2, p 8.

4. Jurisdictional comparison

No other jurisdiction within Australia has the same obligation or approach to managing complaints about officers of their respective anti-corruption/integrity bodies, as Queensland.

4.1 Requirement to notify

4.1.1 No requirement to notify or an ability to receive and consider complaints

4.1.1.1 *Tasmania: Integrity Commission*

The jurisdiction with the least mechanisms for reporting matters to an oversight body is Tasmania. While having an oversight function, the Joint Standing Committee on Integrity has no authority under the legislation to investigate or review complaints or investigations undertaken by the Integrity Commission.⁵⁹ There is no equivalent body similar to a Parliamentary Commissioner, Inspector, Inspectorate or Reviewer in Tasmania.

4.1.2 No requirement to notify, but an ability to receive and consider complaints

4.1.2.1 *New South Wales: Independent Commission Against Corruption*

The New South Wales Independent Commission Against Corruption (NSW ICAC) is not required to report complaints, including about the NSW ICAC, to a parliamentary committee⁶⁰ or the New South Wales Inspector of the NSW ICAC (the NSW Inspector).

However, the NSW Inspector can consider complaints received about the NSW ICAC. One of the principle functions of the NSW Inspector is to 'deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission...'⁶¹ The Inspector may also deal with conduct amounting to maladministration, this can include action or inaction of a serious nature which is contrary to law; unreasonable, unjust, oppressive or improperly discriminatory; or, based wholly or partly on improper motives.⁶²

4.1.2.2 *South Australia: Independent Commissioner Against Corruption*

The South Australia Independent Commissioner Against Corruption (SA ICAC) is not required to report complaints to a parliamentary committee⁶³ or the South Australian Reviewer of the SA ICAC (SA Reviewer), including complaints about SA ICAC.

However, the role of the SA Reviewer extends to considering complaints about the SA ICAC to the extent the SA Reviewer can conduct reviews into relevant complaints that the Reviewer receives.⁶⁴ Relevant complaints are defined as any complaint made in the prescribed form that relates to 'an abuse of power, impropriety or other misconduct on the part of the Commissioner or employees of the Commissioner or of the Office...'⁶⁵

⁵⁹ *Integrity Commission Act 2009* (Tas), section 24.

⁶⁰ *Independent Commission Against Corruption Act 1988* (NSW), section 64.

⁶¹ *Independent Commission Against Corruption Act 1988* (NSW), section 57B(1)(b).

⁶² *Independent Commission Against Corruption Act 1988* (NSW), section 57B(1)(c) and 57B(4).

⁶³ *Parliamentary Committees Act 1991* (SA), section 150.

⁶⁴ *Independent Commissioner Against Corruption Act 2012* (SA), Schedule 4, section 2(1)(b).

⁶⁵ *Independent Commissioner Against Corruption Act 2012* (SA), Schedule 4.

4.1.3 Requirement to notify of complaints received about the anti-corruption body and an ability to receive and consider complaints

4.1.3.1 Victoria: Independent Broad-based Anti-corruption Commission

In Victoria, the Independent Broad-based Anti-corruption Commission (IBAC) is required to disclose to the Victorian Inspectorate complaints or notifications made to the IBAC which involve the conduct of the IBAC or its officers.⁶⁶ The requirement to disclose extends to persons who were IBAC officers at the time of the conduct in question. There is no requirement, however, to disclose such matters to the parliamentary Integrity and Oversight Committee.

The IBAC must also refer a complaint, or notification, to the Victorian Inspectorate for investigation where the IBAC considers the subject matter of the complaint or notification is relevant to the performance of the duties and functions or the exercise of powers of the Victorian Inspectorate and it would be more appropriate for the complaint, or notification, to be investigated by the Victorian Inspectorate.⁶⁷

In the last three financial years, the Victorian Inspectorate received the following number of complaints about the IBAC or IBAC personnel: 36 in 2016-17, 36 in 2017-18 and 34 in 2018-19.⁶⁸ These figures do not differentiate between complaints and notifications referred from the IBAC or IBAC personnel, and complaints and notifications made directly to the Victorian Inspectorate by members of the public.

Legislation provides that a person may make a complaint about the IBAC or its officers in respect of the performance or exercise, failure to perform or exercise, or purported performance or exercise by the IBAC or its officer of the duties, powers and/or functions conferred on them in relation to any matter.⁶⁹ This includes complaints that conduct was contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, based on improper motives, an abuse of power or otherwise improper.⁷⁰ The legislation (including the regulations) does not define these terms.

4.1.3.2 Northern Territory: Independent Commissioner Against Corruption

In the Northern Territory, a new Independent Commissioner Against Corruption (NT ICAC) was established in November 2018.

The legislation does not require the NT ICAC to report complaints to a parliamentary committee or provide for a committee to receive and consider complaints about the NT ICAC.⁷¹ However, provision is made for oversight of the NT ICAC by an Inspector, whose function includes receiving and dealing with complaints about the NT ICAC and its staff.⁷² Additionally, where the NT ICAC receives such a complaint, it must be referred to the Inspector within 14 days.⁷³

The Inspector also has the power to recommend that the relevant Minister appoint an acting ICAC⁷⁴ to investigate the conduct of the NT ICAC, the ICAC's office or staff if:

- (a) *A complaint raises allegations of improper conduct of the ICAC, the ICAC's Office or a member of ICAC staff; or*

⁶⁶ *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), section 71.

⁶⁷ *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), section 73.

⁶⁸ Victorian Inspectorate, *2016-17 Annual Report*, p 12, Victorian Inspectorate, *2017-18 Annual Report*, p 12, and Victorian Inspectorate, *2018-19 Annual Report*, p 33.

⁶⁹ *Victorian Inspectorate Act 2011* (Vic), section 43(1).

⁷⁰ *Victorian Inspectorate Act 2011* (Vic), section 43(4).

⁷¹ *Independent Commissioner Against Corruption Act 2017* (NT), section 5.

⁷² *Independent Commissioner Against Corruption Act 2017* (NT), section 135.

⁷³ *Independent Commissioner Against Corruption Act 2017* (NT), section 138.

⁷⁴ *Independent Commissioner Against Corruption Act 2017* (NT), section 121(2).

