



Review of the Crime and Corruption Commission's activities

**Report No. 106, 57th Parliament
Parliamentary Crime and Corruption Committee
June 2021**

Parliamentary Crime and Corruption Committee

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All web address references are current at the time of publishing.

¹ NB: The former Member for Stretton, Mr Duncan Pegg MP, was a member of the committee until 10 June 2021. Mr Adrian Tantari MP, Member for Hervey Bay, was appointed as a member of the committee on 15 June 2021.

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Abbreviations

2016 Review	Parliamentary Crime and Corruption Committee, Review of the Crime and Corruption Commission, to June 2016
2016 Review Report	Parliamentary Crime and Corruption Committee, Report No. 97, 55th Parliament, <i>Review of the Crime and Corruption Commission</i> , June 2016
ADP	Abbreviated Discipline Process
ARMC	Audit and Risk Management Committee
CBRC	Cabinet Budget Review Committee
CC Act	<i>Crime and Corruption Act 2001</i>
2016 CC Act Amendments	Amendments made by the <i>Crime and Corruption Amendment Act 2016</i>
CCC	Crime and Corruption Commission
CEO	Chief Executive Officer
Committee System Review Report	Legislative Assembly of Queensland, Committee System Review Committee, <i>Review of the Queensland Parliamentary Committee System</i> , December 2010
CJA	<i>Criminal Justice Act 1989 (now repealed)</i>
CJC	Criminal Justice Commission
CLA	Committee of the Legislative Assembly
Clerk	The Clerk of the Parliament (Queensland Parliament)
CMC	Crime and Misconduct Commission
Commission	The Commission is comprised of: <ul style="list-style-type: none"> • a full time Commissioner who is the Chairperson of the CCC • a part-time Commissioner who is the Deputy Chairperson of the CCC • 3 part-time Commissioners who are Ordinary Commissioners.²
committee	Parliamentary Crime and Corruption Committee
CPCA	<i>Criminal Proceeds Confiscation Act 2002</i>
CPSR	Commissioners for Police Service Review
CQU	Central Queensland University
CRC	The Crime and Corruption Commission's Crime Reference Committee
Crime and Misconduct Act	<i>Crime and Misconduct Act 2001</i>
Criminal Code	<i>Criminal Code Act 1899</i>
DATSIP	Department of Aboriginal and Torres Strait Islander Partnerships
DJAG	Department of Justice and Attorney-General
DLGRMA	Department of Local Government, Racing and Multicultural Affairs
DPP	Director of Public Prosecutions

² *Crime and Corruption Act 2001*, s 223.

DSDMIP	Department of State Development, Manufacturing, Infrastructure and Planning
DTMR	Department of Transport and Main Roads
ECQ	Electoral Commission of Queensland
ELT	Executive Leadership Team
ESC	Ethical Standards Command
Fitzgerald Inquiry	Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, led by Tony Fitzgerald QC
Fitzgerald Report	Queensland, <i>Report of a Commission of Inquiry Pursuant to Orders in Council, dated 26 May 1987, 24 June 1987, 25 August 1988, 29 June 1989, 1989</i> (Fitzgerald Report).
Former PCCC	Parliamentary Crime and Corruption Committee of the 56 th Parliament, or earlier
HHS	Hospital and Health Service
HRA	<i>Human Rights Act 2019</i>
IBAC	Independent Broad-based Anti-corruption Commission (Vic)
ICAC	Independent Commission Against Corruption (NSW)
ICAC Act	<i>Independent Commission Against Corruption Act 1988</i>
ICAC Special Report	NSW Independent Commission Against Corruption Special Report No. 2 – A parliamentary solution to a funding model for the ICAC
ICP	Investigative Consultation Process
Inquiry into Corrupt Conduct Complaints	Parliamentary Crime and Corruption Committee, <i>Inquiry into the CCC's performance of its functions to assess and report on complaints about corrupt conduct.</i> Note: this inquiry was commenced by the committee in December 2019, and subsumed into the broader Review of the CCC's activities in May 2020.
JAMC	Joint Assessment of Complaints and Moderation Committee
MOU	Memorandum of Understanding
NSW	New South Wales
NSW Special Report	New South Wales Independent Commission Against Corruption, <i>NSW Independent Commission Against Corruption Special Report No. 2 – A parliamentary solution to a funding model for the ICAC, November 2020</i>
ODPP	Office of the Director of Public Prosecutions
OIA	Office of the Independent Assessor
Parliamentary Commissioner	Parliamentary Crime and Corruption Commissioner
PCCC	Parliamentary Crime and Corruption Committee
PID	Public Interest Disclosure
PID Act	<i>Public Interest Disclosure Act 2010</i> (Qld)
PIM	Public Interest Monitor
POQA	<i>Parliament of Queensland Act 2001</i>
PPRA	<i>Police Powers and Responsibilities Act 2000</i>
PSA Act	<i>Police Service Administration Act 1990</i>
PSA Regulation	<i>Police Service Administration Regulation 2016</i>

QAS	Queensland Ambulance Service
QCAT	Queensland Civil and Administrative Tribunal
QCS	Queensland Corrective Services
QLS	Queensland Law Society
QPCOUE	Queensland Police Commissioned Officers' Union of Employees
QPS	Queensland Police Service
QPU	Queensland Police Union of Employees
QUT	Queensland University of Technology
Review	Review of the Crime and Corruption Commission's activities
Review of the Parliamentary Committee System Report	Committee of the Legislative Assembly, Report No. 17, <i>Review of the Parliamentary Committee System</i> , February 2016
SBRC	South Burnett Regional Council
Section 329 Review	Parliamentary Crime and Corruption Committee, Review of the operation of section 329 of the <i>Crime and Corruption Act 2001</i>
Section 329 Review Report	Report No. 104, 56 th Parliament – <i>Review of the operation of section 329 of the Crime and Corruption Act 2001</i> , December 2019
SES	Senior Executive Service
Speaker	Speaker of the Legislative Assembly (Queensland Parliament)
TI Act	<i>Telecommunications Interception Act 2009</i> (Qld)
TIA Act	<i>Telecommunications (Interception and Access) Act 1979</i> (Cth)
UPA	Unit of public administration

Chair's foreword

Queensland needs an effective, impartial and independent watchdog on public sector corruption and major crime.

The primary role of this committee, under the *Crime and Corruption Act 2001* (CC Act), is to monitor and review the performance of the Crime and Corruption Commission (CCC) in carrying out its functions. The committee is also required under section 292(f) of the CC Act to review, report and make recommendations on the CCC's activities every 5 years.

This '5 year review' received a number of submissions, and has made recommendations, that go to the institutional framework within which the CCC – including its Chairperson, Commissioners, Senior Officers and other employees – perform their functions. Given the history out of which the CCC and its predecessor bodies emerged and the unicameral nature of Queensland Parliament, it is vital that the people of Queensland have confidence that this framework is appropriately structured – both as legislated in law and as the CCC is substantively comprised – to ensure the independence and impartiality of the CCC across the board.

Recommendations in this report touch on this issue. The committee recommends that the meaning of 'bipartisan support' in this committee be amended to guarantee that appointments acceded to, or action taken by, the committee on a 'bipartisan' basis do not just meet the meaning of that term in the CC Act, but actually enjoy support from both Government and Opposition members of the committee (see Recommendation 2). The present definition in the CC Act *looks* bipartisan, but has the potential to be applied in a distinctly partisan manner. As noted above, it is vital for the people of Queensland to have confidence in the framework of the CCC to ensure its independence and impartiality. This recommendation aims to boost that confidence from an institutional and structural perspective.

The *Report Of A Commission Of Inquiry Pursuant To Orders In Council dated 26 May 1987, 24 June 1987, 25 August 1988, 29 June 1989* (the Fitzgerald report) laid down the original institutional and structural parameters within which the CCC now operates. Its recommendations were, famously, adopted and implemented 'lock, stock and barrel' by the then Premier of Queensland, the Honourable Mike Ahern. One of the recommendations of the Fitzgerald report was that the Criminal Justice Commission (a predecessor to the CCC) have four 'community appointees', three of whom should have 'proven ability in community affairs, one of whom must have proven senior managerial experience in a large organization'. Over time, this recommendation has been removed from the CC Act, which has given rise to a contention that the CCC is, or could become, too reliant on legal practitioners in its senior ranks – a situation that goes against the Fitzgerald report. Recommendation 1 of this report seeks to address these concerns by recommending reinstatement of the 'community affairs' requirements for two of the three ordinary commissioners now appointed under the CC Act.

The committee also received a number of submissions about the effectiveness of the CCC. While the committee did not consider individual complaints or matters as part of this review, it has made certain recommendations that it considers would improve the CCC's overall effectiveness. For example, clarifying the intent of Parliament in relation to the use of coercive powers during the assessment of a corruption complaint will remove any doubt about the extent of the CCC's powers in this stage. Further, a recommendation that the CCC develop easily accessible information to better inform witnesses prior to and during coercive hearings seeks to address concerns about the use of information collected in that intrusive process – concerns that have the potential to undermine the public confidence in the Parliament's bestowal of these powers on the CCC. The committee also strongly recommends that the definition of 'money laundering' be reviewed to improve its efficacy in combatting crime and corruption. It is beyond the scope of this report to address all issues concerning the effectiveness, or appropriateness of actions, of the CCC in specific cases. However, it should be

noted that the committee's Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters commenced on 28 May 2021 and will further explore some matters on this point.

It is worth noting that the CCC's extraordinary powers that have the ability to infringe on the rights and liberties of individuals may be susceptible to litigious attacks pursuant to the *Human Rights Act 2019*. Recommendation 30 of this report highlights this and urges engagement by the relevant department with the CCC to ensure the *Human Rights Act 2019* does not become a tool that can be used to weaken the CCC's powers and interfere with its processes.

Prior to the commencement of this 5 year review, the committee also established an inquiry into the CCC's performance of its functions to assess and report on complaints about corrupt conduct (Inquiry into Corrupt Conduct Complaints). The Inquiry into Corrupt Conduct Complaints was not completed in the 56th Parliament, and was incorporated into this 5 year review in 2020. To say that this Inquiry into Corrupt Conduct Complaints arose from controversial circumstances is an understatement. In this report the committee has made certain recommendations arising from these circumstances, including that there be a clear distinction between an 'assessment' and 'investigation' of the CCC to avoid any perception or potential for the CCC to actually be undertaking an investigation of a complaint, while maintaining to the public and interested parties that it was merely "assessing" the complaint. This is vital to public confidence in the institutional independence and impartiality of the CCC – if a complaint is, in fact, being investigated, that should not be obscured under the guise of an "assessment" process.

I thank all parties that made submissions to both the 5 year review and the Inquiry into Corrupt Conduct Complaints. In particular, I thank those who made themselves available to appear before the committee at public hearings to expand upon their submissions and to assist the committee in deepening their understanding of concerns held in the community.

I thank all Parliamentary staff, and members of the secretariat of the Parliamentary Crime and Corruption Committee in 2020 and 2021 for their assistance in compiling this report, and members of the committee in the 56th Parliament, in particular the former Chair, Tim Nicholls MP, for carrying out initial stages of these inquiries.

I thank all members of the committee in the 57th Parliament for their efforts in seeking consensus in the committee recommendations and the report as a whole. With few exceptions, that was achieved. It is now up to the Queensland Government to take action on these recommendations.

Finally, I note with sadness the death of a member of the committee, Mr Duncan Pegg MP, in early June 2021. I served on various committees with Duncan over a period of nearly five years. He was greatly respected by all Members, and his contribution as a parliamentarian in many roles is a credit to him and his family.

I commend this report to the House.



Jon Krause MP

Chair

Member for Scenic Rim

Recommendations

- Recommendation 1** 11
The committee recommends that section 225 of the *Crime and Corruption Act 2001* be amended, to require at least 2 persons to have a demonstrated interest and ability in community affairs, public administration or organisational leadership, to be qualified as Ordinary Commissioners.
- Recommendation 2** 13
The committee recommends the definition of 'bipartisan support' of the parliamentary committee in Schedule 2 of the *Crime and Corruption Act 2001* be amended so that it provides for
- support of the members of the parliamentary committee unanimously, or
 - support of a majority of the members appointed by the Leader of the House (including a member appointed as a substitute committee member in place of a member nominated by the Leader of the House), and the support of a majority of members appointed by the Leader of the Opposition (including a member appointed as a substitute committee member in place of a member nominated by the Leader of the Opposition).
- Recommendation 3** 13
The committee recommends that for the consideration of nominees for appointment as commissioners (including the Chairperson) and Chief Executive Officer of the Crime and Corruption Commission, that the government give consideration to developing a mechanism to ensure nominees are appropriately considered by the committee, and any delay in progressing consideration of appointments be able to be publicly discussed.
- Recommendation 4** 17
The committee recommends consideration be given to amending the *Crime and Corruption Act 2001* to provide for a single non-renewable appointment for the Chairperson and Ordinary Commissioners of the Crime and Corruption Commission, not exceeding seven years.
- Recommendation 5** 20
The committee recommends that section 257 of the *Crime and Corruption Act 2001* be amended, to enable the Crime and Corruption Commission to issue directions for the performance of duties by commission officers who are employed by the Crime and Corruption Commission under section 256 of the *Crime and Corruption Act 2001*.
- Recommendation 6** 20
The committee recommends that the Crime and Corruption Commission and the Queensland Police Service update their practices and procedures in regards to public reporting associated with the charging, or investigating, of police officers, to ensure that the outcome is also subject to public reporting, in circumstances where the police officer is cleared of the publicly reported allegations.
- Recommendation 7** 21
The committee recommends the secretariat functions for the Commissioners for Police Service Review are transferred from the Crime and Corruption Commission to another appropriate entity, separate from the Queensland Police Service.
- Recommendation 8** 26
The committee recommends the security vetting practices of the Crime and Corruption Commission officers continue to be monitored and considered as part of the next five year statutory review of the Crime and Corruption Commission's activities.
- Recommendation 9** 27
The committee recommends the government consider legislative amendments to enable Crime and Corruption Commission officers to make lawful disclosures and be afforded the same protections as those engaged in a unit of public administration under the Public Interest Disclosure framework.
- Recommendation 10** 35
The committee recommends the definition of 'money laundering' in the *Criminal Proceeds Confiscation Act 2002* be reviewed.

Recommendation 11	44
The committee recommends the Crime and Corruption Commission produce easily accessible material to assist in the education of persons (and their legal representatives) participating in coercive hearings.	
Recommendation 12	50
The committee recommends consideration be given to amending section 197 of the <i>Crime and Corruption Act 2001</i> , to ensure clarity in regards to its interpretation and intent.	
Recommendation 13	51
The committee recommends that consideration be given to amending the intelligence operations provisions in the <i>Crime and Corruption Act 2001</i> , to enable the Crime and Corruption Commission's Crime Reference Committee to approve special investigations and special intelligence operations other than in respect of a 'criminal organisation', as defined in the <i>Penalties and Sentences Act 1992</i> .	
Recommendation 14	53
The committee recommends that no changes be made to sections 53, 73 and 75 of the <i>Crime and Corruption Act 2001</i> , pursuant to Recommendations 14 and 20 of the 2016 Review Report.	
Recommendation 15	55
The committee recommends that the government review the uncertainty and potential conflict caused between section 255(5) of the <i>Crime and Corruption Act 2001</i> (and its example) and section 325(4) of the <i>Police Powers and Responsibilities Act 2000</i> ; and whether a senior Crime and Corruption Commission officer, or senior police officer, should be able to obtain surveillance device warrants for both the Crime and Corruption Commission's major crime and corruption function.	
Recommendation 16	55
The committee recommends that the government consider the most appropriate way to address the issue of handwritten amendments and variations on surveillance device warrants, such as amendment of the <i>Police Powers and Responsibilities Act 2000</i> .	
Recommendation 17	56
The committee recommends that the <i>Police Powers and Responsibilities Act 2000</i> be amended to remove the requirement that an application for extension or variation of surveillance device warrants must be made by the officer to whom the original warrant was issued.	
Recommendation 18	57
The committee recommends that the government review the requirement under section 334(3) of the <i>Police Powers and Responsibilities Act 2000</i> that a judge or magistrate who revokes a surveillance device warrant, must cause notice of the revocation to be given to the chief executive officer of the law enforcement agency.	
Recommendation 19	58
The committee recommends that consideration be given to enabling the use of surveillance devices in a lawyer's home or car or other relevant place, in accordance with relevant sections of the <i>Police Powers and Responsibilities Act 2000</i> , including section 330 that presently permits the use of surveillance devices in the office of a practising lawyer in limited circumstances.	
Recommendation 20	59
The committee recommends consideration be given to legislating a requirement that the Crime and Corruption Commission report breaches of telecommunications interception warrant or a surveillance device warrants to the Public Interest Monitor or issuing authority.	
Recommendation 21	60
The committee recommends no change to section 50 of the <i>Crime and Corruption Act 2001</i> , pursuant to Recommendation 16 of the 2016 Review Report.	
Recommendation 22	78
The committee recommends the <i>Crime and Corruption Act 2001</i> be amended to clarify the distinction between an 'assessment' and an 'investigation'.	

- Recommendation 23** **84**
The committee recommends that the Crime and Corruption Commission and the Queensland Parliament (through the Speaker of the Legislative Assembly) consider the development and implementation of an information sharing protocol for the dissemination of information held by the Crime and Corruption Commission that may be relevant to the Parliament in respect of the conduct of Members of Parliament.
- Recommendation 24** **85**
The committee recommends clarification be provided about whether coercive powers are available during an assessment stage or only an investigation by the Crime and Corruption Commission.
- Recommendation 25** **93**
The committee recommends that further consideration of the Crime and Corruption Commission's prosecutorial practices and interaction with the Director of Public Prosecutions, be reported on as part of the committee's Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters.
- Recommendation 26** **111**
The committee recommends there be an ongoing dialogue between the Crime and Corruption Commission and relevant Queensland and Commonwealth authorities to ensure all possible forms of foreign influence or interference are subject to scrutiny and investigation by relevant agencies.
- Recommendation 27** **125**
The committee recommends the *Crime and Corruption Act 2001* be amended to require that the chairperson of the Parliamentary Crime and Corruption Committee is a member of the Opposition, and also one of the members nominated by the Leader of the Opposition to the Parliamentary Crime and Corruption Committee.
- Recommendation 28** **132**
The committee recommends that section 314 of the *Crime and Corruption Act 2001* be amended, to clarify that the parliamentary commissioner has the function to investigate on his or her own initiative a matter which relates to the conduct of a Crime and Corruption Commission officer, that would, if the person were an officer in a unit of public administration, be corrupt conduct.
- Recommendation 29** **138**
The committee recommends the Crime and Corruption Commission develop and deliver additional training and educational material.
- Recommendation 30** **139**
The committee recommends that the Crime and Corruption Commission engage with the Department of Justice and Attorney-General if issues regarding application of the *Human Rights Act 2019* arise, to ensure the Crime and Corruption Commission's powers are not inadvertently undermined.

1 Introduction

1.1 Role of the committee

The Parliamentary Crime and Corruption Committee (committee) is a statutory committee of the Queensland Legislative Assembly which commenced on 26 November 2020 under section 291 of the *Crime and Corruption Act 2001* (CC Act).³

The principal functions of the committee are to:

- monitor and review the performance of the functions of the Crime and Corruption Commission (CCC) and the structure of the CCC, including examining the CCC's annual report and other reports
- report to the Legislative Assembly on matters relevant to the CCC or its performance of its functions and exercise of its powers (including matters appearing or arising out of the CCC's reports)
- participate in the appointment of commissioners and the chief executive officer (CEO) of the CCC
- undertake a five-yearly review of the CCC and report to the Legislative Assembly on any action that should be taken in relation to the CC Act or the functions, powers and operations of the CCC
- issue guidelines and give directions to the Commission as provided under the CC Act.⁴

1.2 Review process

The CC Act requires the committee to undertake and table its report on its 5-yearly review of the activities of the CCC in the Legislative Assembly by the end of each 5-yearly period following the day on which the last review report was completed.⁵

As the committee's previous report on its review of the CCC was finalised and tabled on 30 June 2016,⁶ the committee was required to conduct and finalise its next review of the CCC's activities (Review) by 30 June 2021.

In May 2020, the committee resolved to incorporate into the Review, its existing Inquiry into the CCC's performance of its functions to assess and report on complaints about corrupt conduct pursuant to sections 33 to 51 and 64 of the CC Act (Inquiry into Corrupt Conduct Complaints).⁷ This included considering the 14 submissions received for that inquiry as submissions to the review of the CCC's activities (Review) (a list of submitters is available at Appendix B).

On 1 June 2020, the committee called for submissions to its Review, until 10 August 2020.

The committee accepted 32 submissions, including 5 confidential submissions and 2 supplementary submissions (a list of submitters is available in Appendix A).

The committee held public hearings for the Review on 26 March 2021 and 14 May 2021 (see Appendix C for a list of hearing witnesses).

³ *Parliament of Queensland Act 2001* (POQA), section 88 and Standing Order 194.

⁴ *Crime and Corruption Commission Act 2001* (CC Act), s 292.

⁵ CC Act, s 292(f).

⁶ Queensland Parliament, PCCC, Report No. 97, 55th Parliament, *Review of the Crime and Corruption Commission*, June 2016, (2016 Review Report).

⁷ The PCCC's *Inquiry into the CCC's performance of its functions to assess and report on complaints about corrupt conduct* (Inquiry into Corrupt Conduct Complaints) was initiated on 16 December 2019.

The submissions and transcripts of the hearings are available on the committee's webpage.⁸

1.3 Background to the Review

1.3.1 2016 Review

As noted earlier, the previous review of the CCC was finalised in June 2016 (2016 Review). The committee's report on the 2016 Review, *Report No. 97, 55th Parliament – Review of the Crime and Corruption Commission* (2016 Review Report), provided a reference and starting point for this Review.

The 2016 Review Report included 29 recommendations in total, and the Queensland Government, in responding to the report, provided explicit support for the majority of these recommendations.⁹

A number of the recommendations are yet to be implemented. The CCC, in its submission to this Review, reaffirmed its support for its submissions made to the 2016 Review. The CCC requested that recommendations 14, 20, 22, 26 and 27 made in the 2016 Review Report (which are yet to be implemented) be progressed. Those recommendations were as follows:

Recommendation 14

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

Recommendation 20

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

Recommendation 22

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

Recommendation 26

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

Recommendation 27

The Committee recommends that the *Crime and Corruption Act 2001* be amended to enable:

Commission officers to make lawful disclosures concerning suspected corrupt conduct and improper conduct (as defined in section 329(4) of the Act). The amendments should also ensure that a Commission officer who makes such a disclosure is entitled to the same protections granted to public sector employees under the *Public Interest Disclosure Act 2010*.¹⁰

⁸ Queensland Parliament, PCCC, Review of the Crime and Corruption Commission's activities, <https://www.parliament.qld.gov.au/work-of-committees/committees/PCCC/inquiries/current-inquiries/ReviewCCC2021>.

⁹ The Queensland Government provided explicit support for recommendations 2, 3, 5-7, 12, 14-21, 23-26, 28-29; provided in-principle support for recommendations 13, 22 and 27; and noted recommendations 1, 4, 8, 9, 10 and 11 (which were mostly directed at the committee).

¹⁰ 2016 Review Report, pp viii, ix.

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

The committee launched its Inquiry into Corrupt Conduct Complaints on 16 December 2019, in response to concerns raised by the Speaker of the Legislative Assembly and the Ethics Committee about the CCC's consideration of allegations of corrupt conduct made against the Premier and Minister for Trade and the former Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships.

The terms of reference established as key areas of focus for the committee's Inquiry were:

- the statutory framework for assessing complaints and reporting under the Act
- the CCC's procedures for assessing complaints, including the timeliness of assessments, evidence gathering and the scope of assessments
- the distinction between the CCC's assessment and investigation of a complaint
- how the CCC may deal with a complaint following an assessment, including referring the matter to another body and the use of prosecutorial discretion
- the provision of evidence and supporting information when the CCC refers a complaint to another body
- the CCC's public reporting of its assessment determinations, in particular those matters which attract significant public interest
- the CCC's development and announcement of recommendations for legislative amendments arising from its assessment of complaints
- any other relevant matters.

The committee's consideration of these matters also involved consideration of whether any legislative clarification is required to improve the complaints handling process. The committee did not, however, consider individual complaints about corrupt conduct as part of its Inquiry into Corrupt Conduct Complaints.

1.3.3 Submissions to the Review

In addition to considering outstanding matters from the 2016 Review and matters raised in respect of the Inquiry into Corrupt Conduct Complaints, the committee welcomed broader input from submitters on the CCC's structure, powers and performance of its functions, and on the provisions of the CC Act more generally (which support the CCC's operations).

While specific commentary on particular aspects of the CCC's activities and provisions of the CC Act are examined in the sections of this report to follow, in a general sense submitters were supportive of the ongoing operation of the CCC, albeit identifying varying levels of need for reform.

As an example, Queensland Corrective Services (QCS) submitted:

The CCC has been instrumental in enhancing standards of integrity and conduct for QCS, and ensuring that complaints involving corruption are dealt with appropriately and in accordance with the principles of cooperation, capacity building, devolution, and public interest.¹¹

The Clerk of the Parliament considered that there is a continued need for the CCC, as 'a standing body with broad and far-reaching powers of investigation in Queensland'.¹² Emphasising the need for independent and transparent investigation of public sector misconduct and oversight of public sector systems to reduce misconduct, the Clerk told the committee:

¹¹ Submission 026, p 2.

¹² Submission 036, p 2.

The fundamental point of my submission is that Queensland needs the CCC and that the CCC must continue. I support the CCC, because I strongly believe that there is a continuing need for a standing body with broad and far-reaching powers of investigation in Queensland. The reason for this is that there is an ongoing need for the independent and transparent investigation of public sector misconduct and oversight of public sector systems to reduce misconduct. That is never so important than in a jurisdiction like ours, which is a unicameral system.¹³

The Clerk further stated, however: 'I also believe that the CCC must improve'.¹⁴

The Clerk noted that 'some of the wider safeguards that existed prior to and immediately after the Fitzgerald inquiry and report have now been fatally weakened', and referred to the decline in investigative journalism and academic commentary, combined with challenges faced by stakeholder groups.¹⁵ The Clerk contended that 'the weakening of these other safeguards bolsters the need for the CCC'.¹⁶

The Queensland Police Union of Employees (QPU) also considered that there is a need for the corruption functions of the CCC to be retained, but suggested that extensive reform and restructuring of the organisation is required to enable the CCC 'to perform a proper public sector anti-corruption role'.¹⁷

Comprehensive submissions were also received from the CCC and the Parliamentary Crime and Corruption Commissioner (Parliamentary Commissioner).

Within the submissions, common areas of content included:

- the general jurisdiction and functions of the CCC
- the CCC's use of coercive powers
- the disclosure of evidence obtained by the CCC in coercive or closed hearings
- the devolution principle (regarding the conduct for which complaints are retained and investigated, versus those that are the subject of devolution to the unit of public administration in which the conduct occurred)
- the timeliness of the CCC's assessment of complaints and other activities
- education and training – specifically, regarding of the scope of the CCC's engagement in proactive education regarding corruption risks and mitigation measures.

These key themes or issues, together with related commentary in respect of the terms of reference for the Inquiry into Corrupt Conduct Complaints have guided the structure of this report, with submitter views and other information and considerations of the committee included where appropriate.

¹³ Public hearing transcript, Brisbane, 14 May 2021, p 1.

¹⁴ Public hearing transcript, Brisbane, 14 May 2021, p 1.

¹⁵ Submission 036, pp 2-3.

¹⁶ Submission 036, p 2.

¹⁷ Submission 025, p 1.

2 Overview of the Crime and Corruption Commission

The CCC is a statutory body established in response to the findings of Mr Tony Fitzgerald QC in his 1989 report on the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (Fitzgerald Report).¹⁸ Known in past iterations as the Criminal Justice Commission (CJC) and later the Crime and Misconduct Commission (CMC), the main purposes of the CCC are to:

- combat and reduce the incidence of major crime; and
- continuously improve the integrity of, and reduce the incidence of corruption in, the public sector.¹⁹

The CCC employs approximately 338 full-time equivalent staff and has a total budget of \$67 million.²⁰

2.1 Overview of the Crime and Corruption Commission's functions

The CCC has a range of functions set out in the CC Act, namely:

- Major crime – investigating major crime referred to it by the Crime Reference Committee (CRC),²¹ and investigating incidents involving criminal organisations which pose threats to public safety²²
- Corruption – raising the standards of integrity and conduct in units of public administration and ensuring complaints about corruption are dealt with in an appropriate way²³
- Prevention – helping prevent major crime and corruption²⁴
- Research – undertaking research to support its functions, including research into the incidence and prevention of criminal activity, research into the administration of criminal justice or corruption referred by the Minister, and research into any other matter relevant to its functions²⁵

¹⁸ The Fitzgerald Report recommended the Queensland Parliament establish an independent agency to fight organised crime and corruption to help restore confidence in the state's public institutions, and to be responsible for Queensland's witness protection program. See: CCC, *2019-20 Annual Report*, 24 September 2020, p 8.

¹⁹ CC Act, ss 4, 5 and 7.

²⁰ CCC, *2019-20 Annual Report*, 24 September 2020, p 7.

²¹ The Crime Reference Committee (CRC) is a special statutory committee consisting of the chairperson of the CCC, the Commissioner of Police, the Queensland Family and Child Commissioner, 2 community representatives, a senior executive officer of the CCC (crime), and the CEO of the Australian Crime Commission (where relevant to a function under the *Australian Crime Commission Act 2002* (Cth) or another Commonwealth Act or regulation), and a senior executive officer of the CCC (corruption) (when the committee is performing a relevant function relating to suspected corruption and relevant authorisations). See CC Act, s 278. The CRC is responsible for referring major crime to the CCC for investigation; authorising the CCC to undertake intelligence operations; reviewing general referrals; and coordinating (to the extent the committee considers appropriate), investigations into major crime conducted by the CCC in cooperation with a police task force or another entity (CC Act, s 275).

²² CC Act, ss 25, 26.

²³ CC Act, ss 33, 35.

²⁴ CC Act, ss 23-24.

²⁵ CC Act, s 52. This may include research into police service methods of operations; police powers and the use of police powers; law enforcement by police; and the continuous improvement of the police service.

- Intelligence – gathering and analysing intelligence to support the proper performance of its functions²⁶
- Witness protection – operating a witness protection program²⁷
- Civil confiscation – undertaking civil proceedings to recover the proceeds of crime, regardless of whether the owner has been convicted of a criminal offence²⁸
- a function conferred on it under another Act.²⁹

The CCC is supported in its performance of these functions by various powers set out in the CC Act and other legislation including the *Criminal Proceeds Confiscation Act 2002* (CPCA), *Police Powers and Responsibilities Act 2000* (PPRA), *Telecommunications Interception Act 2009* (TI Act), *Telecommunications (Interception and Access) Act 1979* (Cth), and *Witness Protection Act 2000*.³⁰

2.2 Report structure

This report first considers the organisational structure, funding and corporate governance of the CCC (chapter 3), before examining, in turn, issues relating to the CCC's:

- major crime function of the CCC (chapter 4)
- investigative powers and hearings (chapter 5)
- corruption functions (chapter 6)
- civil confiscation function (chapter 7)
- telecommunication interception powers (chapter 8)
- research and intelligence functions (chapter 9)
- witness protection function (chapter 10)
- broader role in the criminal justice system (chapter 11)
- oversight of the police service (chapter 12).

Chapter 13 considers external oversight mechanisms for monitoring and reviewing the CCC's performance of its functions, while chapter 14 considers matters relating to its prevention function.

Finally, chapter 15 considers the impact of the *Human Rights Act 2019* (HRA) and submissions received in respect of Aboriginal and Torres Strait Islander peoples.

²⁶ CC Act, s 53.

²⁷ CC Act, s 56(a) and *Witness Protection Act 2000*.

²⁸ CC Act, s 56(b) and *Criminal Proceeds Confiscation Act 2002* (CPCA).

²⁹ CC Act, s 56(c).

³⁰ CCC, *2019-20 Annual Report*, 24 September 2020, p 8.

3 Organisational structure, funding and corporate governance

3.1 Organisational structure and appointments

The CCC is headed by a 5-member group referred to as 'the Commission', which functions as the board of the CCC, and is supported by an Executive Leadership Team (ELT).³¹ The roles and responsibilities of the Commission and ELT are set out in Chapter 6 of the CC Act, which contains various provisions designed to support the administration of the organisation.

That is, the Commission is comprised of:

- a full time Commissioner who is the Chairperson of the CCC
- a part-time Commissioner who is the Deputy Chairperson of the CCC
- 3 part-time Commissioners who are Ordinary Commissioners.³²

The ELT, which is responsible for strategic oversight, corporate leadership, portfolio assessment and portfolio review, consists of the:

- Chief Executive Officer (CEO)
- Senior Executive Officer (Crime)
- Senior Executive Officer (Corruption)
- General Manager, Operations Support
- General Manager, Corporate Services.³³

The CC Act sets out the roles and responsibilities of the Commission, Chairperson and CEO as follows:

Crime and Corruption Commission

- responsible for providing strategic leadership and direction for the performance of the CCC functions and the exercise of the CCC's powers, by the Chairperson, CEO and commission staff
- responsible for the preparation of the CCC strategic and business plans
- establishment of internal management committees and their charters
- preparation of the internal audit charter.³⁴

Chairperson

- Chairperson of the CCC
- responsible for the proper performance of the CCC's functions delegated to the Chairperson under section 269 of the CC Act
- must perform the functions and exercise the powers of the CCC delegated to the Chairperson under section 269 and perform the other functions and powers conferred on the Chairperson under the CC Act

³¹ CCC, 'Our leadership', <https://www.ccc.qld.gov.au/about-us/our-leadership>.

³² CC Act, s 223.

³³ CCC, 'Our leadership', <https://www.ccc.qld.gov.au/about-us/our-leadership/executive-leadership-team>.

³⁴ CC Act, s 251.

- must report to the CCC on the performance of its functions but is not subject to the direction of the CCC in performing a function or in their exercise of power in an investigation, hearing, operation or other proceeding.³⁵

Chief Executive Officer

- responsible for the administration of the CCC
- must perform the functions and exercise the powers of the CCC, delegated under section 269 of the CC Act, the Chairperson and any other powers conferred on the CEO by the CC Act, and
- must report to the CCC on all matters relating to the administration of the Commission and the performance of the functions and exercise of any delegated powers.³⁶

On 2 April 2019, the CCC advised the committee that it had developed a new high level internal structure to sit beneath the leadership of the Commission and ELT, and align with the CCC's recently updated operating model and strategic requirements. The new structure included the consolidation of 8 divisions to 6, and establishment of a new Strategy Innovation and Insights division.

The CCC advised that a number of considerations,³⁷ including resourcing and planned IT changes, contributed to the decision to restructure the CCC.³⁷

The CCC's *2018-19 Annual Report* relevantly provided:

During the past year the CCC has focused on identifying the critical capabilities for current and future service delivery, and streamlined its organisational structure in line with our new operating model and strategic requirements.

...

This year the CCC commenced its transition to a simplified, service-led organisational structure. This new structure reflects the CCC's three primary service areas of crime, corruption and witness protection. It also reduces the CEO span of control to a reasonable level, provides clearer lines of accountability, and reduces duplication so that resources can be better deployed to support strategic and transformative initiatives.³⁸

The CCC reported that it had finalised implementation of its restructure at the end of 2019, which 'delivered clearer lines of accountability and a simplified, service-led structure more closely aligned with our operating model'.³⁹

During the Review, stakeholders commented on a number of factors relating to the CCC's organisational structure, appointment processes and staffing arrangements, including issues involving:

- the appointment and role of the CEO
- the appointment of Commissioners and senior officers (including tenure limits)
- the legislative framework and arrangements for the secondments of police officers to the CCC
- staffing support for Commissioners for Police Service Reviews, who undertake independent reviews of certain decisions about police officers' employment which those officers consider to be unfair and about which they are aggrieved.

These matters are examined below.

³⁵ CC Act, s 252.

³⁶ CC Act, s 253.

³⁷ Mr MacSporran, CCC, public meeting transcript, Brisbane, 3 May 2019, p 12.

³⁸ CCC, *2018-19 Annual Report*, 30 September 2019, p 10.

³⁹ CCC, *2019-20 Annual Report*, 24 September 2020, p 58.

3.1.1 Appointment and role of the Chief Executive Officer

Under the CC Act, the CEO of the CCC is appointed by the Governor in Council, after being nominated by the relevant Minister.⁴⁰ An appointment as CEO can be made only if the nomination is made with the bipartisan support (as defined in schedule 2 of the CC Act) of the parliamentary committee.⁴¹ The CEO's appointment can be terminated by the Governor in Council, pursuant to section 236 of the CC Act.

The CEO's role is provided by section 253 of the CC Act, which states that the CEO is responsible to the CCC for the administration of the CCC. Section 253 further provides:

- (2) The chief executive officer is to—
- (a) perform the functions, and exercise the powers, of the commission delegated to the chief executive officer under section 269; and
 - (b) perform the functions and exercise the powers delegated to the chief executive officer by the chairperson; and
 - (c) perform the other functions, and exercise the other powers, conferred on the chief executive officer under this Act.
- (3) In performing a function or exercising a power under this Act, the chief executive officer is subject to the direction of—
- (a) for a function or power delegated to the chief executive officer by the chairperson—the chairperson; or
 - (b) otherwise—the commission.
- (4) The chief executive is to report to the commission on—
- (a) all matters relating to the administration of the commission; and
 - (b) the performance of the functions and exercise of the powers mentioned in subsection (2)(a) and (c).
- (5) Anything done in the commission's name by the chief executive officer or chief executive officer's delegate is taken to have been done by the commission.