(b) *The Inspector becomes aware (in an evaluation or dealing with a complaint or otherwise) of information that, if true, would tend to show improper conduct of the ICAC, the ICAC's Office or a member of ICAC staff.*⁷⁵

Improper conduct under the NT legislation includes corrupt conduct, misconduct, unsatisfactory conduct, anti-democratic conduct, conduct constituting an offence against the Act and/or other secondary conduct engaged in by a person that relates to the other types of conduct.⁷⁶ While broad, the threshold for improper conduct appears high to the extent the different types of improper conduct as defined, must:

- variously constitute an offence or a reasonable basis for dismissing or terminating a public officer's services, or involve illegality, impropriety, negligence, incompetence or intentionality
- must be connected to public affairs in relation to corrupt conduct, misconduct and unsatisfactory conduct, and
- have a substantial and/or significant result or impact with respect to unsatisfactory conduct.⁷⁷

4.1.3.3 Australian Capital Territory: Integrity Commission

On 29 November 2018, the Australian Capital Territory (ACT) Legislative Assembly passed the *Integrity Commission Act 2018* (ACT), which established the Integrity Commission. The Integrity Commission partially commenced operation on 1 July 2019. It is envisaged that the Integrity Commission will start to receive complaints from 1 December 2019.⁷⁸

The legislation does not require the Integrity Commission to report complaints to a parliamentary committee or provide for a committee to receive and consider complaints about the commission.

Similar to the NT ICAC, the *Integrity Commission Act 2018* (ACT) appoints an Inspector to oversee the Integrity Commission. One of the Inspector's functions is to receive, investigate and assess complaints about the Integrity Commission and its officers.⁷⁹ The Act also provides that the Integrity Commission must refer corruption complaints about commissioners or commission staff to the Inspector.⁸⁰

The *Integrity Commission Act 2018* (ACT) includes analogous provisions to the NT legislation, setting out the circumstances in which an Inspector may recommend to the Speaker that a special investigator be appointed to investigate potential corrupt conduct of the commissioner or an officer.⁸¹

The *Integrity Commission Act 2018* (ACT) defines *corrupt conduct* as conduct that could constitute a criminal offence, a serious disciplinary offence or reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of, a public official and which is included in the general nature of corrupt conduct (the types of conduct that amount to corrupt conduct).⁸²

⁷⁵ *Independent Commissioner Against Corruption Act 2017* (NT), section 140.

⁷⁶ *Independent Commissioner Against Corruption Act 2017* (NT), section 9.

⁷⁷ *Independent Commissioner Against Corruption Act 2017* (NT), sections 9 to 16.

⁷⁸ ACT Government, Chief Minister, Treasury and Economic Development Directorate website, 'ACT Integrity Commission' <https://www.cmtedd.act.gov.au/industrial-relations-and-public-sector-management/act-integrity-commission>.

⁷⁹ *Integrity Commission Act 2018* (ACT), sections 226 and 227.

⁸⁰ *Integrity Commission Act 2018* (ACT), section 105.

⁸¹ *Integrity Commission Act 2018* (ACT), section 273.

⁸² *Integrity Commission Act 2018* (ACT), section 9.

4.1.4 Requirement to notify concerns about an officer and ability to receive and consider complaints

4.1.4.1 Western Australia: Corruption and Crime Commission

In Western Australia, the Corruption and Crime Commission (WA CCC) is not required to report complaints to the parliamentary committee.⁸³ The functions and powers of the committee in Western Australia are determined by the agreement of the Houses of the Western Australian parliament, and such agreement has not been made.

The Western Australian legislation establishes the Parliamentary Inspector of the Corruption and Crime Commission⁸⁴ and the WA CCC is required to:

*... notify the Parliamentary Inspector whenever it receives an allegation that concerns, or may concern, an officer of the Commission and at any time the Parliamentary Inspector may review the Commission's acts and proceedings with respect to its consideration of such an allegation.*⁸⁵

Where the WA CCC notifies the Parliamentary Inspector of a matter, the Parliamentary Inspector can decide to remove the matter from the WA CCC for the Inspector's consideration and determination.⁸⁶ Otherwise, the WA CCC continues to have responsibility for the matter.

In 2015, after experiencing difficulties in reaching an understanding on matters to be notified, the Parliamentary Inspector and WA CCC agreed to a protocol setting out the parameters for the WA CCC to refer matters to the Parliamentary Inspector. The subject of the protocol includes:

*... any matter or information received in any way by the Commission which concerns, or may concern, the conduct, by act or omission, publicly or privately, of an officer of the Commission in an adverse manner in that it may, directly or indirectly, reflect adversely upon the person's fitness as an officer of the Commission.*⁸⁷

Based on its wording, the requirement includes matters or information that are pre-existing. It also covers matters and information that the WA CCC only becomes aware of internally (and not from an external source).⁸⁸

The protocol does not apply to matters or information where someone is expressing dissatisfaction with a decision made by the WA CCC while performing their duties.⁸⁹ It also appears to exclude matters that are minor to the extent such conduct would not 'reflect adversely upon the person's fitness as an officer of the Commission'.

Finally, the protocol provides that where the Parliamentary Inspector does not decide to remove a matter from the WA CCC, the WA CCC is to advise the Parliamentary Inspector of the WA CCC's final determination on the matter.⁹⁰

⁸³ *Corruption, Crime and Misconduct Act 2003* (WA), section 216A.

⁸⁴ *Corruption, Crime and Misconduct Act 2003* (WA), section 188.

⁸⁵ *Corruption, Crime and Misconduct Act 2003* (WA), section 196(4).

⁸⁶ *Corruption, Crime and Misconduct Act 2003* (WA), sections 196(5) and 196(6) to 196(8).

⁸⁷ Joint Standing Committee on the Corruption and Crime Commission, *The Operation of section 196(4) of the Corruption and Crime Commission Act 2003*, Report No. 20, June 2015, Annexure A, point 1.

⁸⁸ Joint Standing Committee on the Corruption and Crime Commission, *The Operation of section 196(4) of the Corruption and Crime Commission Act 2003*, Report No. 20, June 2015, Annexure A, point 6.

⁸⁹ Joint Standing Committee on the Corruption and Crime Commission, *The Operation of section 196(4) of the Corruption and Crime Commission Act 2003*, Report No. 20, June 2015, Annexure A, point 2.

⁹⁰ Joint Standing Committee on the Corruption and Crime Commission, *The Operation of section 196(4) of the Corruption and Crime Commission Act 2003*, Report No. 20, June 2015, Annexure A, point 5.