Prior to legislative amendments in 2014, the Chairperson of the CCC effectively held the role of Chairperson and CEO. After commencement of the *Crime and Misconduct and Other Legislation Amendment Act 2014*, the structure of the CCC changed so that the CEO held the role as a full-time commissioner of the CCC.

In May 2016, the *Crime and Corruption Amendment Act 2016* (the 2016 CC Act Amendments) commenced. Amendments included separating the roles of CEO and Commissioner (but retaining a five member commission by adding another part-time commissioner); and requiring bipartisan support of the committee for the appointment of the CEO (rather than a power of veto which existed prior to 2016).⁴²

3.1.1.1 Stakeholder views

The CCC recommended that the CEO should be appointed by, and answerable to, the CCC.⁴³

In its supplementary submission to the 2016 Review, the CCC noted that although the CEO is subject to the direction of, and is to report to, the Commission, 'because the Commission does not enjoy the

⁴⁰ CC Act, ss 228-229.

⁴¹ CC Act, s 228.

⁴² CC Act, ss 223, 223A.

⁴³ Submission 027, p 24.

usual power to hire and dismiss a CEO, the check on executive power envisaged by those sections of the CC Act is greatly weakened'.⁴⁴

Committee comment

The committee notes the CCC's previously expressed view that because the CCC does not enjoy the usual power to hire and dismiss a CEO, the check on executive power envisaged by the CC Act is greatly weakened. However, the committee considers that the separation of this process from the CCC is a useful oversight mechanism and enhances transparency.

As the role of CEO is one of significant importance, enjoying certain delegated powers including decision-making responsibilities regarding the management of conflicts of interest involving various senior officers of the CCC, the committee values the existing appointment process and its independence from the CCC executive. The committee further notes that the Chairperson is the decision-maker for conflicts involving the CEO, and considers the existing appointment process to be beneficial to the successful operation of the CCC and the discharging of its function.

The Chairperson is also appropriately notified of any suspected improper conduct of the CEO.

In summary, the committee considers its role in the appointment of the CEO of the CCC to be an important part of its oversight and monitoring role, and does not support the CCC's proposal.

3.1.2 Appointment and eligibility of Commissioners

The Clerk of the Parliament, in his submission to the Review, commented on the independence and 'mix' of the Commission. The Clerk noted the CCC, at its formation under the *Criminal Justice Act 1989* (CJA), previously required that the Chairperson be a lawyer qualified for judicial appointment, and that of the remaining four Commission members, 'one was to be a person in legal practice who had demonstrated an interest in civil liberties, the three remaining were to be persons with an interest and ability in community affairs'.⁴⁵ Currently however, while there is a requirement that both the Chairperson and the Deputy Chairperson of the CCC must be a lawyer qualified for judicial appointment, the CC Act provides only that the other three commissioners must have 'qualifications, experience or standing appropriate to assist the commission to perform its functions'.⁴⁶

The CCC's *2019-20 Annual Report* indicates that, as at 30 June 2020, 4 of the 5 commissioners of the CCC were qualified lawyers with considerable reputation and experience, with only one ordinary commissioner not holding a legal qualification.⁴⁷ The Clerk noted that, combined with the CEO of the CCC also being a lawyer (with additional considerable public sector administrative experience), this indicates the CCC is 'now dominated by lawyers, a situation that was not contemplated by the Fitzgerald vision'.⁴⁸ The Clerk further explained:

The recent trend to have the leadership of the CCC dominated by lawyers does not satisfy the original vision of the organisation. The commission needs leadership that includes lawyers; people with a background in and understanding of government and how it works in a practical sense; people with a background in civil liberties; and people with academic expertise. If the number of commissioners needs to increase to ensure diversity then so be it.⁴⁹

⁴⁴ Submission 014A to the 2016 review, p 7.

⁴⁵ Submission 036, pp 6-7.

⁴⁶ CC Act, s 225(2); submission 036, p 7.

⁴⁷ CCC, *2019-20 Annual Report*, 24 September 2020, pp 63-64.

⁴⁸ Submission 036, p 7.

⁴⁹ Public hearing transcript, Brisbane, 14 May 2021, p 1.

The Clerk has suggested 'the re-legislative entrenchment of diversity of background for the commission'.⁵⁰

The Clerk also queried the eligibility provisions under the CC Act. The Clerk noted the definition of 'ineligible person'⁵¹ is intended to preclude conflicts of interest and ensure independence from the public sector, but considered it to be deficient in its formulae. The Clerk submitted:

For example, under the current formulae an officer of the Parliamentary Service is not an ineligible person (which is clearly not appropriate). A contractor or consultant to an agency may not be ineligible (which is clearly not appropriate).⁵²

Committee comment

Given the nature of the CCC and its functions, the committee considers it appropriate to have a number of executive positions for which legal background and experience should be required, but notes that there should also be representation of other sectors of the community within the Commission.

The committee also notes that as part of its role in the appointment process, the committee considers a wide range of factors, and this includes respective experience and fit for the role.

The committee recommends amendment of the CC Act to require that, of the 3 Ordinary Commissioners of the CCC, at least 2 have demonstrated an interest and ability in community affairs, public administration or organisational leadership, to be qualified as Ordinary Commissioners (noting this requirement should be prospective only, not retrospective).

Recommendation 1

The committee recommends that section 225 of the *Crime and Corruption Act 2001* be amended, to require at least 2 persons to have a demonstrated interest and ability in community affairs, public administration or organisational leadership, to be qualified as Ordinary Commissioners.

3.1.3 Bipartisan support for appointment of commissioners

Under the CC Act, bipartisan support of the committee is required for commission appointments to the CCC (including the Chairperson, Deputy Chairperson and Ordinary Commissioners) and CEO of the CCC.⁵³ Nominations for these positions are made by the responsible Minister, who must then consult with the committee.⁵⁴

Consultation with the committee regarding appointment for the Chairperson of the CCC originates from the Fitzgerald Report.⁵⁵

Bipartisan support is defined in schedule 2 of the CC Act as:

- support of the members of the parliamentary committee unanimously; or
- support of a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Legislative Assembly.

The committee is not required to provide reasons for its support or non-support of nominations.

⁵⁰ Submission 036, p 7.

⁵¹ CC Act, schedule 2.

⁵² Submission 036, p 8.

⁵³ CC Act, s 228(b).

⁵⁴ CC Act, s 228(a).

⁵⁵ Fitzgerald Report, pp 310, 347.

3.1.3.1 *Stakeholder views*

The CCC recommended the CC Act be amended to require reasons to be given if bipartisan support is withheld for the appointment of the Chairperson, Commissioners or CEO.⁵⁶ The CCC acknowledged there may be good reason for the committee to withhold support for a nominee, however ‘there should be a legitimate reason for refusing bipartisan support’ and submitted that ‘the absence of such a reason will almost certainly undermine public confidence in the independence of the appointment’.⁵⁷ The CCC suggested that by requiring reasons for not supporting a nomination to be made public, ‘could be expected to ensure that unsuitable candidates were not nominated (lest the reasons for their unsuitability be exposed), and equally, that the reasons for not providing bipartisan support were transparent’.⁵⁸

During the public hearing for the Review held on 26 March 2021, the committee heard from former Parliamentary Crime and Corruption Commissioner Mr Paul Favell, who spoke from personal experience. Mr Favell supported the recommendation of the CCC to require reasons to be given, and stated that such reasons should also include any relevant political affiliations.⁵⁹ Mr Favell also considered that the reasoning should be made available to the public, noting ‘it is a public exercise, so the public can follow the appointment of, after all, what are important appointments in the community and can have confidence in the appointment and can see that there is accountability and that there is a reasoning that can be followed’.⁶⁰ Mr Favell considered that this amendment could improve the community’s confidence in the appointment process, and would bring credibility to the appointment.⁶¹ Mr Favell clarified, however, that he was not suggesting that the determination of the committee about the appointment could be appellable.⁶²

Commentary was also provided in regards to the definition of ‘bipartisan support’. When asked whether the definition of bipartisan support should reflect the government and the opposition in concert (as opposed to allowing a crossbench Member to affect the process), the Parliamentary Commissioner indicated that she considered it should be.⁶³ The Parliamentary Commissioner stated:

As a general observation, I would have thought the parliamentary commissioner and senior officers of the CCC would be examples of something that the public would want to see has the support of both parties—that this is some person who it is accepted by both sides should have that position. I think it displays, first to the public, a uniform approach by parliament which I think is always well regarded. I think the public like to see occasions where all parties unite for some common goal. It is important that that is reflected through the legislation.⁶⁴

The Parliamentary Commissioner further added ‘... you do not want to turn these kinds of appointments into a political game and discredit the role’.⁶⁵

Similarly, the Clerk stated in his submission that ‘tactical substitutions to avoid bipartisan provisions also need to be addressed in the legislation’.⁶⁶

⁵⁶ Submission 027, p 36.

⁵⁷ Submission 027, p 36.

⁵⁸ Submission 027, p 36.

⁵⁹ Public hearing transcript, Brisbane, 26 March 2021, p 33.

⁶⁰ Public hearing transcript, Brisbane, 26 March 2021, p 33.

⁶¹ Public hearing transcript, Brisbane, 26 March 2021, p 33.

⁶² Public hearing transcript, Brisbane, 26 March 2021, p 33.

⁶³ Public hearing transcript, Brisbane, 26 March 2021, p 4.

⁶⁴ Public hearing transcript, Brisbane, 26 March 2021, pp 4-5.

⁶⁵ Public hearing transcript, Brisbane, 26 March 2021, pp 4-5.

⁶⁶ Submission 036, p 18.

Committee comment

The committee agrees that for the consideration of nominees for appointment as commissioners (including the Chairperson) and CEO of the CCC, consideration should be given to developing a mechanism to ensure nominees are appropriately considered by the committee, and any delay in progressing consideration of appointments be able to be publicly discussed.

The committee notes that the plain meaning of the term ‘bipartisan support’, in the context of the committee, denotes support from both parties - that is, committee members nominated by the Government, and committee members nominated by the Opposition. The committee considers the intention of the legislation was and is to reflect such bipartisanship, and therefore recommends that the CC Act be amended to reflect this intention.

Recommendation 2

The committee recommends the definition of ‘bipartisan support’ of the parliamentary committee in Schedule 2 of the *Crime and Corruption Act 2001* be amended so that it provides for

- support of the members of the parliamentary committee unanimously, or
- support of a majority of the members appointed by the Leader of the House (including a member appointed as a substitute committee member in place of a member nominated by the Leader of the House), and the support of a majority of members appointed by the Leader of the Opposition (including a member appointed as a substitute committee member in place of a member nominated by the Leader of the Opposition).

Recommendation 3

The committee recommends that for the consideration of nominees for appointment as commissioners (including the Chairperson) and Chief Executive Officer of the Crime and Corruption Commission, that the government give consideration to developing a mechanism to ensure nominees are appropriately considered by the committee, and any delay in progressing consideration of appointments be able to be publicly discussed.

3.1.4 Limits on tenure of senior officers

The initial structure of the former CJC followed the recommendations of the Fitzgerald Report,⁶⁷ including the requirement that the Chairman ‘be appointed for a term of not less than two or more than five years, with first Chairman being appointed for not more than three years’.⁶⁸ The Fitzgerald Report recommended other members of the CCC ‘be appointed for a term of not less than two or more than five years’⁶⁹ but did not make similar recommendations in regards to other officers of the CCC (including Senior Executive Service (SES) level).

In 2014, the *Crime and Misconduct Act 2001* (Crime and Misconduct Act) which was later replaced by the CC Act, was amended to limit the term of appointment for a commissioner to no more than 10 years in total.⁷⁰

Currently the Commissioners, CEO and Senior Officers of the CCC may not be appointed or employed for more than 10 years.⁷¹

⁶⁷ *Report of a Commission of Inquiry Pursuant to Orders in Council, 1989* (Fitzgerald Report).

⁶⁸ Fitzgerald Report, p 373 (recommendation B, I, 5(b)).

⁶⁹ Fitzgerald Report, p 310.

⁷⁰ *Crime and Misconduct and Other Legislation Amendment Act 2014*, s 39.

⁷¹ CC Act, s 231.

A 'Senior Officer' includes a person who is employed at the SES Level, and 'whose principal duties relate directly to the performance of the commission's prevention, crime, corruption, research or intelligence functions or the giving of legal advice to the commission'.⁷² It does not include 'a senior officer whose duties support the commission's functions' such as an officer whose principal duties relate to information technology matters or whose principal duties relate to financial matters.⁷³

3.1.4.1 Stakeholder views

In its submission, the CCC recommended that the CC Act be amended to remove limits on the tenure of Senior Officers and the CEO of the CCC, stating that such limits can hinder long term planning and policy implementation.⁷⁴ Noting the application of these to all relevant officers in the agency, the CCC stated that the current limits on tenure:

...may have a perverse outcome by eliminating from a pool of potential candidates staff who have worked in other senior positions within the CCC. This may deplete corporate knowledge, and discourage promotion or lateral transfer of quality staff...

...forced departure of officers after a fixed period may serve to achieve the opposite – the loss of skilled, talented staff who continue to drive the CCC forward.⁷⁵

At the public hearing, the CCC further clarified that this recommendation was made to ensure consistency with other public sector agencies, and to allow the CCC to retain and rely on the wealth of corporate knowledge within the CCC. The CCC also noted that removal of the current tenure limits would allow officers to progress and move within the senior ranks of the CCC.⁷⁶

Acknowledging the intent of the limits on tenure, Mr MacSporran argued:

...Whilst the intention or part of the intention in imposing the limit on the tenure was to prevent or mitigate a corruption risk with people being in the job too long, not being sufficiently refreshed and being tempted to behave corruptly, we think that is such a small risk, if it happened at all, of going undetected that the benefits to be gained by the retention of corporate knowledge and expertise that people in those positions gain far outweighs that minimalist risk. I cannot conceive, frankly, of someone who would behave in a way that could be described as corruptly—to fulfil the purpose behind the 10-year limit—going undetected. There are so many internal and external systems in place that would inevitably uncover that sort of behaviour.⁷⁷

...

...the number of internal and external checks and balances would almost certainly uncover any attitude or lapse in that respect. I cannot frankly conceive of it happening unnoticed. For that reason I think the risk is so minimal and so readily mitigated that it is almost non-existent as opposed to the huge losses we suffer. It is a career-threatening position people in the senior roles in our organisation face by having to make the choice—as some have, as you know—to leave before their 10 years is up because at their 10-year mark they might be of an age where other employment might be precluded.⁷⁸

...

Our business, frankly, is quite a complex business. It has various businesses under the one roof, each of them in their own way complex. The interrelationship between them adds a further level of complexity. At a management senior officer level, to lose that 10 years cumulative experience and expertise is a

⁷² CC Act, s 247(5).

⁷³ CC Act, s 247(5).

⁷⁴ Submission 027, p 34.

⁷⁵ Submission 027, p 34.

⁷⁶ Public hearing transcript, Brisbane, 26 March 2021, p 20.

⁷⁷ Public hearing transcript, Brisbane, 26 March 2021, p 20.

⁷⁸ Public hearing transcript, Brisbane, 26 March 2021, p 20.

significant problem for us. As I say, the only argument against it is the corruption risk, the jaded worker problem and so forth, but we think that can be addressed quite easily.⁷⁹

The CCC provided a practical example of the effects of limited tenure of its senior officers:

For example, a person engaged at the SES 2 level who has served for ten years must leave the CCC at the end of that period. They are currently precluded from ever returning to an SES level role including at a higher level. The impact this has on succession planning is self-evident. Our SES 2 level officers are generally our pipeline for the two x SES 4 level roles the organisation has in our workforce profile. To restrain those roles by this tenure limit is to effectively cut the talent and succession pipeline from the organisation. An investment of ten years in capability development is lost as a result. It is not desirable and at the very least the CC Act should be amended as a matter of priority to carve out its application to roles that are not the CEO or either Senior Executive Officer (Crime) or (Corruption).⁸⁰

The CCC noted under the CC Act, the limit on tenure for a senior officer applies to a senior officer 'responsible for the CCC's core functions or the provision of legal advice' but not to a senior officer who provides ancillary support to the CCC. It was the CCC's view that this distinction causes issues with implementation because determining whether an officer's role 'falls within the ambit of section 247(5) may pose some difficulty, as organisational structures and functions change over time'.⁸¹ The CCC also queried whether 'the periods as a senior officer (as defined in section 245) in areas excluded from section 247(5) are counted towards the calculation' and 'whether the ten-year limit applies depending on the officer's particular role when ten years is reached'. The CCC suggested the rationale for the distinction between senior officers performing different functions is not clear and should be questioned.⁸²

The CCC also emphasised that the restrictions on tenure of senior officers 'do not exist elsewhere within the Queensland public sector'. The CCC acknowledged its 'extraordinary powers and unique role may justify such differential treatment' but argued that 'it is also worth noting that such restrictions on senior executives are also not found in any other integrity or organised crime investigative agency within Australia'.⁸³

The CCC did not propose an amendment should be made to the legislated limit on tenure of Commissioners, and recommended the current base-term of appointment of five years for senior officers and the CEO be preserved.⁸⁴ It recommended that the current base-term of appointment of five years be preserved, allowing for officers at the SES level 'whose skills or direction no longer supports the needs of the CCC' to 'not have their contract renewed at the conclusion of their term'.⁸⁵

The CCC referred to the approaches in other jurisdictions where there are no limits on tenure of senior officers in their relevant integrity/organised crime investigative entities.⁸⁶ The CCC noted in Victoria and the Australian Capital Territory no term limits are imposed on the role of CEO, and in NSW the CEO may be appointed for a term not exceeding seven years but is eligible for re-appointment (with no maximum number of reappointments).⁸⁷

⁷⁹ Public hearing transcript, Brisbane, 26 March 2021, p 21.

⁸⁰ Submission 027A, p 8.

⁸¹ Submission 027, p 34.

⁸² Submission 027, p 35.

⁸³ Submission 027A, p 8.

⁸⁴ Submission 027, p 35.

⁸⁵ Submission 027, p 35.

⁸⁶ Submission 027, p 35.

⁸⁷ Submission 027, p 35.

Other stakeholders also expressed views on tenure limits for senior officers, and the CCC's position in this respect.