The 2016-17 Annual Report of the Parliamentary Inspector states that the WA CCC notified the Parliamentary Inspector of 54 matters during the 2016-17 year.⁹¹ The report states that the matters disclosed related to 'misconduct, unfair or incorrect use of powers, inadequate investigation or investigation of complaints made to the Commission, alleged incompetence, and alleged corruption of Commission officers'.⁹²

The functions of the Parliamentary Inspector also includes dealing 'with matters of misconduct on the part of the Commission, officers of the Commission and officer of the Parliamentary Inspector'.⁹³ This extends to the receipt of complaints, noting that the functions of the Parliamentary Inspector may be performed in respect to a matter reported to the Parliamentary Inspector.⁹⁴

Misconduct under the legislation relates to a public officer:

- corruptly acting or failing to act in the performance of their functions
- corruptly taking advantage of their office or employment to obtain a benefit for themselves or another person, or to cause detriment to another person
- committing an offence punishable by two or more years imprisonment while acting or purporting to act in their official capacity, or
- engaging in specified conduct that constitutes or could constitute a disciplinary offence providing reasonable ground for termination of a person's office or employment as a public service officer under the *Public Service Management Act 1994 (WA)*.⁹⁵

4.1.4.2 Commonwealth: Australian Commission for Law Enforcement and Integrity

At the Commonwealth level, a joint parliamentary committee has the duty to monitor and review performance by the Australian Commission for Law Enforcement and Integrity (ACLEI) Integrity Commissioner of their function. This role does not, however, extend to receiving complaints or being notified of matters involving ACLEI staff. The relevant legislation expressly excludes the committee from investigating a corruption issue, including within ACLEI, and reconsidering decisions or recommendations relating to a corruption issue considered by ACLEI, or a corruption issue considered by ACLEI or a special investigator.⁹⁶

Under the legislation, matters relating to ACLEI staff are oversights by the Minister (the Attorney-General), to the extent:

- the Integrity Commissioner is obligated to notify the Minister in writing as soon as practicable when they become aware of any ACLEI corruption issues that relate to the conduct of another person who is or was a staff member of ACLEI⁹⁷
- ACLEI staff are similarly obligated to report corruption issues to the Minister that relate to the conduct of the Integrity Commissioner,⁹⁸ and

⁹¹ Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report for the year ended 30 June 2017*, p 4.

⁹² Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report for the year ended 30 June 2017*, pp 4-5.

⁹³ *Corruption, Crime and Misconduct Act 2003 (WA)*, section 195(1)(b).

⁹⁴ *Corruption, Crime and Misconduct Act 2003 (WA)*, section 195(2)(a).

⁹⁵ *Corruption, Crime and Misconduct Act 2003 (WA)*, section 4.

⁹⁶ *Law Enforcement Integrity Commissioner Act 2006 (Cth)*, section 215.

⁹⁷ *Law Enforcement Integrity Commissioner Act 2006 (Cth)*, section 153.

⁹⁸ *Law Enforcement Integrity Commissioner Act 2006 (Cth)*, section 153.

- where ACLEI staff become aware of a corruption issue relating to the conduct of other staff (other than the Integrity Commissioner), they are required to write to the Integrity Commissioner as soon as practicable.⁹⁹

The failure to notify in all these stated circumstances constitutes an offence under the legislation, with a penalty of imprisonment for 6 months.¹⁰⁰

A person who is not an ACLEI staff member may also refer an allegation or information that raises an ACLEI corruption issue to the Minister.¹⁰¹

Where the Minister is notified, or otherwise becomes aware, of an ACLEI corruption issue, the Minister may refer the ACLEI corruption issue to the Integrity Commissioner for investigation (except where the conduct in question related to the Integrity Commissioner or an Assistant Integrity Commissioner), authorise a special investigation (an independent investigation), or decide to take no further action.¹⁰² The Minister is required to notify ACLEI of their decision.

Where an investigation is conducted, the Minister and party who referred the matter (where they elect to) are to be informed of an investigation's progress.¹⁰³ When the investigation is complete the Minister is to be provided with the investigation report, and the party who referred the matter and the person subject to the investigation are to be advised about the outcome of the investigation.¹⁰⁴

An ACLEI corruption issue is defined under the legislation to be an issue whether a person is or was a staff member of ACLEI who previously or currently is or may be, or may at any time in the future engage in corrupt conduct.¹⁰⁵ Further, an allegation or information may raise an ACLEI corruption issue even in circumstances where the identity of the person is unknown, uncertain or not disclosed in the allegation of information.

Corrupt conduct is defined, as it applies to ACLEI staff (while they are ACLEI staff), to include where the staff's conduct:

- involves or is engaged in for the purpose of abusing their office
- perverts or is engaged in for the purpose of perverting the course of justice, or
- having regard to the duties and powers of the ACLEI staff member, involves or is engaged in for the purpose of corruption of any other kind.¹⁰⁶

ACLEI is required to include in their annual report ACLEI corruption issues investigated during the period. The ACLEI reports from 2006-07 through to 2016-17 record a total of four investigations, describing the type of corruption issue subject to the investigation and the outcome of the investigation (including any recommendations, action taken or disciplinary, criminal or civil penalty proceedings and the outcome).¹⁰⁷ One investigation was reported in the 2008-09 and 2015-16 annual reports respectively, and two investigations were reported in the 2011-12 annual report. These statistics referred to completed investigations, there is no indication of the number of issues that the Minister was notified of in total across years (including matters where no investigation was conducted).

⁹⁹ *Law Enforcement Integrity Commissioner Act 2006* (Cth), section 174(5).

¹⁰⁰ *Law Enforcement Integrity Commissioner Act 2006* (Cth), section 174.

¹⁰¹ *Law Enforcement Integrity Commissioner Act 2006* (Cth), section 154.

¹⁰² *Law Enforcement Integrity Commissioner Act 2006* (Cth), section 156.

¹⁰³ *Law Enforcement Integrity Commissioner Act 2006* (Cth), sections 155, 161 and 168.

¹⁰⁴ *Law Enforcement Integrity Commissioner Act 2006* (Cth), sections 163 to 165, 170, 172 and 173.

¹⁰⁵ *Law Enforcement Integrity Commissioner Act 2006* (Cth), section 8.

¹⁰⁶ *Law Enforcement Integrity Commissioner Act 2006* (Cth), section 6.

¹⁰⁷ *Law Enforcement Integrity Commissioner Regulations 2017*, regulation 16.