Mr Favell supported the CCC's position, noting the importance of corporate knowledge within the senior positions at the CCC.⁸⁸

The Queensland Law Society (QLS) however, argued that that the limits on the tenure of senior officers should stay as they are:

The QLS is against any change in that position. Limited tenures were introduced as recommendations from the Fitzgerald inquiry. When there are ingrained, long-term tenures, it is a breeding ground for corruption and the potential for corruption. Our position is that there should be no shift away from that position that was recommended all those years ago.⁸⁹

The Parliamentary Commissioner, while noting she is not a member of the CCC and therefore not aware of the full context and reasons for the CCC's recommendation, stated:

...as a general rule, any position anywhere which leaves people in place for too long without checks and balances can build up a culture that attaches itself to the views of whoever the head officers are. If that culture is not healthy, that means the whole organisation is crippled for a long time. They might be partisan to a particular view, they may not be willing to move towards technology or there may be all kinds of areas where I think it is more healthy to reinvigorate an organisation by timely changes. The issue is: what is the time? Clearly, two years would be too short a time. I do not know whether 10 years is too long. In particular, anti-corruption agencies play such an important role—and there are other similar agencies—and I think that is why there are restrictions on the time during which people can serve a term.⁹⁰

The Clerk submitted that the terms of officers of the commission 'is worthy of careful consideration', and posed the following questions:

Is it really in the interests of the independence of the CCC for senior appointments (such as the chairperson or commissioners) to be made for periods and subject to renewals? Isn't a single, longer fixed term appointment (not exceeding 10 years) more likely to safeguard independence?⁹¹

Committee comment

The committee acknowledges the importance of attracting and retaining a high calibre of qualified and appropriately experienced staff, particularly at senior levels.

The committee notes, however, that long-term tenures and limited changes at the executive level of an organisation can lead to a potential corruption risk and other issues relevant to a culture and environment of an organisation.

The committee does not support the proposal of the CCC to remove limits on the tenure of senior officers or the CEO of the CCC.

The committee notes the concerns raised by the Clerk of the Parliament about the terms of Commissioners being subject to renewal on the initiative of the government of the day. The committee recommends that the government consider amending the CC Act to provide for a single-non-renewable appointment for the Chairperson and Ordinary Commissioners, not exceeding seven years. This will ensure there is no potential for a Commissioner to, or be seen to, be impacted in any way in the conduct of their work as a Commissioner by the imperative of re-appointment as a Commissioner.

⁸⁸ Public hearing transcript, Brisbane, 26 March 2021, p 34.

⁸⁹ Public hearing transcript, Brisbane, 26 March 2021, p 44.

⁹⁰ Public hearing transcript, Brisbane, 26 March 2021, p 5.

⁹¹ Submission 036, p 8.

Recommendation 4

The committee recommends consideration be given to amending the *Crime and Corruption Act 2001* to provide for a single non-renewable appointment for the Chairperson and Ordinary Commissioners of the Crime and Corruption Commission, not exceeding seven years.

3.1.5 Seconded officers and internal disciplinary powers and processes

Secondments of Queensland Police Service (QPS) employees are an important part of the CCC's staffing structure. In the CCC's *2019-20 Annual Report* it was reported that 20% of the CCC's 373 employees were police officers.⁹² At the public hearing, the QPS noted that currently there are 85 police officers seconded to the CCC.⁹³

There is currently a Memorandum of Understanding between the QPS and the CCC for the secondment of police officers to the CCC.

Whilst a QPS officer is seconded to the CCC, the officer retains a relationship with their 'home agency'.⁹⁴

Officers can be employed by the commission under section 254 (commission staff), section 255 (officers on secondment) or section 256 (engagement of agents to meet temporary circumstances) of the CC Act.

3.1.5.1 Stakeholder views

During the public hearing for the review, the QPS, QPU and the Queensland Police Commissioned Officers' Union of Employees (QPCOUE) commented generally on secondments of QPS employees to the CCC.

The QPS acknowledged that police play 'a critical role' in the CCC,⁹⁵ making the following comments about the recruitment and retention of police officers at the CCC:

...obviously we expect officers at very high standards to come in and work in that environment, as we do within our own Ethical Standards Command. It is not for everybody. It is an incredibly difficult role at times because of the nature of the work that is being done and also the nature of being quite isolated from the organisation....The recruitment is always challenging, as it should be. That is the way that I view it. You usually are after the best of the best of what you have to work with in that environment.⁹⁶

The QPCOUE commented generally about its members, some of whom would find themselves under investigation by the CCC. In regards to the welfare and wellbeing of police officers when seconded to the CCC, Superintendent Stephen Munro, QPCOUE noted:

I think they are managed quite well. Two of our executive members work at the CCC. The welfare of our staff and the welfare of the Police Service has always been a high priority for the organisation. I think there have been significant changes in the last number of years about rotation of staff through the CCC. Historically, some people may have spent 10, 15 or 20 years there, and there is a policy where people do not stay—it is a bit like in our other areas of the organisation. We have certainly matured in that respect.⁹⁷

The CCC acknowledged that in the past, some criticism has been raised regarding the secondment of police to the CCC to assist its investigations, but also noted that the Fitzgerald Inquiry was staffed with seconded police to facilitate its investigations and 'Mr Fitzgerald QC regarded seconded police as

⁹² CCC, *2019-20 Annual Report*, 24 September 2020, p 68.

⁹³ Mr Doug Smith, QPS, public hearing transcript, Brisbane, 26 March 2021, p 9.

⁹⁴ Submission 027, p 37.

⁹⁵ Public hearing transcript, Brisbane, 26 March 2021, p 11.

⁹⁶ Public hearing transcript, Brisbane, 26 March 2021, p 11.

⁹⁷ Public hearing transcript, Brisbane, 26 March 2021, p 17.

essential for an anti-corruption agency, and expressly recommended that as the appropriate mechanism to staff its misconduct investigation function'.⁹⁸

General support for the practice and management of secondments aside, stakeholders expressed a number of views regarding the scope of disciplinary powers and actions taken in relation to seconded officers.

Chapter 6, Part 1, Division 9 of the CC Act provides for disciplinary action to be taken against CCC staff. The CCC noted that the power for the CCC to issue a direction for the performance of duties by CCC officers (including a direction that the person participate in a disciplinary interview), is limited to those officers employed under sections 254 and 255 of the CC Act, and does not apply to those engaged under section 256. The CCC requested the CC Act be amended to provide for a direction to be issued to officers engaged as agents under section 256.⁹⁹

The CCC also raised a concern regarding the application of disciplinary action for staff who have left secondment positions with the CCC and returned to their 'home agency'. Under the CC Act, the CEO of the CCC can make a disciplinary finding or disciplinary action against a former CCC officer.¹⁰⁰ Following a disciplinary action or finding, the CCC CEO or 'home agency' CEO can choose to take disciplinary action against the person.¹⁰¹

The CCC recommended that the disciplinary provisions set out in Chapter 6, Part 1, Division 9 of the CC Act be amended to ensure that disciplinary action taken by the CCC in respect of seconded officers, including those engaged under section 256, can operate with the same effect as if the officer were employed directly by the CCC (including enabling sanctions such as demotion and termination to be applied).

The CCC further elaborated on its concerns and identified need for amendment as follows:

There are circumstances where a person's misconduct may be so grave that the CCC's CEO would consider that dismissal is the appropriate disciplinary outcome. Where a person is a secondee, dismissal for these purposes only amounts in practice to termination of the secondment. The same considerations apply to disciplinary sanctions such as demotion or reduction in pay levels – they do not apply to seconded officers because the CCC cannot alter the underlying employment relationship between the employee and their 'home agency'.¹⁰²

The QPS, in contrast, did not support the proposal to extend the disciplinary reach of the CCC, which it considered to represent what would be a 'really significant policy shift'. The QPS noted the Fitzgerald Report included commentary on the purpose of discipline, including that the purpose is 'the managing of the employee' rather than a punitive mechanism.¹⁰³ Deputy Commissioner Doug Smith, QPS, further explained:

If the purpose of discipline is not to punish and if the purpose of discipline is to protect the integrity of the organisation—which is quite a different intent—I think it behoves us to consider why the employer of the individuals who has that responsibility for the individuals would not retain that right.

...

It goes to the purpose of discipline. It is very different to a criminal proceeding which is there to protect the community and punish. The first step, of course, is that the employee who is an employee of the

⁹⁸ Submission 027A, p 4.

⁹⁹ Submission 027, p 37.

¹⁰⁰ CC Act, s 273D.

¹⁰¹ CC Act, ss 273CBA, 273CBB.

¹⁰² Submission 027, p 37.

¹⁰³ Public hearing transcript, Brisbane, 26 March 2021, p 11.

Police Service comes back to the Police Service, and then we have that responsibility to protect the integrity of the Police Service through the discipline process. Again, it is a policy decision.¹⁰⁴

The QPU similarly opposed the CCC's 'request for power to demote or dismiss personnel seconded at the commission' stating it is 'completely unnecessary'.¹⁰⁵ The QPU noted that for QPS officers seconded to the CCC 'the Commissioner of Police is charged with the responsibility in relation to discipline and taking action as she sees fit'.¹⁰⁶ The QPU also noted other possible effects of extending the disciplinary process:

The CCC has full powers to review any QPS decision and the term of discipline taken, including any decision not to take discipline action. ... Giving the CCC such powers in respect of seconded personnel really means their actual employer would lose the power to discipline and manage its own staff. The officers concerned would also lose the review rights currently existing for discipline action under the Police Service Administration Act.¹⁰⁷

The QPU raised further concerns about issues with the publication of decisions to suspend or revoke a police officer's secondment to the CCC.¹⁰⁸

The committee has been told of instances where public announcements have been made when a police officer seconded to the CCC has their secondment suspended or terminated, when allegations of misconduct are made (and sometimes persons are charged). After an assessment/investigation has been finalised, there are not always public announcements which relay the outcome of those decisions (particularly where the allegations have not been substantiated and where the officer has been cleared of wrongdoing).

Mr Ian Leavers APM, President of the QPU stated:

I have a concern in relation to some of the public comments which are made like that. When the rank is mentioned, within the organisation—although it consists of 12,000 sworn police—it is no secret who it is and it is widely known. It is extremely detrimental to the police officer and especially those close to them, including their families, when that occurs. Ironically, when police are cleared we do not see such a statement come out publicly indicating that their actions have been vindicated, which is a concern. To get back to the point, if the CCC were to look at demotion and dismissal of a police officer, they would have no industrial rights as they are seconded to the CCC and I believe that everyone should have rights to a review process.¹⁰⁹

Committee comment

The committee notes the integral contribution of QPS secondees to the CCC in supporting the CCC to carry out its functions.

The committee notes the CCC's call for the power for the CCC to issue a direction for the performance of duties by CCC officers (including a direction that the person participate in a disciplinary interview), to be extended to those agents employed under section 256 of the CC Act.

The committee does not support a proposal to extend the CCC's disciplinary process (or disciplinary actions) to staff who have left secondment positions with the CCC and returned to their 'home agency'. The committee considers the current ability of the CCC to notify a home agency of any disciplinary finding of the CCC (with the home agency then being able to take disciplinary action if it deems it appropriate) to be sufficient.

¹⁰⁴ Public hearing transcript, Brisbane, 26 March 2021, p 13.

¹⁰⁵ Public hearing transcript, Brisbane, 26 March 2021, p 38.

¹⁰⁶ Public hearing transcript, Brisbane, 26 March 2021, p 38.

¹⁰⁷ Public hearing transcript, Brisbane, 26 March 2021, p 37.

¹⁰⁸ Public hearing transcript, Brisbane, 26 March 2021, p 39.

¹⁰⁹ Public hearing transcript, Brisbane, 26 March 2021, p 39.

The committee is aware of instances in which public reporting by the CCC and/or QPS about the charging, or investigating, of police officers, has not been followed by public reporting of outcomes. The committee is concerned about instances in which the subject police officer is cleared of the allegations, but this is not reported. The committee considers that the CCC and/or QPS should generally, in circumstances where a police officer is cleared of publically reported allegations, publicly announce the outcome.

Recommendation 5

The committee recommends that section 257 of the *Crime and Corruption Act 2001* be amended, to enable the Crime and Corruption Commission to issue directions for the performance of duties by commission officers who are employed by the Crime and Corruption Commission under section 256 of the *Crime and Corruption Act 2001*.

Recommendation 6

The committee recommends that the Crime and Corruption Commission and the Queensland Police Service update their practices and procedures in regards to public reporting associated with the charging, or investigating, of police officers, to ensure that the outcome is also subject to public reporting, in circumstances where the police officer is cleared of the publicly reported allegations.

3.1.6 Commissioners for Police Service Review – secretariat functions

Commissioners for Police Service Review (CPSR) are provided for under Part 9 of the *Police Service Administration Act 1990* and Part 11 of the *Police Service Administration Regulation 2016* (PSA Regulation). CPSRs provide police officers with an independent review of decisions about promotions, transfers and disciplinary matters (other than misconduct), which they believe to be unfair and about which they are aggrieved. CPSRs are independent of the CCC and the QPS, and are appointed by the Governor in Council.¹¹⁰

Consistent with section 35 of the PSA Regulation, the CCC currently funds and provides secretariat support for the CPSR. The CCC otherwise has no role in the review process.

The secretariat's role is to provide administrative support and advice to the CPSR. The secretariat consists of 0.5 full-time equivalent of an AO4 administration officer and is located at the CCC premises.¹¹¹

3.1.6.1 Stakeholder views

The CCC recommended that it no longer be responsible for the provision of secretariat support to the CPSR process.¹¹² The CCC suggested that by providing the secretariat services, the CCC 'may create the impression that the decisions of the CPSR have the imprimatur of the CCC, or may have some overlap with CCC functions and activities'.¹¹³

The CCC suggested the secretariat function 'is best delivered in an agency whose purpose and services are more aligned to the police service review function' such as the Public Service Commission or the Department of Justice and Attorney-General (DJAG).¹¹⁴ The CCC suggested 'Aligning the police service review function with the Public Service Commission would deliver greater support to Review

¹¹⁰ *Police Service Administration Act 1990*, s 9.2A.

¹¹¹ Submission 027, p 38.

¹¹² Submission 027, p 39.

¹¹³ Submission 027, p 38.

¹¹⁴ Submission 027, p 38; public hearing transcript, Brisbane, 26 March 2021, p 24.

Commissioners while maintaining the necessary independence'.¹¹⁵ Alternatively, it suggested the CPSR could be moved to be an independent arm of any agency. The CCC clarified at the public hearing for the review that it would not be appropriate for the secretariat functions to be located in the QPS:

Wherever it goes, it should not go back to the Police Service because it would just be, firstly, a very bad appearance because of the perception of lack of objectivity and independence. Whether there was in fact or not, it is just a perception issue. It could go to the Attorney, for instance, under her control. It would sit, I think, comfortably there, and then funding for it could be arranged through that method.¹¹⁶

The QPU agreed the function should be removed from CCC, and suggested it be transferred to the 'Industrial [Relations] Commission', as an 'experienced and properly resourced commission [which] is available to undertake those types of hearings'.¹¹⁷

Recommendation 7

The committee recommends the secretariat functions for the Commissioners for Police Service Review are transferred from the Crime and Corruption Commission to another appropriate entity, separate from the Queensland Police Service.

3.2 Funding

The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, is responsible for the allocation of funds for the CCC budget.¹¹⁸ The CCC is required to adopt and submit a budget to the Minister each financial year, as well as report to the Minister on the CCC's efficiency, effectiveness, economy and timeliness.¹¹⁹

The CCC receives its funding on a quarterly basis in the form of grants from DJAG, which are funded by parliamentary appropriations for the provision of CCC outputs. The CCC makes a budget submission to the Attorney-General which is then considered by the Cabinet Budget Review Committee (CBRC). If approved, the CBRC provides the funds to DJAG which then distributes the funds to the CCC.

3.2.1 Stakeholder views

The CCC recommended a review of the CCC's funding model 'to avoid possibility or perception of political interference by appropriation from Parliament'.¹²⁰ The CCC stated that its independence is paramount for the performance of its functions, and that its funding model 'must be as free as possible from the potential for political influence, or perception of political influence, that may control or influence the investigations undertaken'.¹²¹

The CCC proposed that it be funded by a direct appropriation from Parliament, arguing this would 'strengthen the CCC's independence, and is consistent with the approach adopted, or advocated in other jurisdictions'.¹²² This recommended approach for a new funding model, the CCC continued, 'seeks to ensure that the CCC has genuine structural independence from government and is not subject to funding decisions by an entity over which the CCC is meant to exercise oversight'.¹²³

¹¹⁵ Submission 027, p 38.

¹¹⁶ Public hearing transcript, Brisbane, 26 March 2021, p 24.

¹¹⁷ Public hearing transcript, Brisbane, 26 March 2021, p 38.

¹¹⁸ CCC, 'Oversight and accountability', <https://www.ccc.qld.gov.au/about-us/oversight-and-accountability>; CC Act, s 259.

¹¹⁹ CC Act, s 260.

¹²⁰ Submission 027, p 32.

¹²¹ Submission 027, p 32.

¹²² Submission 027, p 32.

¹²³ Public hearing transcript, Brisbane, 26 March 2021, p 20.

At the public hearing on 26 March 2021, the CCC further explained how its proposed new model might operate in practice:

The idea we had was that we would produce a business case, which we do anyway, for what funds were necessary with evidence as to why it was necessary in various parts. That would go to someone independent, whether it be a committee of parliament or a completely independent person with business skills. They would then assess our business case and make recommendations which would then go to parliament, whether it be via this committee or just directly to parliament, and then parliament would decide in whatever form.¹²⁴

The CCC suggested the proposed change would result in further transparency. Mr MacSporran stated:

I would assume, subject to operational disclosures in the material that might need to be redacted in part, our business case would be published, as would the independent person's recommendation be published, and then the parliament debate would reveal in public what the determination was and why. I think that is just healthier. We would not object to being knocked back if the reasons were transparent and everyone could see either that our business case was deficient or an overreach or such was not accepted for other legitimate reasons. That would all become public.¹²⁵

To support its recommendation, the CCC noted recent outcomes of reviews into other independent oversight/integrity agencies in Victoria and New South Wales (NSW).

In Victoria, the Independent Broad-based Anti-corruption Commission (IBAC) previously received its funding from the Department of Premier and Cabinet of the Victorian Government. Following passage of the Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Bill 2018, IBAC has been provided with greater budget independence from 1 July 2020, and now receives its budget as a Parliament Appropriation Bill each financial year. The budget for IBAC is determined in consultation with the Parliamentary Integrity and Oversight Committee, concurrently with IBAC's annual plan.¹²⁶

In NSW, the NSW Public Accountability Committee and the Independent Commission Against Corruption (ICAC) tabled a special report in the NSW Parliament titled *NSW Independent Commission Against Corruption Special Report No. 2 – A parliamentary solution to a funding model for the ICAC* (ICAC Special Report), which outlined their desire for a new independent funding model.¹²⁷ ICAC is currently funded by a mix of appropriations by Parliament and grants for supplementary funds from the Department of Premier and Cabinet. The Special Report stated that the funding role of the Executive Government is 'inconsistent with the essential independence of the Commission created and conferred by the provisions of the ICAC Act [*Independent Commission Against Corruption Act 1988* (NSW)]'.¹²⁸ The ICAC Special Report recommended instead, that an ICAC budget assessor be established by the Presiding Officers of the Parliament to determine the Commission's core annual funding requirements, which would then be approved and appropriated from the Consolidated Fund of the Parliament.¹²⁹ In ICAC's *2019-20 Annual Report*, it noted it had received the support of the Parliamentary Committee on the ICAC and from the NSW Legislative Council's Public Accountability Committee, in regards to its call for a new funding model.¹³⁰

¹²⁴ Public hearing transcript, Brisbane, 26 March 2021, p 22.