4.2 Comparison of Queensland with other jurisdictions which have notification requirements

4.2.1 Management of complaints about the anti-corruption body

In a number of jurisdictions complaints will be accepted by an oversight body about the respective anti-corruption body. Some jurisdictions also require that the oversight body be notified when the anti-corruption body receives such complaints.¹⁰⁸

In Queensland, the Committee receives complaints from members of the public under section 295 of the CC Act. While there is no discrete obligation on the CCC to advise the Committee where it receives complaints from the public under the CC Act, such matters will be notified to the Committee under section 329, where the CCC assesses that the conduct raises a suspicion of improper conduct.

4.2.2 Notifying the oversight body of conduct and/or issues relating to the anti-corruption body

Queensland is one of three jurisdictions in Australia that requires the relevant anti-corruption body to notify an oversight body of certain conduct and/or issues relating to their staff, whether identified through a complaint or otherwise by the anti-corruption body.

In Queensland, the requirement to notify is to the Committee and the Parliamentary Commissioner (under section 329 of the CC Act). In Western Australia, the requirement to notify is to the Parliamentary Inspector. At the Commonwealth level, the requirement to report is to the relevant Minister, the Attorney-General.

4.2.3 Matters that are notifiable to an oversight body

4.2.3.1 Reporting threshold

In Queensland, a matter is notifiable where the notifier (the chairperson, deputy chairperson or chief executive officer) suspects conduct of a person involves, or may involve, improper conduct.¹⁰⁹ In forming a suspicion, the notifier cannot take into account whether or not the conduct was inadvertent.¹¹⁰

Western Australia has a lower threshold for reporting a matter to the Parliamentary Inspector to the extent the WA CCC is required to notify the Parliamentary Inspector where an allegation is made.

Similarly, the reporting threshold for the Integrity Commissioner and ACLEI staff is when the relevant officer becomes aware of a relevant issue.

4.2.3.2 Scope

In Queensland, the obligation to notify the Committee and the Parliamentary Commissioner applies to improper conduct, this extends to matters such as non-compliance with a policy or procedural guidelines set by the CCC, inadvertent or deliberate, and that is not minor or trivial in nature.¹¹¹ It also refers to conduct of an officer in their private capacity that reflects seriously and adversely on the CCC.¹¹²

The conduct that must be notified to the Parliamentary Inspector in Western Australia, set out in the protocol between the Parliamentary Inspector and WA CCC, is of more serious nature than in Queensland. Notifiable conduct concerns, or may concern, an act or omission (whether public or private) by a WA CCC officer that may directly or indirectly, reflect adversely on a person's fitness as a WA CCC officer.

¹⁰⁸ Victoria, the Northern Territory and the ACT.

¹⁰⁹ *Crime and Corruption Act 2001*, section 329(1).

¹¹⁰ *Crime and Corruption Act 2001*, section 329(3).

¹¹¹ *Crime and Corruption Act 2001*, section 329(4)(g).

¹¹² *Crime and Corruption Act 2001*, section 329(4)(b).

The conduct that ACLEI is required to refer to the Minister relates to more serious matters again, requiring that the conduct, or possible conduct, in question link to corrupt conduct. Corrupt conduct includes conduct that involves or is for the purpose of abuse of the ACLEI staff member's office, perverting the course of justice, or corruption of any other kind (having regard to the duties and powers of an ACLEI staff member). While not expressly referring to private conduct of an ACLEI staff member, it may be possible that conduct in a private capacity of an ACLEI staff member constitutes corrupt conduct under the legislation, for example where perverting the course of justice.

An ACLEI corruption issue covers past and current conduct, and also includes future conduct under the legislation. However, notifiable conduct does not appear to extend to a staff members conduct prior to joining ACLEI; to engage in corrupt conduct under the legislation the conduct must occur while a person is an ACLEI staff member.¹¹³ The ACLEI legislation also requires notification of ACLEI corruption issues to the Minister in circumstances where the person the subject of an allegation is unknown, uncertain or not disclosed. This is not expressly stated in the legislation or protocols that apply in Queensland and Western Australia, however, it can be inferred.

4.2.4 Practical matters

4.2.4.1 Timeframe for reporting

In all three jurisdictions, the anti-corruption body is required to advise the oversight body as soon as practicable or reasonably practicable and in writing.

With respect to ACLEI, this requirement applies after the Integrity Commissioner or ACLEI staff member become aware of the ACLEI corruption issue. In Western Australia, the requirement applies when the WA CCC receives a matter or information. In Queensland, a notification must be made as soon as is practicable after the relevant notifier has formed the required suspicion of improper conduct. This results in delays in the Committee being notified, compared to the other two jurisdictions, as the notifier must first form a suspicion of improper conduct.

There are no legislative consequences for an officer of the CCC or the WA CCC failing to notify their respective oversight bodies of a notifiable matter. However, if the Integrity Commissioner or ACLEI staff fail to report a notifiable matter they may be subject to six months imprisonment. Given the nature of matters to be reported to the Minister by ACLEI, applying a penalty for failing to report does not appear unreasonable.

4.2.4.2 After a notification is made

In Queensland, after the CCC notifies the Committee and Parliamentary Commissioner under section 329 of the CC Act, the CCC cannot take action on a matter until the Committee responds to the CCC. This excludes steps taken by the CCC to preserve evidence, obtain evidence otherwise not obtainable without immediate action, and/or to preserve the integrity of the CCC's operations.¹¹⁴

The Commonwealth and Western Australian legislation (or protocol) does not expressly restrict ACLEI or the WA CCC from considering a matter after it has been referred to the relevant oversight body. However, this could be implied in light of the possible steps that the oversight bodies can take in response to a notification. In Western Australia, after reviewing a notified matter, the Parliamentary Inspector may notify the WA CCC that the matter is removed for the Parliamentary Inspector's consideration and determination. At the Commonwealth level, the Minister may refer the matter back to ACLEI for investigation, authorise the conduct of a special investigation or decide to take no further action.

¹¹³ *Law Enforcement Integrity Commissioner Act 2006* (Cth), section 6.

¹¹⁴ *Protocols governing the reporting of improper conduct complaints against officers of the Crime and Corruption Commission*, April 2017, p 4.

Where the Parliamentary Inspector in Western Australia does not remove a notified matter from the WA CCC and where the Minister refers an ACLEI corruption issue to ACLEI or for special investigation, the WA CCC and ACLEI are to provide the Parliamentary Inspector and the Minister with a final determination or report after they finish considering the matter.

In Queensland, the Committee can similarly authorise the CCC to investigate and report to the Committee on a matter referred to it.¹¹⁵

5. Key issues raised during the Inquiry

This section discusses the key issues raised during the Inquiry and during the Committee’s recent consideration of section 329 notifications.

5.1 Amendments to section 329 – improper conduct and duty to notify

Prior to the 2014 amendments to the CC Act, section 329 of the CM Act provided:

329 Duty of chairperson to notify improper conduct to the parliamentary committee

(1) The chairperson must notify the parliamentary committee, in the way, and within the time, required by the committee, of all conduct of a commission officer that the chairperson suspects involves, or may involve, improper conduct.

(2) In this section—

“improper conduct”, of a commission officer, means—

(a) disgraceful or improper conduct in an official capacity; or

(b) disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the commission; or

(c) conduct that would, if the officer were an officer in a unit of public administration, be official misconduct.

Currently, section 329 of the CC Act provides:

329 Duty to notify the parliamentary committee and the parliamentary commissioner of improper conduct

*(1) The person mentioned in column 1 of the following table (the **notifier**) must notify the parliamentary committee and the parliamentary commissioner of all conduct of a person mentioned opposite the notifier in column 2 of the table that the notifier suspects involves, or may involve, improper conduct.*

<i>Column 1</i>	<i>Column 2</i>
<i>Chairperson</i>	<i>commissioner other than the chairperson chief executive officer</i>
<i>deputy chairperson</i>	<i>chairperson</i>
<i>chief executive officer</i>	<i>commission officer other than a commissioner or the chief executive officer</i>

¹¹⁵ *Crime and Corruption Act 2001*, section 295(2)(b).

(2) A notification under subsection (1) must be given in the way and within the time required by the parliamentary committee or parliamentary commissioner.

(3) In forming a suspicion for subsection (1) in relation to the conduct of a person, the notifier must disregard the intention of the person in engaging in the conduct.

(4) In this section—

improper conduct, of a person, means—

(a) disgraceful or improper conduct in an official capacity; or

(b) disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the commission; or

(c) conduct that would, if the person were an officer in a unit of public administration, be corrupt conduct; or

(d) disclosure of confidential information without the required authorisation, whether or not the disclosure contravenes an Act; or

(e) failure to ensure—

(i) a register kept by the commission under an Act is up to date and complete; or

(ii) all required documentation is on a file kept by the commission and correctly noted on a register kept by the commission under an Act; or

(f) exercise of a power without obtaining the required authorisation, whether inadvertently or deliberately; or

(g) noncompliance with a policy or procedural guideline set by the commission, whether inadvertently or deliberately, that is not of a minor or trivial nature; or

(h) exercise of a power conferred on the person under this or another Act in a way that is an abuse of the power.

5.2 Number of notifications received since 2013

The number of notifications to the Committee and Parliamentary Commissioner made immediately prior to, and following, the 2014 amendment to section 329 of the CC Act is outlined below:

2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
13	13	28	12	24	27

5.3 Definition of improper conduct

As noted by the Parliamentary Commissioner, there is no express definition of *improper conduct* in the CC Act. Instead, section 329 of the CC Act provides a number of general subsections (a), (b) and (c) with respect to improper conduct, followed by a series of subsections (d) to (h), which provide specific details of conduct that amounts to improper conduct.¹¹⁶

5.3.1 Submitters' views

Some submitters, including the former Parliamentary Commissioner and the Queensland Whistleblower's Action Group considered that the definition of *improper conduct* should be amended to improve clarity and reduce uncertainty.¹¹⁷

¹¹⁶ Parliamentary Crime and Corruption Commissioner (Parliamentary Commissioner), submission 4, p 13.

¹¹⁷ Submissions 3 and 6.

For example, submitters considered that the terms *disgraceful* and *improper conduct* were vague terms, open to subjective interpretation and may not capture ‘unbecoming’ conduct. It was suggested that these terms be further defined in the CC Act.¹¹⁸

The CCC and Parliamentary Commissioner considered that the term *improper conduct* was generally well understood and a more explicit definition was not required.¹¹⁹

The Parliamentary Commissioner considered that the term *improper conduct* had ‘... served the Committee, Commissioner and CCC reasonably well to date’ and there ‘... is no need for any change’.¹²⁰ The Parliamentary Commissioner noted that the term was used in other Acts and stated that:

*... although “improper conduct” can be considered a nebulous term, all in all it has served the Commission and other entities throughout Australian reasonably well. In instances in which its meaning was unclear, there are a number of cases including High Court decisions which can assist in its interpretation.*¹²¹

5.4 Scope of conduct to be notified

As discussed earlier, the definition of *improper conduct* and the scope of the requirement on the CCC to notify the Committee was expanded by the insertion of subsections (d) to (h) into section 329 of the CC Act, following the PCMC’s Report on the release and destruction of Fitzgerald Inquiry documents.

5.4.1 Submitter’s views

The CCC considers that the breadth of the current definition of *improper conduct* has achieved the intended purpose of focussing CCC managers’ minds on the standard of conduct expected of Commission officers and raising CCC staff’s awareness of the obligations to report under section 329 of the CC Act.

The CCC stated that the introduction of the Chief Executive Officer (CEO), with responsibility to the Commission, to oversee the effective administration of the organisation also means that there is now significant and effective administrative oversight. The CCC noted that ‘This is an advantage that was not enjoyed by the Commission prior to 2014’.¹²²

However, the CCC considers that the amendments to section 329 have created ‘an undoubted administrative burden on both the CCC and, we expect, the Committee’.¹²³

The CCC considers that the definition of *improper conduct* is very broad and captures:

*... activities which are not uncommon in either the public or private sector, such as an inadvertent failure to follow a policy (which is a guide only) or mistakenly failing to complete a register of information.*¹²⁴

In addition, the CCC highlighted that when forming a suspicion of *improper conduct*, the notifier must disregard the intention of the person engaging in the conduct (section 329(3) of the CC Act). The CCC stated that this effectively removed any discretion for the notifier and resulted in ‘... every innocent or inadvertent mistake (other than minor or trivial) becoming notifiable conduct’.¹²⁵

The CCC considered that the very wide application of the definition of *improper conduct* resulted in ‘... an immediate and significant increase in administrative processes’ and the Committee receiving

¹¹⁸ Whistleblowers’ Action Group, submission 3, p 1; Mr Kevin Lindeberg, submission 1, p 2.

¹¹⁹ Crime and Corruption Commission (CCC), public hearing transcript, Brisbane, p 13.

¹²⁰ Parliamentary Commissioner, submission 4, p 8.

¹²¹ Parliamentary Commissioner, submission 4, p 8.

¹²² CCC, submission 2, p 6.

¹²³ CCC, submission 2, pp 3 and 6.