¹²⁵ Public hearing transcript, Brisbane, 26 March 2021, p 23.

¹²⁶ Submission 027, p 30; Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Bill 2018, explanatory memorandum, p 136.

¹²⁷ ICAC, *NSW Independent Commission Against Corruption Special Report: The need for a new independent funding model for the ICAC*, May 2020, (ICAC Special Report).

¹²⁸ ICAC Special Report, p 4.

¹²⁹ ICAC Special Report, p 5.

¹³⁰ ICAC, *Annual Report 2019-20*, p 5.

Dr Colleen Lewis, Honorary Professor at the Australian Studies Institute, Australian National University, highlighted the possibility of a conflict of interest, should a situation arise where the CCC must investigate DJAG, noting that such funding arrangements have been amended to prevent this situation in other Australian states.¹³¹

The Parliamentary Commissioner also commented on the CCC's proposed new funding model and the approach taken in other jurisdictions, stating:

I have been aware of jurisdictions where entities, anti-corruption agencies, that have been reliant on government funding have been restricted—punished, in some way. They have not got the amount of funds they needed whenever they were wanting to investigate something that might involve the current government. I remember reading on one occasion of an uprising amongst the local populace who got together some funds to assist the anti-corruption agency because the government of the day would not fund something. I think it was a structural thing. They were in very poor accommodation, they needed a building and they would not get funded. The basic point is that any of these entities should be at arm's length from any kind of political interference as to their funding.¹³²

Committee comment

The committee notes the recommendation of the CCC to change its funding model, citing benefits of additional transparency and to maximise freedom from the potential for political influence, and referring to the approach taken in other jurisdictions.

The committee notes the model in operation for ICAC is different to Queensland, but so is the governance and role of ICAC. In particular, ICAC is not responsible to a Government Minister,¹³³ unlike the CCC which must report to the Minister on the CCC's efficiency, effectiveness, economy and timeliness.¹³⁴

The committee does not consider the case to change the basis for funding the CCC has been made out, especially in light of the differences between ICAC, IBAC and the CCC.

3.3 Corporate governance

The CCC is guided in its operations by a strategic plan (setting out its vision, purpose, values and objectives), governance framework (which sets out key principles, behaviours and processes to guide its work),¹³⁵ and Code of Conduct.¹³⁶

With risk management being a key organisational focus, the Commission also operates subject to a Risk Management Framework, a Fraud and Corruption Control Plan, and an Information Security Management Framework.¹³⁷ The efficacy of the controls established in these plans and procedures, together with the financial management and compliance of the CCC with regulatory requirements, is

¹³¹ Submission 034, p 4.

¹³² Public hearing transcript, Brisbane, 26 March 2021, p 5.

¹³³ ICAC, 'Independence and accountability', <https://www.icac.nsw.gov.au/about-the-nsw-icac/independence-and-accountability>.

¹³⁴ CC Act, s 260.

¹³⁵ The CCC's governance framework includes key objectives relating to its leadership; culture; staff expectations; risk management; service; and performance management. See CCC, *2019-20 Annual Report*, 24 September 2020, p 71.

¹³⁶ The purpose of the Code of Conduct is to: a) set out the standards of conduct expected of CCC staff, consistent with the ethics principles and values outlined in the *Public Sector Ethics Act 1994*; b) guide and assist CCC staff to identify and resolve ethical dilemmas that may arise in the course of their duties; c) foster and maintain an ethical culture within the CCC; and d) promote public confidence in the CCC. CCC, *Code of Conduct for the Crime and Corruption Commission*, October 2019, (Code of Conduct), <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/CCC-Code-of-Conduct.pdf>, p 6.

¹³⁷ CCC, *2019-20 Annual Report*, 24 September 2020, p 71.

also guided and oversighted by the Audit and Risk Management Committee (ARMC). The ARMC – which consists of the organisation’s CEO, two internal (CCC) members and two external members – provides independent assurance on risk, internal controls, compliance with legislative and regulatory requirements, and the financial management of the CCC.¹³⁸

Additionally, the CCC is subject to internal audits (regarding the effective and efficient use of CCC powers, assets and resources) and external (financial) audits.¹³⁹

During the Review, stakeholders made a number of comments regarding certain governance issues, including in relation to:

- the management of conflicts of interest of CCC officers
- the security vetting of CCC personnel
- public disclosure protections for CCC officers.

3.3.1 Internal declarations of conflicts of interest

Under the CC Act, the CCC is required to keep a register of pecuniary interests and personal or political associations of each CCC commissioner and the CEO.¹⁴⁰ The register must be updated within 30 days of any substantial change and annually.¹⁴¹ A CCC commissioner must also disclose a material personal interest¹⁴² to a meeting of the CCC as soon as practicable after becoming aware that the interest may be relevant to an issue before the CCC and could conflict with, or be seen to conflict with, performance of the commissioner’s duties.¹⁴³ A similar requirement applies to members of the Crime Reference Committee under section 289 of the CC Act.

The CCC Code of Conduct,¹⁴⁴ approved by the Attorney-General as the responsible Minister, sets out the standards of conduct expected of everyone who works for or at the CCC,¹⁴⁵ consistent with the ethics, principles and values outlined in the *Public Sector Ethics Act 1994*. In relation to conflicts of interest, the Code of Conduct advises CCC officers that a direct, potential or perceived conflict of interest with their personal financial or other private interests ‘must be formally declared in writing to your manager and either resolved in favour of the public interest or managed appropriately without delay’.¹⁴⁶ The CCC Code of Conduct also states that CCC officers have ‘an ongoing obligation’ to:

- monitor and assess their private and personal interests and whether such interests may conflict or have the potential to conflict with their official duties

¹³⁸ CCC, *2019-20 Annual Report*, 24 September 2020, p 72.

¹³⁹ CCC, *2019-20 Annual Report*, 24 September 2020, p 73.

¹⁴⁰ CC Act, s 238.

¹⁴¹ CC Act, ss 238(2), 238(3).

¹⁴² CC Act, s 267(9): Material personal interest means — (a) a direct or indirect interest relating to the personal affairs of the commissioner that may have, or be seen to have, a significant influence on the conduct of the commissioner at the meeting; or (b) a personal or political association that might influence the commissioner in the discharge of the commissioner’s duties.

¹⁴³ CC Act, s 267.

¹⁴⁴ CCC, Code of Conduct.

¹⁴⁵ The Code of Conduct states that the Code ‘covers and is binding upon everyone who works for or at the CCC, whether on a permanent, temporary or casual basis, including: the Chairperson; Commissioners; all people employed at or seconded to the CCC (civilian and police); anyone engaged by the CCC to provide services; information or advice, either as a contractor or a consultant; students on placements, external members of committees and advisory panels and voluntary workers’, p 7.

¹⁴⁶ CCC, Code of Conduct, p 9.

- regularly update their statement of personal particulars and private interests, especially when there is any change in circumstances
- avoid, where possible, situations that may give rise to a conflict of interest or an apparent conflict of interest
- formally disclose all conflicts of interest according to the CCC's policy: Conflicts of interest and other disclosures
- manage any conflicts of interest effectively and transparently where such conflict of interest cannot be avoided.¹⁴⁷

The CC Act provides that a CCC officer's¹⁴⁸ contravention of a standard of conduct applying to the officer under an approved code of conduct is grounds for disciplinary action.¹⁴⁹

3.3.1.1 Stakeholder views

In its submission to this Review, the CCC stated that while conflict of interest disclosure requirements are recognised in the Code of Conduct 'there is no legal obligation on CCC officers to declare a conflict of interest in relation to specific matters they may be allocated to work on'.¹⁵⁰ The CCC recommended 'that section 238 of the CC Act be amended to ensure that CCC officers are obliged to make conflict of interest declarations'.¹⁵¹

The CCC submitted:

Imposing an obligation to declare a conflict of interest in relation to specific matters on all CCC officers, rather than just Commissioners and members of the Crime Reference Committee, is consistent with the CCC's public position on the role that the proper management of conflicts of interest plays in protecting against corruption and promoting public confidence in the integrity of public institutions.¹⁵²

Committee comment

The committee acknowledges that the CC Act does not require CCC officers (commission staff, seconded officers, agents temporarily engaged to provide services) to disclose a material personal interest that could conflict with, or be seen to conflict with, a specific matter that arises in the course of their duties. The committee notes, however, that the CCC has made and applies numerous policies and procedures including a code of conduct by which everyone who works for, or at, the CCC, is bound by. The committee also notes that the CC Act provides for disciplinary action for breaches of the CCC Code of Conduct by CCC officers.

While the committee appreciates the CCC's contention that legislative amendment to specifically require conflicts of interest to be declared by all CCC officers is relevant to the role of the CCC and the CCC's position on management of conflicts of interest in public sector entities, the committee does not consider that amendment of the CC Act is warranted in this instance. The committee considers that staff employment contracts, the CCC Code of Conduct, and application of disciplinary provisions of the CC Act relating to CCC officers provide sufficient processes for proper declaration and management of conflicts of interest of CCC officers.

¹⁴⁷ CCC, Code of Conduct, p 10.

¹⁴⁸ CC Act, s 273A.

¹⁴⁹ CC Act, s 273B(1)(g)(ii).

¹⁵⁰ Submission 027, p 32.

¹⁵¹ Submission 027, p 33. Note: Section 238 applies to commissioners and the chief executive officer (see CC Act, Division 2, s 222A - Meaning of *officer* for div 2).

¹⁵² Submission 027, p 32.

3.3.2 Security vetting of personnel

The CC Act requires a CCC officer to consent to a criminal history check before appointment,¹⁵³ and may require potential employees to disclose information about previous serious disciplinary action.¹⁵⁴ There are no other provisions which provide for security vetting of CCC officers, however, the CCC has a Personnel Security policy and procedure, which sets out the standards of personnel security and the process to assess suitability in accordance with those standards.¹⁵⁵

3.3.2.1 Stakeholder views

The CCC submitted that the CC Act should be amended to provide a mechanism to allow for security vetting of prospective and current CCC officers and contractors, with provision for procedural fairness safeguards as appropriate.¹⁵⁶

The CCC stated that ‘because of the confidential and often sensitive nature of work performed by the CCC, it is imperative that careful and considered security vetting is undertaken to protect CCC officers and information’,¹⁵⁷ noting that statutory vetting powers are included in the *Independent Commission Against Corruption Act 1988* (NSW) (ICAC Act) and for the QPS under the *Police Service Administration Act 1990*.

The CCC advised that it considers that its Personnel Security policy and procedure reflects best practice, but that the CC Act should be amended to detail security vetting requirements.¹⁵⁸ The CCC stated:

Given the nature of the work undertaken by the CCC, it is arguable that a more stringent level of security vetting may be warranted than that provided for potential QPS employees. This may bear on the nature and quality of procedural fairness which may be afforded to a potential appointee.¹⁵⁹

Committee comment

The committee does not consider the CCC has established sufficient argument for legislative amendments to require security vetting of CCC officers. The committee notes that the CCC has recently reviewed and amended its Personnel Security policy and procedure, and has confirmed that it reflects best practice in regard to appropriate vetting criteria which are effective to protect the personnel and information of the CCC, and to affording candidates procedural fairness.

Any legislating of vetting provisions would have the potential to set a minimum vetting standard and inhibit flexibility for any future change to vetting practices.

The committee will continue to monitor the concerns raised by the CCC in regards to its security vetting of CCC officers, and will consider any further changes if required.

Recommendation 8

The committee recommends the security vetting practices of the Crime and Corruption Commission officers continue to be monitored and considered as part of the next five year statutory review of the Crime and Corruption Commission’s activities.

¹⁵³ CC Act, s 330(1).

¹⁵⁴ CC Act, s 273G.

¹⁵⁵ Submission 027, p 39.

¹⁵⁶ Submission 027, p 40.

¹⁵⁷ Submission 027, p 39.

¹⁵⁸ Submission 027, p 39.

¹⁵⁹ Submission 027, p 39.

3.3.3 Public interest disclosure protections for Crime and Corruption Commission officers disclosing Crime and Corruption Commission wrongdoing

Public Interest Disclosures (PIDs) are disclosures about wrongdoing in the public sector that serve the public interest.¹⁶⁰ PIDs are governed by the *Public Interest Disclosure Act 2010 (Qld)* (PID Act) which sets the parameters for what is considered to be a PID, how a PID should be handled, and provides protections for persons who make PIDs.

The CCC raised a concern with the inability of CCC officers to make lawful disclosures concerning suspected corrupt conduct and improper conduct, and to receive protections under the PID Act. CCC officers are unable to make a PID pursuant to the PID Act in relation to corrupt conduct of another CCC officer as corrupt conduct is defined by reference to section 15 of the CC Act which only applies to a unit of public administration (UPA) or holders of an appointment in a UPA, which the CCC is not.¹⁶¹

The CCC recommended that the CC Act be amended to enable CCC officers to make lawful disclosures concerning suspected corrupt conduct and improper conduct (as defined in section 329(4) of the CC Act). It was the CCC's view that the amendments should also ensure that a CCC officer who makes such a disclosure is entitled to the same protections granted to public sector employees under the PID Act.¹⁶²

Although the CCC noted that a CCC officer can make a disclosure of improper conduct under the CC Act, it submits that 'there do not appear to be adequate provisions to protect the officer who originally made such a disclosure'.¹⁶³

The CCC therefore recommended that legislative provisions be introduced into the CC Act to enable CCC officers to make a lawful disclosure concerning corrupt conduct and be protected against reprisal for doing so.¹⁶⁴

Committee comment

The committee notes this recommendation is analogous with the CCC's recommendation submitted to the 2016 Review, which was reflected in the 2016 Review Report.¹⁶⁵ The committee stated in the 2016 Review Report that it strongly agreed with the CCC recommendation and reflected the CCC's proposal in Recommendation 27 of the report. The government provided in-principle support for Recommendation 27 of the 2016 Review Report, and noted further consideration of the legislative amendments and targeted consultation would be required.¹⁶⁶

Recommendation 9

The committee recommends the government consider legislative amendments to enable Crime and Corruption Commission officers to make lawful disclosures and be afforded the same protections as those engaged in a unit of public administration under the Public Interest Disclosure framework.

¹⁶⁰ Queensland Ombudsman, 'What is a public interest disclosure?', <https://www.ombudsman.qld.gov.au/improve-public-administration/public-interest-disclosures/what-is-a-public-interest-disclosure>.

¹⁶¹ Submission 027, p 21; PID Act, s 13(l)(a)(i).

¹⁶² Submission 027, p 21.

¹⁶³ Submission 027, p 21.

¹⁶⁴ Submission 027, p 21.

¹⁶⁵ 2016 Review Report, p 98.

¹⁶⁶ Queensland Government, 2016 Review Report – Queensland Government Response, December 2016, p 13.

4 Major crime function, including the investigation and prevention of major crime

As previously noted, one of the CCC's functions is to investigate major crime.¹⁶⁷ The CC Act defines major crime as:

- criminal activity that involves an indictable offence punishable on conviction by a term of imprisonment not less than 14 years; or
- criminal paedophilia; or
- organised crime; or
- terrorism.¹⁶⁸

The definition covers people preparing to commit such crimes or attempting to avoid detection of, or prosecution for, such crimes.¹⁶⁹ The CCC states that its focus is on crime such as drug trafficking, fraud and money laundering.¹⁷⁰

The CCC can investigate incidents that criminal organisations or participants in criminal organisations have, are, or plan to engage in that have or may threaten public safety.¹⁷¹

The CCC's jurisdiction for major crime investigations and intelligence operations is limited to referrals or authorisations made or approved by the CCC's Crime Reference Committee (CRC).¹⁷² These can be general (see below), specific (in relation to a particular incident of major crime), or may concern the purposes for which an intelligence operation may be undertaken.¹⁷³

A system of general referrals enables the CCC to investigate areas of major crime. The current general referrals are:

- Organised Crime — organised crime that involves an offence relating to drugs, weapons, money laundering, property or prostitution, or an offence against the person or the administration of justice
- Organised Crime (Facilitators) — organised crime that involves a professional facilitator, an industry insider or a drug producer
- Serious Crime (Homicide) General Referral — offences of homicide occurring since 1 January 1952
- Serious Crime (Vulnerable Victims) — offences of homicide or serious harm to a "vulnerable victim" (i.e. aged under 16, aged over 70 or physically or mentally disabled)
- Serious Crime (Sexual Offences) — sexual offences committed by a "serial" offender, or which are aggravated by the presence of multiple offenders and/or a weapon

¹⁶⁷ CC Act, s 25(a).

¹⁶⁸ CC Act, Schedule 2.

¹⁶⁹ CC Act, Schedule 2.

¹⁷⁰ CCC, 'Our functions', <https://www.ccc.qld.gov.au/about-us/our-functions>.

¹⁷¹ CC Act, s 25(b).

¹⁷² The Crime Reference Committee (CRC) oversees the general conduct of the performance of the CCC's functions in relation to major crime and specific intelligence operations. The members of the CRC are the CCC Chairperson (chair of the committee), Commissioner of Police, Principal Commissioner of the Queensland Family and Child Commission, Senior Executive Officer (Crime), and two community representatives appointed by the Governor-in-Council upon the recommendation of the Minister. The Senior Executive Officer (Corruption) is also a member of the CRC if it is considering whether to authorise an intelligence operation relating to suspected corruption.

¹⁷³ CCC, *2019-20 Annual Report*, 24 September 2020, pp 10, 74.

- Criminal Paedophilia — sexual offences against children and/or offences relating to child exploitation material
- Terrorism — terrorist acts, or threats of terrorist acts.¹⁷⁴

If a matter is not covered by the above categories, a specific referral may be sought for a particular incident of major crime for which a police investigation may not be effective and where it is in the public interest. Such referrals are usually initiated by the Commissioner of Police, and are granted on a case-by-case basis.¹⁷⁵

The CRC may also authorise the CCC to undertake specific intelligence operations to gather intelligence about the criminal activities in which criminal organisations and their participants may be involved.¹⁷⁶

When conducting investigations into major crime, the CCC gathers evidence for the prosecution of persons for offences, the recovery of the proceeds of major crime and the recovery of other property liable to forfeiture, or a person's unexplained wealth, under the CPCA.¹⁷⁷

The CCC can liaise with, provide information to, and receive information from, other law enforcement agencies and prosecuting authorities.¹⁷⁸

The CCC uses its expertise and powers, in cooperation with the QPS, law enforcement partners and other relevant agencies.¹⁷⁹

During the Review, stakeholders made a number of comments regarding:

- the CCC's exercise of its major crime function, including the appropriateness of the CCC's responsibility for other functions in addition to this function, and observations regarding the prioritisation of major crime activities relative to those relating to other key functions
- the legislative framework governing the CCC's major crime powers, including the definition of 'money laundering', and a CCC proposal to enable crime hearings and compulsory information production powers to be engaged for crime prevention purposes.

4.1 Exercise of the major crime function

The QPU raised an objection to the CCC's major crime function, recommending that the function be removed and the organisation be reformed to operate as an anti-corruption agency only, and 'perform a proper public sector anti-corruption role'.¹⁸⁰ The QPU noted that the crime function is currently carried out by sworn QPS officers seconded to the CCC, and suggested that this creates a duplication of roles, investigation and expenditure.¹⁸¹ The QPU recommended the CCC's 'current roles in investigating high-level crime, intelligence and witness protection should return to the Queensland Police Service', noting there 'is often a doubling up of investigative efforts between the CCC and the QPS'.¹⁸²

¹⁷⁴ CCC, 'Our crime jurisdiction: what the CCC investigates', <https://www.ccc.qld.gov.au/crime/our-crime-jurisdiction-what-ccc-investigates>.

¹⁷⁵ CCC, 'Our crime jurisdiction: what the CCC investigates', <https://www.ccc.qld.gov.au/crime/our-crime-jurisdiction-what-ccc-investigates>.

¹⁷⁶ CCC, 'Our crime jurisdiction: what the CCC investigates', <https://www.ccc.qld.gov.au/crime/our-crime-jurisdiction-what-ccc-investigates>.

¹⁷⁷ CC Act, section 26(b).

¹⁷⁸ CC Act, section 26(c).

¹⁷⁹ CCC, 'Our functions', <https://www.ccc.qld.gov.au/about-us/our-functions>.

¹⁸⁰ Submission 025, p 2.

¹⁸¹ Submission 025; public hearing transcript, Brisbane, 26 March 2021, p 37.

¹⁸² Public hearing transcript, Brisbane, 26 March 2021, p 37.

The QPU also considered that the body responsible for the investigation of serious crime should not also be responsible for the investigation of misconduct, due to the potential for extended and covert powers to be abused.¹⁸³ Further, the QPU submitted that the CCC's role should be limited to overseeing matters subject to the principle of devolution (which provides for less serious matters to be devolved to the public sector unit in which they occurred), and that the CCC should only intervene in regards to investigation and discipline where 'the corruption is of a nature to warrant dismissal and the Director-General has not undertaken dismissal action, or the corrupt conduct is of such a serious or systemic nature as to warrant independent investigation and action by the CCC'.¹⁸⁴

The QPU recommended the establishment of an independent crime commissioner within the QPS, to be vested with the CCC's current powers under the crime function.¹⁸⁵

The Clerk of the Parliament also expressed concerns about the practical implications of the CCC's joint crime and corruption roles, suggesting the CCC's focus may have 'drifted from an independent agency to fight organised crime and corruption to restore and maintain confidence in public institutions, to an agency increasingly focussed on major and serious crime'.¹⁸⁶

The Clerk made reference to the early days of the CCC (known then as the CJC) and its focus on organised crime, and stated:

...there is often a linkage between organised crime and misconduct. Often organised crime leads to misconduct in the police force or other agencies et cetera. There is a natural linkage between misconduct, corruption and organised crime. These other terms of major crime or serious crime—what is that? At what point should individual crimes that are not linked in any way to organised crime and misconduct but that are simply serious or major crimes be the responsibility of the CCC—or just the QPS?¹⁸⁷

Referring to the CCC's strategic plan and the ordering of its strategies, the Clerk noted that 'major crime and confiscation of assets takes precedence of order to public sector corruption and police misconduct' and pointed out that 'the strategy indicates that the CCC will only involve itself in serious or systemic corruption and misconduct'.¹⁸⁸

In his submission, the Clerk posed the following questions:

- What is major and serious crime sufficient to warrant the CCC's powers and resources?
- Why are the resources and powers of the Queensland Police Service insufficient to deal with these matters?
- What is the cost in time, effort and resources to corruption investigations by the CCC increasingly involving itself in major and serious crime?¹⁸⁹

Speaking at the public hearing on 14 May 2021, the Clerk argued that if the CCC can't 'stop the drift from an independent agency to fight organised crime and corruption to restore and maintain confidence in public institutions to an agency increasingly focused on major and serious crime', then 'structural separation may be required'.¹⁹⁰

In reference to suggestions regarding the potential need for reform of the functional responsibilities of the CCC, and specifically, the QPU proposal that the crime function (together with the witness

¹⁸³ Submission 025, p 2.

¹⁸⁴ Submission 025, p 3.

¹⁸⁵ Submission 025, p 2.

¹⁸⁶ Submission 036, p 6.

¹⁸⁷ Public hearing transcript, Brisbane, 14 May 2021, p 4.

¹⁸⁸ Submission 036, p 6.

¹⁸⁹ Submission 036, p 6.

¹⁹⁰ Public hearing transcript, Brisbane, 14 May 2021, p 1.

protection function) be returned to the QPS, the QPS advised that it is supportive of the current arrangements.¹⁹¹ In specific reference to organised crime and very serious crime, the QPS stated that it was generally 'pretty comfortable with the arrangements', noting 'the multidisciplinary teams, the coercive powers, the intelligence capability and the witness protection capability are the product of 31 years of growth and learning' since the establishment of the CJC in 1990.¹⁹²

The CCC also addressed the QPU's comments about potential duplication of roles and investigations, referring the committee to Chapter 2, Part 2 of the CC Act which sets the jurisdictional parameters for investigating major crime. The CCC stated of its involvement in these matters:

As a general proposition, that requires an assessment by the Crime Reference Committee of whether investigation by the police has not been effective, or is unlikely to be effective, using powers ordinarily available to the police service, and it is in the public interest to refer that major crime to the CCC.

...

The CCC's coercive hearings powers have resulted in significant outcomes in myriad complex investigations – the investigation of the murder of Tiahleigh Palmer and the 'cold case' investigation of the murder of Barbara McCulkin and her children being recent notable examples. These powers are called in aid both of investigations referred from the QPS, and investigations conducted by the CCC itself.¹⁹³

The CCC advised that these same skills and resources are equally brought to bear in corruption investigations.¹⁹⁴

In response to the Clerk's commentary regarding 'what he considers to be a shift in focus of the CCC', the CCC also advised that the order of the strategies in its strategic plan does not set out a hierarchy of the CCC's priorities, and that the Strategic Plan 'sets out the objectives in similar terms, focusing on both crime and corruption'.¹⁹⁵ The CCC explained:

The CCC's strategic plan for 2020 – 2024 (a copy of which is attached) has two objectives – the first is to reduce the incidence of major crime and corruption in Queensland and the second is to build our organisational capability. The statement of the first objective is consistent with the purpose of the CCC as set out in the Crime and Corruption Act 2001 (CC Act).¹⁹⁶

The CCC noted that amendments made by the *Crime and Misconduct and Other Legislation Amendment Act 2014* 'were expressly intended to "refocus" the commission on investigating serious cases of corrupt conduct' and contended that 'the focus on the most serious and systemic cases of corrupt conduct is mandated by the CCC's enabling legislation'.¹⁹⁷

Further, the CCC stated that it 'does not accept that there has been an increased focus on major crime, nor that this is to the detriment of investigating corruption'.¹⁹⁸

¹⁹¹ Public hearing transcript, Brisbane, 26 March 2021, p 13.

¹⁹² Public hearing transcript, Brisbane, 26 March 2021, pp 13-14.

¹⁹³ Submission 027A, p 3.

¹⁹⁴ Submission 027A, p 3.

¹⁹⁵ Submission 027A, p 1.

¹⁹⁶ Submission 027A, p 1.

¹⁹⁷ Submission 027A, p 2.

¹⁹⁸ Submission 027A, p 3.

Suggesting that its internal resourcing reflects the priority given to investigating corruption, the CCC provided the committee with the following figures:

At present the CCC has 69 FTE positions allocated to the Crime division, and 97.8 FTE positions allocated to Corruption. To compare 'apples to apples' it should be noted that those figures for the Crime division include 22 FTE positions responsible for investigating Proceeds of Crime.¹⁹⁹

4.2 Legislative framework and powers relating to major crime

For a crime investigation and specific intelligence operations (crime), under the CC Act (having received the relevant authorisations) the CCC has particular powers:

- to require information or attendance, including:
 - information or documents (s 72)
 - a person to produce a document or thing via a notice to produce (s 74)²⁰⁰
 - a witness at a hearing to immediately produce a document or thing (s 75B)
 - a person to attend at a commission hearing in relation to a crime investigation to give evidence, produce a stated document or thing, or to establish a reasonable excuse or claim of privilege (s 82(1)(a))
- execute a search warrant to obtain evidence of the commission of major crime being investigated by the commission (s 86)
 - the warrant may order the person in possession of documents at the place to give to a commission officer all documents of a type stated in the warrant (s 88), or access to/information from a digital device (s 88A)
 - an authorised officer can undertake a range of activities including opening anything relevant, detaining a person, digging up land, seizing property, photographing evidence and removing wall or ceiling linings or floors (s 92)
- to search a place to prevent loss of evidence without a search warrant if the authorised commission officer believe evidence of the commission of major crime may be concealed or destroyed, or the forensic value of the evidence may be destroyed unless the place is immediately entered and searched (section 95), and then as soon as reasonably practicable, the officer must apply to a magistrate in writing for an order approving the search (s 97)
- to search a person, while maintaining the dignity of the person and causing minimal embarrassment (s 100)
- to seize property if a commission officer conducting a crime investigation:
 - lawfully enters a place, or is at a public place, and finds at the place a thing the officer reasonably suspects is evidence of the commission of major crime that the commission is investigating
 - the officer may seize the thing, whether or not as evidence under a warrant and, if the place is entered under a warrant, whether or not the warrant was issued for the major crime (s 110)

¹⁹⁹ Submission 027A, p 2.

²⁰⁰ If a person claims privilege when required to produce a document or thing under sections 72 or 74, the commission officer must consider the claim and may withdraw the requirement in relation to which the claim is made. Alternatively, the commission officer may advise the person that they may be required to attend before a commission hearing to establish the claim. More on this can be found in section 5.2 of the report.

- to execute orders to a financial institution, comprising a:
 - monitoring order directing a financial institution to give information about transactions conducted through an account held by the named person with the institution to a commission officer (s 119E)
 - suspension order directing a financial institution to refrain from completing or effecting a transaction for 48 hours, unless a commission officer gives the financial institution written consent to the transaction being completed immediately (s 119K(c))
- to execute a covert search warrant to enter and search a place for evidence of the commission of major crime being investigated by the commission (s 155)
- to execute an additional powers warrant for a crime investigation relating to terrorism, authorising the use of powers:
 - at any time during business hours, to enter premises at which records of a financial entity or a suspected associate of a person being investigated are held, and to inspect and make copies of, or take extracts from, the records so far as they relate to the affairs of the person being investigated
 - power to seize passports, other travel documents, instruments of title to property, securities and financial documents found in the possession or control of a person concerned in an investigation
 - power to require a person to give to the commission or officer one or more sworn affidavits or statutory declarations relating to the property of, financial transactions of, or movements of money or other assets by a person being investigated or a suspected associate of the person being investigated (s 165)
- apply for and execute an arrest warrant for a person who has:
 - been given an attendance notice
 - has, without reasonable excuse, failed to attend at the commission hearing as required by the notice, or
 - the person has made a representation that the person intends not to attend at a commission hearing as required by the attendance notice and it is in the public interest that the person be compelled to attend at the hearing to avoid prejudice to the conduct of an investigation (s 168).

To strengthen its powers to combat major crime, the CCC made the following recommendations to the committee:

- review the definition of money laundering in section 250 of the CPCA to provide clarity as to what constitutes money laundering, and avoid constraining the ability to successfully prosecute cases of money laundering²⁰¹
- amend section 26 of the CC Act to provide that crime hearings and compulsory information production powers are available for crime prevention purposes.²⁰²

These matters are considered below.

²⁰¹ Submission 027, p 40.

²⁰² Submission 027, p 41.

4.2.1 Money laundering

Money laundering is the 'process of disguising the illegal or unlawful origins of money or property and disguising of ownership of illegal property to enable criminals to use and enjoy the funds without attracting government attention'.²⁰³

The CPCA defines money laundering as follows:

- (2) A person engages in money laundering if the person knowingly or recklessly—
 - (a) engages, directly or indirectly, in a transaction involving money or other property that is tainted property; or
 - (b) receives, possesses, disposes of or brings into Queensland money or other property that is tainted property; or
 - (c) conceals or disguises the source, existence, nature, location, ownership or control of tainted property.²⁰⁴

The CCC is concerned with money laundering because, according to the CCC, it is 'one of the most significant and widespread enablers of organised crime'.²⁰⁵

In its submission to the review, the CCC suggested the offence of money laundering contained in section 250 of the CPCA is 'complex, unwieldy and rarely used',²⁰⁶ and that this potentially constrains 'the ability to successfully prosecute cases of money laundering'.²⁰⁷

The CCC was particularly concerned that the reference to 'tainted property' within section 250 of the Confiscation Act is 'confusing, self-referential and circular'.²⁰⁸ It recommended the definition be amended to 'provide clarity as to what constitutes money laundering', as well as providing for a more 'fit for purpose' offence to assist prosecution.

The CCC suggested such amendment 'would assist to better achieve the objects of the CPCA, in removing the financial gain and increasing the financial loss associated with illegal activity'.²⁰⁹

The CCC also referred to legislation being considered by the Australian Government which is, in part, focused on money laundering:

It seeks to do a lot things but, essentially, will seek to make it easier to capture professional persons involved in money laundering, particularly money laundering controllers who are acting at arm's length but controlling the money laundering process. We could certainly do with some changes to our legislation in that regard.²¹⁰

The QLS provided its support for a review into the definition of 'money laundering', noting that any review should allow for public consultation.²¹¹

²⁰³ QLS, 'Preventing money laundering – Q&A', https://www.qls.com.au/Knowledge_centre/Ethics/Practice_Support_Resources/Preventing_money_laundering-Q_and_A.

²⁰⁴ CPCA, s 250(2).

²⁰⁵ CCC, *2019-20 Annual Report*, 24 September 2020, p 28.

²⁰⁶ Submission 027, p 40.

²⁰⁷ Submission 027, p 40.

²⁰⁸ Submission 027, p 40.

²⁰⁹ Submission 027, p 40.

²¹⁰ Public meeting transcript, 26 February 2021, p 17.

²¹¹ QLS, correspondence, 6 April 2021, p 4.

Committee comment

The committee acknowledges the CCC's view that the offence of 'money laundering' as currently defined in section 250 of the CPCA, could be amended to ensure it is fit for purpose and enables prosecution of the offence where appropriate.

The committee would expect any review of the definition to allow for public consultation.

Recommendation 10

The committee recommends the definition of 'money laundering' in the *Criminal Proceeds Confiscation Act 2002* be reviewed.

4.2.2 Crime prevention powers

Section 26 of the CC Act currently refers to the ways in which the CCC may perform its crime function, which include investigating major crime, and gathering and sharing evidence about major crime with authorities of other jurisdictions. It does not provide for gathering of evidence for the purposes of crime prevention.

Specifically, the section provides:

Without limiting the ways the commission may perform its crime function, the commission performs its crime function by—

- (a) investigating major crime referred to it, under division 2, by the reference committee; and
- (b) when conducting investigations under paragraph (a), gathering evidence for—
 - (i) the prosecution of persons for offences; and
 - (ii) the recovery of the proceeds of major crime; and
 - (iii) the recovery of other property liable to forfeiture, or a person's unexplained wealth, under the Confiscation Act; and
- (c) liaising with, providing information to, and receiving information from, other law enforcement agencies and prosecuting authorities, including agencies and authorities outside the State or Australia, about major crime.²¹²

In its submission to the Review, the CCC recommended that section 26 of the CC Act be amended to 'clarify' that crime hearings and compulsory information production powers are available for crime prevention purposes. The CCC suggested extending this power would provide benefits for matters such as the child death review panel in reviewing child deaths and serious injury, and would be broadly consistent with recommendations 14 and 20 made in respect of the corruption function by the previous PCCC review.²¹³

The QLS opposed the expansion of the CCC's powers for crime prevention and stated:

The framework for the CCC is that it has extraordinary powers to deal with a limited range of circumstances. That is the justification for powers that are otherwise quite inconsistent with the fundamental tenets of our justice system. We do not think it is appropriate for that to move into some prospective crime prevention forum.²¹⁴

Committee comment

The committee notes the QLS's opposition to the expansion of the CCC's powers here is echoed in other parts of this report, for example section 5.5 (Removal of self-incrimination for disciplinary

²¹² CC Act, s 26.

²¹³ Submission 027, p 41.

²¹⁴ Public hearing transcript, Brisbane, 26 March 2021, p 45.

purposes). There are concerns that any further expansion of powers will result in further limiting the rights and liberties of those involved in an investigation, or in the case of crime prevention, individuals that are in fact not subject to investigation. The CCC already has extensive powers to enable its investigations.

Furthermore, concerns have been raised about the CCC's focus on major crime to the detriment of organised crime or serious or systemic corruption. While the CCC disputes this claim, the committee has concerns that expanding the CCC's powers in relation to crime hearings and compulsory information production for the purposes of crime prevention may facilitate a shift away from its core functions as legislated in various iterations of the CC Act since 1989.

The committee considers the CCC's coercive powers to be an important part of its functions to combat major crime and corruption, and acknowledges that these are extensive powers which infringe on a person's rights and liberties.

The prevention function has the potential to be given a very wide interpretation by the CCC. Specifying that the CCC is able to utilise these coercive powers under its crime function in order to facilitate crime prevention would represent a significant broadening of the use of these powers in what is essentially a mirroring of the CCC's prevention function, in the realm of the crime function. The prevention function – whether it is the prevention function per se, or, as referred to by the CCC, prevention of the crime within the crime function – has the potential to be given a very wide interpretation by the CCC.

The committee does not consider that the case for further extension of the CCC's powers to specifically authorise crime hearings and compulsory information production powers in the exercise of the CCC's prevention function, has been adequately made out at this time.

The committee acknowledges the dynamic nature of activity the CCC is engaged to combat under its crime function, and considers that this issue raised by the CCC should be monitored in the next 5 year period.