¹²⁴ CCC, submission 2, p 5.

¹²⁵ CCC, submission 2, p 5.

‘unprecedented detail about matters which would likely never be required to be reported to in any other department or body’. The CCC also stated that capturing ‘mainly low-level failures to adhere to policies ... adds little in terms of oversight beyond the obvious premise that commission officers will make mistakes’.¹²⁶

The CCC considered that the disproportionate resources presently being applied to relatively minor matters is something that requires careful examination and suggested that the breadth of the conduct required to be notified should be refined.¹²⁷

This position is supported by the former Parliamentary Commissioner who stated ‘It may well be that the section [section 329] now captures conduct which could be classified as minor or mere failures to adhere and not necessarily the kind of conduct the amendments to the section were aimed at’.¹²⁸

The Bar Association of Queensland (BAQ) also raised concerns about the broadening of the definition of *improper conduct*. The BAQ considered that the obligation to notify should be based on reasonable suspicion and not suspicion per se.¹²⁹ The BAQ raised further concerns about the 2014 amendment to section 329 of the CC Act going beyond the original intent of the provision – that was, to reflect the reporting obligations of other agencies to notify the Commission of corrupt conduct.¹³⁰

The Parliamentary Commissioner agreed that the insertion of subsections (d) to (h) into section 329 of the CC Act resulted in the Committee receiving notifications about managerial and procedural issues in relation to the CCC.¹³¹ The Parliamentary Commissioner stated:

*There is no doubt that the consequences of the Commission not complying with subsections (d) to (h) can, on occasions, have serious consequences. However the fact that the Committee is required to monitor such conduct could be of concern in the event that the notifications become significant in number.*¹³²

During the public hearing, the Parliamentary Commissioner advised:

*My view is now, having observed and been in the role for some time, that the point has been reached where there should be some decrease in the bureaucratic and administrative type notifications. That is mainly because the CCC—I should imagine out of an abundance of caution—are forwarding matters that really were not meant to be within the purview of either the committee or the commissioner. I think it is an excessive use of your time, my time and resources when they should be directed towards more important matters.*¹³³

The Parliamentary Commissioner recommended that the definition of *improper conduct* at section 329(4) be amended as follows:

improper conduct, of a person, means—

(a) disgraceful or improper conduct in an official capacity; or

(b) disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the commission; or

(c) conduct that would, if the person were an officer in a unit of public administration, be corrupt conduct; or

¹²⁶ CCC, submission 2, p 5 and public hearing transcript, Brisbane, 8 June 2018, p 9.

¹²⁷ CCC, submission 2, p 6 and public hearing transcript, Brisbane, 8 June 2018, p 9.

¹²⁸ Mr Paul Favell, submission 6, p 3.

¹²⁹ Bar Association of Queensland, submission 5, pp 9-10.

¹³⁰ Bar Association of Queensland, submission 5, p 10.

¹³¹ Parliamentary Commissioner, submission 4, p 8.

¹³² Parliamentary Commissioner, submission 4, p 8.

¹³³ Parliamentary Commissioner, public hearing transcript, Brisbane, 8 June 2018, p 1.

(d) disclosure of confidential information without the required authorisation, whether or not the disclosure contravenes an Act, **that is not of a minor or trivial nature**; or

~~(e) failure to ensure—~~

~~(i) a register kept by the commission under an Act is up to date and complete; or~~

~~(ii) all required documentation is on a file kept by the commission and correctly noted on a register kept by the commission under an Act; or~~

(f) exercise of a power without obtaining the required authorisation, whether inadvertently or deliberately, **that is not of a minor or trivial nature**; or

(g) **repeated** noncompliance with a policy or procedural guideline set by the commission, whether inadvertently or deliberately, that is not of a minor or trivial nature; or

(h) exercise of a power conferred on the person under this or another Act in a way that is an abuse of the power.¹³⁴

[Suggested amendments are highlighted in bold]

The CCC contended that the version of section 329 of the CC Act, immediately prior to amendment in 2014, would adequately address the need for transparency and accountability, and should be adopted with a suitable protocol.¹³⁵

In doing so, the CCC noted that some of the matters notified to the Committee under section 329(4)(d) to (h) also fell within section 329(4)(a) to (c), as they relate to disgraceful or improper conduct in an official or private capacity or conduct that would be considered corrupt conduct in a UPA. The CCC considered that such matters would, therefore, still be notified to the Committee, if section 329(4)(d) to (h) were omitted.

Committee comment

The Committee has considered the concerns raised by submitters about the broad scope of the requirement to notify the Committee and the Parliamentary Commissioner of suspected improper conduct by CCC commissioners or officers. However, the Committee does not consider that amendments to section 329 of the CC Act are required at this stage.

The Committee acknowledges that the 2014 amendments to section 329 of the CC Act resulted in an increase in the number of notifications. The Committee also accepts that a number of the notifications received post-2014 have related to what may be referred to as bureaucratic, administrative or procedural matters.

The Committee does not consider, however, that its consideration of such matters is an excessive use of its time and resources. The Committee notes that in 2017-18 and 2018-19 it received 24 and 27 notifications respectively, however, the notification numbers received since 2013 has fluctuated considerably each year, for example 12 notifications were received in 2016-17.

The Committee notes that since 1 July 2014 it has been notified of, and considered, a number of incidences of suspected improper conduct under the broader scope provided by sections 329(4)(d) to (h), for example:

- poor record keeping at the CCC leading to delays in the provision of legal advice
- leaking of confidential information to journalists
- the delegation of financial accountability functions without the authority under the CC Act, and

¹³⁴ Parliamentary Commissioner, public hearing transcript, Brisbane, 8 June 2018, pp 1-2.

¹³⁵ CCC, submission 2, p 7.

- the loss of a Telecommunications Intercept Warrant.

The Committee considers that it is appropriate for the CCC to notify the Committee of such matters, and that the Committee's consideration of these matters forms an important part of its monitoring and reviewing function under the CC Act.

The Committee notes that while some matters notified to the Committee may appear minor or trivial, they provide the Committee with information about potential systemic issues in the CCC. In this regard, the Committee's consideration of notifications, including under section 329(4)(d) to (h), have resulted in recommendations to improve the CCC's processes and procedures.

Furthermore, the CCC is the peak integrity body in Queensland responsible for overseeing the entire Queensland public sector, and is bestowed with coercive powers to discharge its functions. The Committee, therefore, considers that it is appropriate for the CCC to be subject to enhanced transparency and accountability mechanisms, compared to the rest of the public sector.