5 Investigative powers and hearings

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

The PCCC's 2016 Review of the CCC recommended that the government review Chapters 3 and 4 of the CC Act to: develop uniform provisions with generic application to Commission functions where appropriate; and clarify what specific privileges are abrogated or unaffected by the provisions of the CC Act (recommendation 6).²¹⁵

The PCCC also recommended the government consider a review of the power provisions in the PPRA and CC Acts to: ensure consistency between the PPRA and CC Act and between the various functions in the CC Act where appropriate; and consider any new powers necessary for the CCC's operations.²¹⁶

Work on these two recommendations has commenced, but not yet been completed. The CCC described these reviews as a 'huge task' and advised the CCC has been working with DJAG over the past several years on the reviews. The CCC described the reviews as 'a complex process because we need to ensure that the changes are fit for purpose while also ensuring that fundamental rights and privileges are considered in that process'.²¹⁷

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

1. Create a single power to issue notices to discover information and notices to discover documents or things, if the Chairperson reasonably suspects that a person has information relevant to the investigation, which applies to all of the CCC's functions whether it be a crime investigation, specific intelligence operation (crime), corruption investigation, specific intelligence operation (corruption), witness protection function or confiscation-related investigation.
2. Create uniform provisions to: (1) establish the procedure by which claims of reasonable excuse may be made in response to a notice, (2) establish a claim of reasonable excuse to refuse to answer a question asked in a hearing, (3) provide for the safekeeping of documents that are the subject of a claim of reasonable excuse, and (4) create a new provision for issuing a notice to attend a hearing to establish a claim of reasonable excuse, which apply to all of the CCC's functions.
3. Create single offence provisions for: (1) failing to answer a question at a hearing and (2) failing to produce a document or thing at a hearing, which apply to all of the CCC's functions.
4. Create a single procedure for deciding claims to establish a claim of reasonable excuse/privilege at a hearing, which applies to all of the CCC's functions.
5. Establish the uniform application of the concept of reasonable excuse from responding to a notice including certain expressly identified privileges.²¹⁸

The CCC advised that 'the issue of consistency between the CC Act and PPRA will be addressed once the review of Chapters 3 and 4 is complete'.²¹⁹

²¹⁵ 2016 Review Report, p 35.

²¹⁶ 2016 Review Report, p 38.

²¹⁷ Public hearing transcript, Brisbane, 26 March 2021, p 20.

²¹⁸ Submission 027, pp 16-17.

²¹⁹ Submission 027, p 17.

In addition to these reviews, the CCC made the following recommendations to the committee as a means of strengthening its investigative powers and hearings:

- amendment of section 176 of the CC Act to provide for hearings to be undertaken for the purpose of establishing claims of privilege and reasonable excuse in investigations where hearings are not otherwise authorised
- consideration be given to amending the intelligence operations provisions in the CC Act to enable the CRC to approve special investigations and special intelligence operations by reference to criteria other than the definition of criminal organisation as presently defined in the *Penalties and Sentences Act 1992*
- section 113 of the CC Act be amended to remove the obligation to obtain property retention orders where the unit of public administration (UPA) or corporate entity has no reasonable expectation of return of the record.

Stakeholders raised concerns with a number of elements of the CCC's investigative powers and with these recommendations as outlined in the sections below.

5.1 Coercive hearing powers

The CCC has a unique set of coercive powers to allow it to carry out its functions. These include the ability to hold coercive hearings, whereby a witness is compelled to attend and must answer questions (even if the answer is self-incriminating); and the ability to compel people or agencies to produce records or other items.²²⁰

The CCC notes that its coercive powers are 'used extensively in corruption investigations, financial investigations into organised crime and money laundering, and confiscation investigations'.²²¹

The QPCOUE raised significant concerns with what it described as 'the CCC's misuse of coercive hearing powers for minor criminal allegations' against commissioned officers and a 'lack of transparency as to how their committee have made such a determination, taking into consideration all of the public interest factors'.²²² The QPCOUE explained:

There is a growing level of disquiet that the use of their coercive powers are being utilised outside of the scope of the original approval of the legislature. Some feedback from our membership has described the use of the powers akin to a fishing expedition to elicit the scalp of a senior police officer.²²³

The QPCOUE suggested the legislation needed to be reviewed:

In our view they need to be reviewed and this committee over-viewing them because we think there has been significant creep in how that is being applied to particularly our members in relation to sometimes minor matters where we take the view that sometimes it is like a fishing expedition. The powers were introduced for the purpose of major and organised crime and oversight of the role and function of the Police Service. Our view is they are being utilised well outside that original intent of the legislation.²²⁴

The QPCOUE advised that it has observed an increasing use of coercive hearing powers on minor matters over the last couple of years.²²⁵

²²⁰ CC Act, ss 188, 192.

²²¹ CCC, *2019-20 Annual Report*, 24 September 2020, p 10.

²²² Public hearing transcript, Brisbane, 26 March 2021, p 15.

²²³ Public hearing transcript, Brisbane, 26 March 2021, p 15.

²²⁴ Public hearing transcript, Brisbane, 26 March 2021, p 15.

²²⁵ Public hearing transcript, Brisbane, 26 March 2021, p 18.

The QPU also stated its belief that coercive hearings should be used only for major crime, and not for disciplinary matters:

The coercive hearings should just be for major crime and not for disciplinary matters. I think it is an abuse of process, it is not what it was designed for and I think we should reconsider that. I believe a lot of the organised crime functions should return to the police department. We have moved on since the eighties. I certainly would concur with them in that it should be used for its original purpose, not for disciplinary matters. A coercive hearing is the most invasive thing ever and it should only be used as a last resort.²²⁶

In response to these concerns, the CCC told the committee:

I do not accept the assertion, frankly, that there is a change in procedures, a change in emphasis, a creep or a widening in our jurisdiction as a matter of practice. I say, and have always said, that our coercive hearings powers are our most important and productive investigative tool. We do a lot of work on referrals from the QPS. All the cold case work we do is referred from the QPS. There was the Tiahleigh Palmer case and the O'Dempsey-McCulkin case—all those magnificent results were a direct result of the work we did with coercive hearings. With each coercive hearing we conduct, the police are required at the end of the process to evaluate the effectiveness of the coercive hearings. I have never seen one that says they were not successful.²²⁷

...

If a matter comes to us where we think it involves corrupt behaviour, whether it is a commissioned officer or a first-year constable, and it is serious enough for us to justify, as we have to, in writing the basis for using coercive hearings, we do. I can see nothing wrong with that, frankly. Why should the police, and certainly the commissioned officers, be immune to the use of coercive hearings if the matter is serious enough to justify it?²²⁸

The QPS responded to this issue from the perspective of finding balance between the ability to prosecute for a criminal offence and gathering information that may lead to further investigations and prosecutions. The QPS told the committee:

We take it very seriously in the way we look at those powers before we use them. I think that is the major issue around it—understanding what the consequences are early so that you can structure the system around that. We do a lot of planning, and there is a lot of planning done by the CCC about the expectation of outcomes as to where we are going with it. They are very apt at sitting down and talking to us about why we are doing what we are doing. Having that level of overlay from an external agency to bring that independence over it works really well for us. I would say that it is working quite well for us and we do get very good results out of it.

...

The use of coercive powers that did not exist a couple of decades ago was probably a real gap in the tools that we have available to us to deal particularly with that high-level organised crime and those difficult things that you try to break through. Your question goes to the issue of balance. You are balancing the ability to prosecute for a criminal offence or to detect and disrupt offences. As Assistant Commissioner Innes said, when you are trying to achieve that particular balance, the purpose has to be very clear to the users of the powers that are available. It is not always the prosecution that may be the desirable outcome.²²⁹

Mr Paul Favell, former Parliamentary Crime and Corruption Commissioner, supported the use of coercive hearings and raised concerns about recent court decisions regarding the use of hearings and information obtained, stating:

²²⁶ Public hearing transcript, Brisbane, 26 March 2021, p 38.

²²⁷ Public hearing transcript, Brisbane, 26 March 2021, p 27.

²²⁸ Public hearing transcript, Brisbane, 26 March 2021, p 27.

²²⁹ Public hearing transcript, Brisbane, 26 March 2021, p 11.

...in my opinion the use of coercive hearings and powers is a very useful tool for the CCC and its operations. In that regard some of the more recent decisions of courts concerning the use of the hearings and the information obtained may require further monitoring with a view to making amendments to the legislation so as to ensure a balance between the use of the powers, the use of information gained from the exercise of the powers and the rights of individuals concerned.

The use of a bench book with the relevant decisions and draft homilies goes a long way to ensuring the appropriate balance.²³⁰

The Clerk of the Parliament criticised the CCC for its increasing use of closed hearings and secrecy restraints on persons receiving orders to produce, and submitted:

[this] means that there is very little information available for public scrutiny of the CCC's investigations and actions within those investigations, even when those investigations are closed. Any inconsistency of approach or excessive use of powers are difficult to scrutinise. There needs to be consideration of a statutory time limit to the CCC's secrecy restraints on closed investigations and on persons receiving orders to produce.²³¹

At the public hearing, the Clerk further argued for greater transparency, asserting that the CCC should: 'reverse the thinking on secrecy and closed hearings—start with the assumption that everything is in public unless there are compelling reasons to undertake it in private'.²³²

In response to the Clerk's suggestion that there should be a statutory time limit on secrecy restraints, the CCC advised that it is not usual for information gathered by investigative agencies to be made publicly available at the conclusion of an investigation. The reasons given for protection of investigative information included 'ensuring the free flow of information to law enforcement agencies, protection of investigative methodologies, and fairness to those who intersect with investigations'.²³³

Further, regarding the Clerk's call for hearings to be conducted in public unless there are strong reasons to the contrary, the CCC advised that 'Investigations, by their very nature, are conducted with as much secrecy as possible' and referred to a High Court statement:

It is of the very nature of an investigation that the investigator proceeds to gather relevant information from as wide a range of sources as possible without the suspect looking over his shoulder all the time to see how the inquiry is going. For an investigator to disclose his hand prematurely will not only alert the suspect to the progress of the investigation but may well close off other sources of inquiry.²³⁴

The CCC also advised that ultimately an investigation will conclude, either by action being taken (whether criminal or disciplinary) or not taken, and so:

Whether, and what, information is publicly available at this point will depend on competing considerations, such as the nature of the matter, fairness to persons connected with the investigation, the actions taken in concluding the investigation, and any questions of ongoing operational sensitivity.²³⁵

The CCC further noted that its investigative activities are scrutinised through the courts process where a person is charged, or disciplinary action is taken against them, unless there is some reason for confidentiality (which is a determination made by the court).²³⁶

²³⁰ Submission 032, pp 2-3.

²³¹ Submission 036, pp 8-9.

²³² Public hearing transcript, Brisbane, 14 May 2021, p 2.

²³³ Submission 027A, p 5.

²³⁴ Submission 027A, p 4.

²³⁵ Submission 027A, p 5.

²³⁶ Submission 027A, p 5.

5.2 Hearings to establish claims of privilege and reasonable excuse

Section 176 of the CC Act allows the CCC to hold a hearing 'in relation to any matter relevant to the performance of its functions' other than for a confiscation related investigation. Section 176(3) specifies that a hearing in relation to the performance of its intelligence function must be permitted under an authorisation pursuant to sections 55A (authorising a specific intelligence operation, including by holding hearings) or 55D (authorising an immediate response to either undertake an investigation or hold a hearing in relation to the incident threatening or potentially threatening public safety) of the CC Act.

Under the CC Act, different provisions apply for a person who refuses to answer a question or produce a document or thing in crime investigations and intelligence and witness protection function hearings; as well as in corruption investigations and confiscation related investigations.

For crime investigations and intelligence and witness protection function hearings, a person can refuse to answer a question if the person has a 'reasonable excuse' or on a ground of legal professional privilege.²³⁷ If a person makes a claim of reasonable excuse (to not produce a document or thing at a hearing), the presiding officer (chairperson, sessional commissioner or senior executive officer of the CCC) decides that claim.²³⁸ This includes a reasonable excuse based on a claim of legal professional privilege.

A person can appeal against a decision of a presiding officer in regards to a reasonable excuse claim, to the Supreme Court (pursuant to section 195 of the CC Act).

For corruption investigations, a person can refuse to produce a document or thing, or answer a question on the grounds of privilege (legal professional privilege, public interest immunity or parliamentary privilege).²³⁹

For corruption investigations and confiscation related investigations, if a person makes a claim of reasonable excuse, that claim is decided by the Supreme Court.²⁴⁰

5.2.1 Stakeholder views

The CCC in its Review submission recommended a number of consequential amendments to section 176 of the CC Act to support amendment to Chapters 3 and 4 of the CC Act, including:

- in relation to s 176(2), to allow for confiscation related investigation hearings for the limited purpose of establishing a claim for reasonable excuse
- in relation to s 176(3), to ensure the ability to hold hearings for the purpose of establishing reasonable excuse/privilege in the context of specific intelligence operations where the 55A or 55D authorisation does not already authorise the holding of a hearing.²⁴¹

Pursuant to Recommendation 6 of the 2016 Review, a joint review of Chapters 3 and 4 of the CC Act is being undertaken by the CCC and DJAG, 'to: develop uniform provisions with generic application to commission functions where appropriate; and clarify what specific privileges are abrogated or

²³⁷ CC Act, s 190.

²³⁸ CC Act, ss 181(1)(b), 194(1A).

²³⁹ CC Act, ss 188, 192.

²⁴⁰ CC Act, ss 195B, 196.

²⁴¹ Submission 027, p 41.

unaffected by the provisions of the CC Act'.²⁴² The CCC advised that as part of that joint review, it has reached in-principle agreement with DJAG, in relation to reasonable excuse claims and processes.²⁴³

The QLS strongly opposed the CCC's above recommended amendments, arguing that the CCC as the investigative body should not also determine whether a privilege claim should be accepted or not. The QLS told the committee:

One of the major concerns that the Queensland Law Society frequently raises with regard to the Crime and Corruption Commission is that the investigative powers are unfair in that they require persons to give evidence even if that person would choose not to do so and on the basis that it might incriminate them—fundamental rights that are central to the Westminster system. In this review the CCC are again creeping or chipping away at those fundamental rights, asking parliament for further abrogation of the right to remain silent, the right to claim privilege against self-incrimination... The CCC recommends that section 176 of the Crime and Corruption Act be amended to provide hearings to be undertaken for the purpose of establishing those claims themselves, whether those claims have a reasonable excuse or whether they are valid. This is concerning. It should not be for the CCC themselves, who are the investigative body, to also determine whether a privilege claim should be accepted or not.²⁴⁴

...

That might refer only to the privilege against self-incrimination or it might even extend to legal professional privilege. The point of those privileges, when they are properly claimed, is to preserve the integrity of communications or knowledge that an investigative agency should not have. An investigative agency should not be in a position of determining for itself whether the privilege applies. That is a function that needs to be undertaken by an independent body. Presently it is usually the Supreme Court. That position should be maintained. The recommendation appears to us to be a significant intrusion into the protection afforded to people who are consulting with lawyers.²⁴⁵

Committee comment

The committee notes the broader view of the QLS that claims of privilege and reasonable excuse should generally be a matter for the courts to determine.

The committee acknowledges, however, that under the CC Act the CCC is already empowered to hold hearings and determine claims of privilege and reasonable excuse for crime investigations and intelligence and witness protection function hearings.

It is noted that under the CC Act, the CCC does not have the ability to hold hearings related to a confiscation investigation, or intelligence investigation (unless authorised under section 55A and 55D of the CC Act).

The committee does not support the extension of the CCC's powers to hold hearings as proposed by the CCC. The committee recognises the concerns raised by stakeholders about this proposal and considers that these concerns should be taken into account by DJAG in its review of Chapters 3 and 4 of the CC Act.

5.3 Disclosure of evidence provided in closed hearings

As previously noted, the CCC has the legislative power to hold coercive hearings. These hearings are usually held in private and witnesses are entitled to be legally represented in these hearings.²⁴⁶

²⁴² Submission 027, p 6.

²⁴³ Submission 027, pp 16-17.

²⁴⁴ Public hearing transcript, Brisbane, 26 March 2021, p 41.

²⁴⁵ Public hearing transcript, Brisbane, 26 March 2021, p 45.

²⁴⁶ CCC, 'Reporting on private hearings', <https://www.ccc.qld.gov.au/media/reporting-private-hearings>.

Witnesses have limited ability to refuse to produce documents or things, or to refuse to answer questions.²⁴⁷

5.3.1 Stakeholder views

Some submissions raised issues with the CCC's practices in relation to the disclosure of evidence obtained in closed hearings.²⁴⁸

For example, Mr Ken Mackenzie, an individual Accredited Specialist in Criminal Law who has attended private hearings of the CCC in a representative capacity for witnesses, noted that on several occasions, evidence provided by witnesses in closed hearings has been provided to the people the witnesses have given evidence against.²⁴⁹ Mr Mackenzie submitted that this practice is contrary to the moral and legal professional ethics of Barristers and Solicitors, and recommended that the preamble given to witnesses at closed hearings should advise witnesses before giving evidence that their evidence may be disclosed to third parties. In the event that evidence given in closed hearings is provided to third parties, Mr Mackenzie recommended that the witness be informed that their evidence has been disclosed, to allow time for the witness to take steps to protect themselves and their family.²⁵⁰

The QLS similarly noted that its members have raised concerns about the treatment of witnesses in coercive hearings:

One of our concerns about the way in which the commission takes evidence from witnesses in coercive hearings is that the witness is, firstly, often giving evidence which incriminates another person and they may have good reason to fear retaliation or the consequences of that evidence if the evidence is revealed to that other person.²⁵¹

...

There are two aspects to the way the commission handles this situation which, in our submission, are inadequate. The first is that, in the course of the hearing, the presiding officer seeks to reassure the witness that the proceedings are not open to the public, that they are being conducted in secret and that, apart from the people who are present at that hearing, no-one else can pass on to any other person what has occurred whilst they are there. Sometimes information is given to a witness along the lines of 'information provided by you to the commission may be acted upon'. The commission may, for example, formally disseminate the information to the Office of the Director of Public Prosecutions, but that is about as far as the warning to the witness goes.

What they are not told—and, in fact, they are given the impression it will not happen—is that if a person is charged with the offence and the prosecution decide to call that witness as part of their case, whether the witness wants to be called or not, the evidence that they give to the commission is disclosed to the accused's legal representatives and, therefore, to the accused. In our submission, as a matter of fairness and, indeed, honesty and integrity, witnesses ought to be informed of that risk at the time that they are giving the evidence. That is not the only relevant time, because the risk crystallises when the transcript of their evidence is actually disclosed to the accused and the accused's representatives. That is presently done, and it is done without notice to the witness that, at the point in time when the person is most at risk of some retaliation or some consequence due to the fact they have informed the authorities about things, they are being placed at that risk, and that is a matter of some concern.²⁵²

²⁴⁷ CC Act, ch 4, pt 2.

²⁴⁸ Submissions 001, 025, 032, 033.

²⁴⁹ Submission 001.

²⁵⁰ Submission 001, pp 1-2.

²⁵¹ Public hearing transcript, Brisbane, 26 March 2021, p 42.

²⁵² Public hearing transcript, Brisbane, 26 March 2021, p 42.

The QLS suggested that the committee:

- review the manner in which information about the risk of their evidence being disclosed is provided to witnesses
- consider the establishment of frameworks and guidelines around the provision of this information
- investigate compliance with these processes.²⁵³

The QLS further noted that ensuring the appropriate treatment of witnesses, particularly in closed hearings, will serve to instil greater confidence in participation.²⁵⁴

Committee comment

The committee notes the serious concerns raised by Mr Mackenzie, both in his personal capacity and as the Chair of the QLS's Occupational Discipline Law Committee. The issues raised by Mr Mackenzie indicate the CCC's practices in relation to the disclosure of evidence obtained in closed hearings undermine confidence generally in the CCC and could lead to difficulties in conducting hearings that otherwise may not occur (for example, refusing to answer owing to the risk of disclosure to third parties).