The Committee notes the CCC's recent compliance with section 329 of the CC Act, and agrees that the relationship between the Committee and CCC has improved since 2014. However, the Committee does not consider that there is a compelling reason to amend the legislation.

The Committee will continue to monitor the operation of section 329 and will further consider whether any amendments are required as part of its five year statutory review of the operation of the CCC due for completion in 2021.

The Committee notes the CCC and Parliamentary Commissioner's concerns about the administrative impact of notifications. The Committee agrees that changes should be made to the protocols to facilitate the efficient administration of the notification process, while ensuring the CCC remains accountable to the Committee for its actions (see section 5.7).

Recommendation 2

The Committee recommends that section 329 of the *Crime and Corruption Act 2001*, which places a duty on the Crime and Corruption Commission to notify the Committee of suspected improper conduct by commissioners or commission officers, not be amended.

5.5 Minor or trivial matters

Section 329(4)(g) of the CC Act provides that the relevant notifier must notify the Committee of noncompliance with a policy or procedural guideline set by the CCC, whether inadvertently or deliberately, that is not of a minor or trivial nature.

The relevant notifier is not required to notify the Committee and Parliamentary Commissioner of 'minor' or 'trivial' matters. Any matters that are considered minor or trivial and not reported to the Committee under section 329 are required to be reported in a schedule of matters not referred, which is provided to the Committee and Parliamentary Commissioner.

The terms minor or trivial are not defined in the CC Act and little guidance can be drawn from the explanatory notes to the 2014 amendments, the second reading debate or other legislation.

The Committee has considered the CCC's internal legal advice with respect to the threshold of minor or trivial matters.

Essentially, the CCC's internal legal advice states that the ordinary meaning of the word 'minor' is taken to mean of lesser importance. The ordinary meaning of the word 'trivial' is taken to mean trifling or insignificant. However, applying the meaning will depend on the circumstances of each matter.

The CCC considers the following criteria to assist with its assessment of minor or trivial matters:

- is the policy or guideline important to the CCC's functions and/or integrity?

- did the breach cause any adverse consequences on the Commission or the performance of the Commission's functions or any person or body whom the policy was designed to protect?
- how regular or frequent is the breach of the policy?
- was the breach identified and corrected promptly?
- did it involve a breach of any statutory requirements?

The Committee notes that the Parliamentary Commissioner agrees with the CCC's legal advice. The Parliamentary Commissioner noted that definition of the terms minor or trivial are generally not provided in legislation and the ordinary dictionary sense of the words is usually adopted.

Committee comment

The Committee is satisfied with the CCC's approach to assessing minor or trivial matters and notes that each matter will need to be considered on a case-by-case basis.

The Committee notes that the requirement for the CCC to maintain and provide to the Committee and the Parliamentary Commissioner a register of all complaints and issues which did not meet the notification threshold ensures that the Committee and Parliamentary Commissioner are apprised of all matters relating to the potential improper conduct of CCC commissioners and officers.

5.6 Notification of improper conduct prior to employment at the CCC

Previous committees have been notified of the conduct of CCC officers prior to becoming a commission officer. It is arguable, however, as to whether 'prior conduct' is required to be notified under section 329 of the CC Act.

The Parliamentary Commissioner considers, as a matter of policy, that prior conduct should be notified.¹³⁶ The Parliamentary Commissioner stated that:

*I think integrity organisations such as an anti-corruption body, ICAC or whatever need to be seen to be of as high a calibre as they can. The last thing you want to do is find that someone has been employed and their history would have been of concern. For that reason, I think it is perfectly appropriate that everything from their prior history should be there before you as well.*¹³⁷

The CCC is of the view that section 329 does not require the CCC to notify prior conduct. This view is based on the CCC'S understanding of the definition of *commission officer* and the legislative purpose of the duty to notify the Committee under section 329 of the CC Act (ie the duty is directly linked to the Committee's purpose of providing oversight by monitoring, reviewing and reporting to the Parliament on the CCC).¹³⁸

The Parliamentary Commissioner considers that it is arguable that the CC Act does require the CCC to notify the Committee of prior improper conduct, however, there is no express provision to that effect.¹³⁹

Committee comment

The Committee notes that section 329 of the CC Act is not explicit in relation to whether the CCC is under a duty to notify the Committee of prior suspected improper conduct by a commissioner or officer.

The Committee is not minded, at this stage, to recommend amendments to section 329 of the CC Act in relation to this issue.

¹³⁶ Parliamentary Commissioner, public hearing transcript, Brisbane, 8 June 2018, p 7.

¹³⁷ Parliamentary Commissioner, public hearing transcript, Brisbane, 8 June 2018, p 7.

¹³⁸ CCC, correspondence dated 17 May 2017.

¹³⁹ Parliamentary Commissioner, correspondence dated 18 September 2019, p 1.

The Committee acknowledges the practical difficulty in requesting the CCC to notify the Committee of prior improper conduct, as such conduct is potentially unlimited in time. However, the Committee considers that if the CCC receives information about a commission officer's prior conduct, the Committee and Parliamentary Commissioner should be notified.

The Committee notes that it has been notified of prior conduct by the CCC in the past despite the arguable legal position. The Committee will seek to amend the protocols to affirm its position on this matter.

5.7 Protocols governing reporting

The current protocols governing notifications under section 329 of the CC Act were agreed to and issued in April 2017. It should be noted that the protocol is not a guideline issued by the Committee to the CCC under section 296 of the CC Act.

The CCC stated that the protocol would benefit from refinements in a number of areas to prevent delays in taking action and to delegate the notification obligation to a suitably qualified commission officer.¹⁴⁰

5.7.1 Delays and references to a direction on how a matter is to be dealt with

Once a notification has been made, the protocols currently provide that the CCC may not take any further action in relation to the suspected improper conduct until such time as it has received a response from the Committee or Parliamentary Commissioner, except in specified circumstances. Those circumstances are if the action is necessary in order to preserve evidence or to obtain evidence that would not otherwise be obtainable without immediate action or to preserve the integrity of the CCC's operations.

The protocols also state that 'Advice from the PCCC or Parliamentary Commissioner will direct how the matter is to be dealt with'.

The CCC submitted that this does not enable the CCC to address the merits of the issue until the Committee has been notified and has responded.

The CCC further contended that this approach delays '... dealing with what would generally otherwise be a straightforward internal administrative matter and which may also impact on the health of the subject officer in circumstances where they are aware of the notification of the alleged conduct.'¹⁴¹

Committee comment

The Committee is of the view that it deals with section 329 notifications expeditiously. When the CCC has requested the Committee to give urgent consideration to a matter, it has done so.

The Committee notes that it has not been advised of any unnecessary delays or impacts to the health of subject officers. Should the CCC advise the Committee of such circumstances, it would undoubtedly address the matter with urgency.

The Committee acknowledges, however, that the requirement to notify the Committee, prior to any managerial action being taken by the CCC can lead to unnecessary delays in dealing with the matter.

The Committee considers that it would be appropriate for the CCC to take certain managerial action in relation to suspected improper conduct under sections 329(4)(d) to (h) only, which does not also fall within section 329(a) to (c), prior to notifying the Committee and Parliamentary Commissioner. The Committee will work with the CCC and the Parliamentary Commissioner to review and amend the protocol in this regard.

¹⁴⁰ CCC, submission 2, p 8.

¹⁴¹ CCC, submission 2.

The Committee notes that the current wording of the protocol in relation to the Committee and Parliamentary Commissioner directing how a matter is to be dealt with does not reflect accurately the current process and provisions of the CC Act. In this regard, the Committee notes that its powers are limited to those outlined at section 295 of the CC Act, and neither it nor the Parliamentary Commissioner has the power to direct the CCC how to deal with a management or discipline issue, as it is the CEO who is responsible for the administration of the CCC. The Committee will seek to make appropriate amendments to the protocol to better reflect this position.

5.7.2 Delegation by notifier

Section 329 of the CC Act requires suspected improper conduct to be notified by particular officers. The majority of notifications are made by the CEO who is responsible for notifying all suspected improper conduct of commission officers other than the Chairperson or Commissioner.

The CCC stated that it was unaware of any other public sector agency where the CEO would personally deal with matters that are generally ‘inadvertent errors or low-level misconduct.’¹⁴²

The CCC estimated that approximately 25 per cent of the CEO’s time is spent on administering section 329 notifications, and 30 to 40 per cent of the Director of Integrity Services’ time is spent on preparing recommendations.¹⁴³ The CCC described this as an inefficient application of public funds.¹⁴⁴

The CCC described the notification process as follows:

*The way it works is that the CEO is notified of the complaint. The complaint is delegated to the director of integrity services, who might then delegate an investigator to look at it. A report is compiled. The director of integrity services then compiles a recommendation in a report to the CEO. Then the CEO compiles a report that comes to you as the committee.*¹⁴⁵

As mentioned above, the CCC considers this ‘... is a huge administrative impost’, takes up a large percentage of senior officers’ time and if not for the legislative requirement to do so, it would be hard to otherwise justify the expenditure of resources on such low-level matters.¹⁴⁶

The CCC stated that the CEO should be able to delegate the reporting obligation to another suitably qualified CCC officer.¹⁴⁷

Committee comment

The Committee notes that the position of CEO was established as part of the 2014 amendments to the CC Act. The Explanatory Notes to the *Crime and Misconduct and Other Legislation Amendment Bill 2014* state that the ‘CEO is pivotal to the effective management of the commission’. The Explanatory Notes also state the CEO is responsible, amongst other things, for the proper administration of the commission and the employment, management and discipline of commission staff.¹⁴⁸

The Committee considers that the duty on the CEO to notify the Committee of suspected improper conduct by commission officers is in line with the objectives of the 2014 amendments, and falls within the CEO’s responsibilities as described above.

The Committee also considers that the requirement for the CEO to notify helps to ensure that issues relating to the conduct of commissioner officers and any disciplinary issues are brought to the CEO’s

¹⁴² CCC, submission 2, p 5.

¹⁴³ CCC, submission 2, p 5.

¹⁴⁴ CCC, submission 2, p 6.

¹⁴⁵ CCC, public hearing transcript, Brisbane, 8 June 2018, p 10.

¹⁴⁶ CCC, public hearing transcript, Brisbane, 8 June 2018, p 10.

¹⁴⁷ CCC, submission 2, p 9 and public hearing transcript, 8 June 2018, p 11.

¹⁴⁸ Crime and Misconduct and Other Legislation Amendment Bill 2014, Explanatory Notes, pp 2-3.

attention. In addition, the Committee considers that the making of a notification to the Committee is of a sufficiently serious nature to warrant the approval of the CEO.

The Committee notes that a significant part of the notification process, including assessment and investigation, is already delegated by the CEO to the Director of Integrity Services.

5.7.3 Appropriate notifier

The Committee has dealt previously with section 329 notifications about former commissioners of the CCC. While not explicitly provided for in the CC Act, in such circumstances the CCC's legal advice considered that the appropriate notifier under section 329 of the CC Act is the CEO.

Committee comment

The Committee will seek to make changes to the protocols to clarify that the appropriate notifier, under section 329 of the CC Act, of suspected improper conduct by former commissioners is the CEO.

5.7.4 Review and amendments to protocol

As outlined above, the Committee does not consider that there is any compelling reason to amend, at this time, the provisions of section 329 of the CC Act.

The Committee will, however, work with the CCC and the Parliamentary Commissioner to review the current protocols and to make the amendments outlined in this report, to ensure the notification process is efficient and effective, while ensuring that appropriate accountability mechanisms remain in place.

Recommendation 3

The Committee recommends that the House notes the Committee will work with the Crime and Corruption Commission and Parliamentary Crime and Corruption Commissioner to review the protocols governing notifications made under section 329 of the *Crime and Corruption Act 2001* and to make the amendments outlined in this report.

Appendix A – List of submissions

Sub #	Submitter
001	Kevin Lindeberg
002	Crime and Corruption Commission
003	Whistleblowers Action Group (Queensland)
004	Parliamentary Crime and Corruption Commissioner
005	Bar Association of Queensland
006	Paul Favell
007	Confidential

Appendix B – List of witnesses at public hearing

Parliamentary Crime and Corruption Commissioner

- Ms Karen Carmody, Parliamentary Crime and Corruption Commissioner
- Mr Mitchell Kunde, Principal Legal Officer

Crime and Corruption Commission

- Mr Alan MacSporran QC, Chairperson
- Ms Jen O’Farrell, Chief Executive Officer

Bar Association of Queensland

- Ms Elizabeth Wilson QC, Chair, Criminal Law Committee
- Mr Eoin Mac Giolla Ri, Member, Criminal Law Committee

Whistleblowers Action Group (Queensland)

- Mr Kevin Lindeberg

Individual

- Mr Kevin Lindeberg

Individual

- Mr Paul Favell