The risk posed to witnesses, and their families, in serious crime matters is something that needs to be considered by all involved in relevant proceedings, including the CCC. The CCC needs to adopt practices to ensure all persons who may be adversely affected by disclosure of evidence obtained in coercive hearings, are aware of the possibility and timing of any such disclosure so those parties can take any necessary precautions.

Recommendation 11

The committee recommends the Crime and Corruption Commission produce easily accessible material to assist in the education of persons (and their legal representatives) participating in coercive hearings.

5.4 Use of evidence obtained in Crime and Corruption Commission investigations for disciplinary purposes

Sections 42 and 44 of the CC Act, provide the process by which the Commissioner of Police (section 42) and other public officials (section 44) deal with complaints.

The former PCCC, in the 2016 Review Report, recommended that (recommendation 22):

... sections 42 and 44 of the *Crime and Corruption Act 2001* be amended to ensure that the Commissioner of Police or a public official may, subject to claims of privilege, use information regarding alleged corruption provided by the commission for the purpose of dealing with the alleged corruption, including the taking of disciplinary action.²⁵⁵

During the Review the CCC reaffirmed its support for the implementation of recommendation 22 of the 2016 Review Report, noting:

In certain circumstances, there may be a need for alignment of the use of information in the possession of other agencies with the use of information for purposes of the CC Act. Many public sector agencies, apart from the QPS, have statutory powers to obtain information or evidence for law enforcement purposes. In the event that the exercise of those powers revealed evidence of misconduct by the holder

²⁵³ Submission 033, p 3.

²⁵⁴ Submission 033, p 3.

²⁵⁵ 2016 Review Report, Recommendation 22, pp ix, 83.

of an appointment in a public sector agency, it may be appropriate that this evidence be available for discipline purposes.²⁵⁶

The QLS however, argued that the CCC's proposal in this regard 'is seeking to expand these extraordinary powers to circumstances where they are not warranted'. The QLS stated:

The power to abrogate self-incrimination privilege was granted for the precise purpose of investigating serious and major crime. When fundamental rights are abrogated by legislation there is a narrow purpose for which such evidence is capable of being used.²⁵⁷

Committee comment

The committee notes that this recommendation of the PCCC (Recommendation 22), provided to the government in 2016, is yet to be implemented. The committee draws attention to the serious impact the proposed changes may have on police officers or other public servants' rights and liberties.

The committee considers the concerns noted by the QLS should be considered fully, prior to any implementation of this proposal by the government.

5.5 Removal of self-incrimination for disciplinary purposes

In its submission to the 2016 Review, the CCC recommended abolishing the privilege against self-incrimination (also known as incrimination privilege) in disciplinary investigations or disciplinary proceedings, including disciplinary proceedings brought in the original jurisdiction of the Queensland Civil and Administrative Tribunal (QCAT).²⁵⁸

The CCC recommended that:

...privilege against self-incrimination be abrogated in disciplinary investigations or disciplinary proceedings, including disciplinary proceedings brought in the original jurisdiction of QCAT and that the use immunity in s. 197 of the Act be specified to not extend to disciplinary proceedings in QCAT.²⁵⁹

In the 2016 Review Report the former PCCC noted that the matters raised by the CCC in relation to this issue could be dealt with by virtue of Recommendations 4 and 6 of the 2016 Review Report.²⁶⁰ The committee also noted there was a matter before the courts which may have impacted on the application of self-incrimination provisions:

In *Nugent v Stewart*, Martin J held that although the provisions of the Police Service Administration Act 1990 and the Police Service (Discipline) Regulations 1990 do not expressly abrogate incrimination privilege, the language and character of this legislation gives rise to the inference that the privilege is abolished by necessary intendment in disciplinary proceedings conducted pursuant to that legislation.²⁶¹

At the time of the 2016 Review Report, the former PCCC noted that an appeal from this matter was being considered by the Queensland Court of Appeal.²⁶² The High Court has since refused the request for special leave to hear further appeal.²⁶³

In its submission to the current Review, the CCC noted previous consideration of the matter of abrogating self-incrimination in this respect, including by the Queensland Law Reform Commission in 2011, which reported:

²⁵⁶ Submission 027, p 19.

²⁵⁷ QLS, correspondence, 6 April 2021, p 2.

²⁵⁸ 2016 Review Report, pp 35-36.

²⁵⁹ Submission 027, p 21.

²⁶⁰ 2016 Review Report, pp 35-36.

²⁶¹ 2016 Review Report, p 36.

²⁶² 2016 Review Report, p 36.

²⁶³ *Nugent v Ian Stewart (Commissioner of Police) and Anor* [2017] HCATrans 53.

The direct and derivative use of information or evidence from a directed disciplinary interview is a difficult area, with significant practical implications and competing public interests. Importantly, the issues also have broader implications for Government because changes in the police disciplinary context may create unintended consequences elsewhere in other public sector disciplinary systems. A careful, substantive policy review to cover the field adequately across the public sector, and not just at the obvious police disciplinary pressure point, is required.²⁶⁴

Noting this, the CCC has refined its 2016 recommendation and has recommended:

...that section 197 of the CC Act be amended to make answers given in coercive hearings admissible against the witness in future disciplinary proceedings. It is further recommended that the privilege against self-incrimination in QCAT proceedings, protected under sections 98 and 214 be abrogated in respect of corrupt conduct proceedings brought under section 50 of the CC Act.²⁶⁵

The CCC referred to the approach in NSW, in which the ICAC Act provides for disciplinary proceedings where a finding is made by the ICAC that a public official has engaged, or has attempted to engage, in corrupt conduct. In this situation 'evidence given to the Commission by the public official may be admitted and used in disciplinary proceedings against the public official' despite immunity provisions regarding self-incrimination and privilege.²⁶⁶

The CCC suggested that, although the CCC cannot make findings in relation to corrupt conduct by public officials, the underlying position is the same, and that:

... where the CCC has obtained sufficient evidence to consider a prescribed person has engaged in corrupt conduct, and therefore commence a proceeding, all the evidence available to the CCC should be admissible in those proceedings.²⁶⁷

The CCC also provided the following further rationale:

It is well-established law that police officers may be directed to participate in interviews for the purpose of disciplinary investigations, and that those disciplinary interviews may be relied on to substantiate disciplinary allegations against those officers. That is so even where the officer's answers may tend to incriminate them. The rationale for implying such a power (to compel answers from an officer, even where those answers may be self-incriminatory) was that the underlying regulation formed "part of a statutory scheme which provides for the regulation and control of a police force – a body upon whose efficiency and probity the State must depend for the security of the lives and property of its citizens and a body which can operate effectively only under proper discipline".²⁶⁸

Additionally, the CCC noted:

The CCC similarly has the power to compel a person to answer questions, even where their answers may tend to incriminate them. However, where a protective order is made under s197, that person's answers are inadmissible in, inter alia, disciplinary proceedings. That position is inconsistent as between an officer compelled by the police and the CCC. There is no good reason why this should be the case.²⁶⁹

While the CCC acknowledged the 'right to silence' and privilege against self-incrimination 'are fundamental rights, which are not to be abrogated lightly, or without serious policy consideration', it reiterated its previous position, that privilege against self-incrimination be abrogated in disciplinary investigations or disciplinary proceedings.²⁷⁰

²⁶⁴ Submission 027, p 22.

²⁶⁵ Submission 027, p 22.

²⁶⁶ ICAC Act, s 114A(5).

²⁶⁷ Submission 027, p 23.

²⁶⁸ Submission 027, p 22.

²⁶⁹ Submission 027, p 22.

²⁷⁰ Submission 027, p 23.

The CCC viewed the proposal as a way to strike an appropriate balance:

...by abrogating the privilege in disciplinary proceedings, and amending section 197, while incorporating a “use immunity” for self-incriminatory evidence led in corrupt conduct proceedings to prevent that evidence being used against the prescribed officer in any other forum.²⁷¹

The CCC suggested the committee may wish to consider a narrow amendment, whereby removal of the privilege against self-incrimination in QCAT proceedings could be applied only to proceedings for corrupt conduct.²⁷²

Despite the CCC’s refinement of its position, there was still some stakeholder concern regarding this recommendation. As mentioned earlier, the QLS has raised concerns about the CCC’s ‘unfair’ investigative powers in that they require persons to give evidence even if that person would choose not to do so on the basis that it might incriminate them. The QLS submitted: ‘QLS has repeatedly objected to the infringement of fundamental tenets of our justice system, such as the right to claim privilege against self-incrimination, without appropriate justification’.²⁷³

The QLS also raised this as an issue during the Inquiry into Corrupt Conduct Complaints, stating:

Some of the CCC’s legislative powers abrogate cornerstone principles of our legal system; for example, powers to compel an individual to give evidence even if doing so may tend to incriminate them and the derivative use of evidence. This is a significant concern. The rescission of cornerstone principles should only be contemplated in a case where a clear justification exists and as a last resort. In our submission, these powers have not been appropriately justified.²⁷⁴

The QLS noted the government’s review of Chapters 3 and 4 of the CC Act (to develop uniform provisions with generic application to commission functions where appropriate; and clarify what specific privileges are abrogated or unaffected by the provisions) is ongoing. The QLS therefore cautioned against further amendment until ‘all reviews in this area are completed’.²⁷⁵

At the public hearing on 26 March 2021, the QLS stated:

The CCC are also seeking amendments to section 197 of the act to make answers given in the course of hearings admissible against witnesses in future disciplinary proceedings and privileged against self-incrimination in QCAT proceedings. Again, the society strongly objects to further creeping or chipping away at those fundamental rights.²⁷⁶

Also at the hearing, the QPS, when asked for its response to the CCC’s recommendations regarding changes to section 197, advised:

That would be a significant policy matter. The ability to detect and disrupt inappropriate behaviour, whether it be criminal behaviour or corrupt conduct within the Police Service, is a significant issue. It is a very significant policy matter where the ability to coerce an answer, to force an answer, from someone and use that against them is a really significant policy shift. I would have to leave that for those who make those policy choices.²⁷⁷

...

²⁷¹ Submission 027, p 23.

²⁷² Submission 027, p 23.

²⁷³ QLS, correspondence, 6 April 2021, p 2.

²⁷⁴ Submission 012 to the Inquiry into Corrupt Conduct Complaints, p 2.

²⁷⁵ QLS, correspondence, 6 April 2021, p 2.

²⁷⁶ Public hearing transcript, Brisbane, 26 March 2021, p 42.

²⁷⁷ Public hearing transcript, Brisbane, 26 March 2021, p 12.

It is a significant change in the way the legal system would operate within Queensland. It would need a lot of serious consideration in relation to the ramifications for that as well.²⁷⁸

Committee comment

The committee notes the issue of privilege against self-incrimination for disciplinary purposes is of ongoing concern to the CCC. However, the committee would consider it pre-emptive to make any specific recommendation until the government has completed its review of Chapters 3 and 4 of the CC Act (with the aim of developing uniform provisions; and to clarify what specific privileges are abrogated or unaffected by the provisions of the CC Act).

The committee does, however, point out that the CCC is already in possession of very wide powers that have the potential to significantly abrogate the rights of individuals, and is inclined to recommend that there be no further abrogation of these rights through the government's review of Chapters 3 and 4 of the CC Act. If it were to occur, there would need to be a compelling case, and the committee is not convinced that case has been made out.

The committee encourages the government to finalise its review of Chapters 3 and 4 of the CC Act taking into account the committee's comments.

5.6 Admissibility in perjury proceedings

The CCC recommended that section 197 of the CC Act be amended to provide that, where a perjury prosecution is commenced, answers otherwise protected are not inadmissible by reason of section 197. Section 197 of the CC Act restricts the use of privileged answers, documents, things or statements disclosed or produced under compulsion. This provision protects a person from self-incriminating answers being used against them, and is also referred to as 'use immunity'.²⁷⁹

Exceptions to use immunity are provided by section 197(3) of the CC Act, including where a person consents to the use of the evidence, or if the proceeding is about the falsity or misleading nature of an answer, document, thing or statement.²⁸⁰

The CC Act also stipulates that:

... in a commission hearing, the presiding officer may order that all answers or a class of answer given by an individual or that all documents or things or a class of document or thing produced by an individual is to be regarded as having been given or produced on objection by the individual.²⁸¹

In this situation, the individual is taken to have objected to the giving of the answer, or to the producing of each document or thing. These orders are also referred to as 'blanket protection orders'.²⁸²

5.6.1 Stakeholder views

In its Review submission, the CCC referred to a recent District Court ruling in regards to blanket protection orders, which concluded that 'a proper construction of [section] 197(3) meant that only the specific answers which comprised the particulars of the perjury allegation were admissible in the proceedings against the defendant'.²⁸³ The CCC raised a concern that if the ruling was followed in other cases, 'it may make perjury prosecutions arising from allegedly false evidence given in CCC

²⁷⁸ Public hearing transcript, Brisbane, 26 March 2021, p 12.

²⁷⁹ Submission 027, p 48.

²⁸⁰ CC Act, s 197(3).

²⁸¹ CC Act, s 197(5).

²⁸² Submission 027, p 48.

²⁸³ Submission 027, p 48.

hearings unduly difficult and artificial for both the prosecution and defence'.²⁸⁴ The CCC further explained:

The construction of section 197 found in that pre-trial application may have the effect of divorcing the specific questions and answers which comprise the particulars of the perjury charge from necessary contextual information about the course of the hearing, something which, depending on the circumstances, could be prejudicial to the prosecution or defence.²⁸⁵

The CCC also cited difficulties in applying section 197 in situations in which the prosecution will make the case that a statement made in a CCC hearing is true, but falsifies another statement made under oath. The CCC suggested it is arguable that 'in such circumstances, the true statement would not be admissible, as it would not fall within the exemption in section 197(3)'.²⁸⁶

The CCC was of the opinion that the District Court ruling may also have unintended consequences in situations in which a witness's truthful answers may be relevant and probative, but on the construction of section 197 adopted in the recent District Court decision, may not be admissible. The following example was provided:

A witness may have answered a series of questions about peripheral matters with clarity and ease of recollection, and then feigned memory loss or a lack of recall about the specific events being investigated. In such circumstances these other "truthful" answers may be relevant to assessing whether the witness was dishonest in their professed forgetfulness by way of a contrast, but may nevertheless be inadmissible. Equally, what would amount to a witness's prior inconsistent statements may be relevant and probative in a proceeding about false evidence given in another context, or elsewhere within a CCC hearing.²⁸⁷

The CCC therefore recommended amending section 197 of the CC Act, to 'provide that, where a prosecution relates to the truth or falsity or misleading nature of an answer given, then all answers given by the witness are admissible in those proceedings'.²⁸⁸ The CCC noted that it is not the intention that such an amendment would displace usual rules of evidence, including the discretion of a judge to exclude evidence under the *Evidence Act 1977*.²⁸⁹

At the public hearing for the Review on 26 March 2021, the CCC clarified that its recommendation was not intended to provide an extension to 'have the evidence admissible generally' but was limited to 'the very narrow terms of the perjured answer and not the context of the entire testimony'.²⁹⁰

In response to this recommendation, the QPU suggested that the CCC's recommendation 'seems to be an attempt to expand the CCC's power base because it may be convenient to the CCC to do so', and did not result from 'any evidence of any hardship arising out of existing processes relating to determining claims of privilege'.²⁹¹ The QPU raised a concern that this recommendation would empower the CCC to make its own rulings of privilege, which are currently subject to rulings by the Supreme Court. The QPU stated that 'to maintain public confidence in organisations like the CCC, external overview and the ability of the court to decide important matters touching on basic human rights is essential'.²⁹²

²⁸⁴ Submission 027, p 48.

²⁸⁵ Submission 027, p 48.

²⁸⁶ Submission 027, p 49.

²⁸⁷ Submission 027, p 49.

²⁸⁸ Submission 027, p 49.

²⁸⁹ Submission 027, p 49.

²⁹⁰ Public hearing transcript, Brisbane, 26 March 2021, p 21.

²⁹¹ Public hearing transcript, Brisbane, 26 March 2021, p 38.

²⁹² Public hearing transcript, Brisbane, 26 March 2021, p 38.

The QLS submitted that the issue should be considered further, noting there may be a need for legislative amendments.²⁹³ It cautioned, however, that any proposed amendments should be subject to proper review and 'significant more specific consultation across the stakeholders'.²⁹⁴

Committee comment

The committee notes both the CCC's proposal and the concerns expressed by the QPU.

The committee agrees with the QLS that any proposed amendment should be considered only after proper consultation on the issue with a broad range of stakeholders.

Recommendation 12

The committee recommends consideration be given to amending section 197 of the *Crime and Corruption Act 2001*, to ensure clarity in regards to its interpretation and intent.

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

Powers to conduct specific intelligence operations and immediate response powers are contained in the CC Act.²⁹⁵ These powers allow the CRC to:

- authorise a specific intelligence operation if certain conditions are met, including a requirement that the CRC is satisfied there are reasonable grounds to suggest a criminal organisation (or a participant in a criminal organisation) engages in criminal activity, or that a person has engaged in corrupt conduct to help a criminal organisation²⁹⁶
- authorise an immediate response to threats to public safety if it is satisfied of certain conditions, including that there are reasonable grounds to suspect that a criminal organisation (or a participant in a criminal organisation) has engaged in, is engaging in, or is planning to engage in, an incident that threatens, has threatened, or may threaten public safety.²⁹⁷

The CCC recommended consideration be given to amending the intelligence operations provisions in the CC Act to enable the CRC to approve special investigations and special intelligence operations other than in respect of a 'criminal organisation', as defined in the *Penalties and Sentences Act 1992*, due to concerns that that definition may limit the CCC's performance of its functions. The CCC explained:

The current definition of criminal organisations will limit intelligence collection to organised crime groups who are already well known in law enforcement and will require significant intelligence workup and resources to attempt to meet the definition of a criminal organisation in respect of each identified organised crime syndicate...

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

This jurisdictional question applies with equal or greater force in relation to the "immediate response" powers. Responses to public safety must necessarily be rapid and based on less-than-complete

²⁹³ QLS, correspondence, 6 April 2021, p 7.

²⁹⁴ Public hearing transcript, Brisbane, 26 March 2021, p 42.

²⁹⁵ CC Act, see Chapter 2, Part 4, Division 2A and 2B.

²⁹⁶ CC Act, s 55A.

²⁹⁷ CC Act, s 55D.

information. One can readily envisage a scenario in which a public safety incident is brought about by a “lone wolf” actor. The inquiry may include seeking to establish whether the activity was conducted alone, or in concert with others. In such circumstances, the CCC’s powers to conduct an “immediate response” hearing would not be available, due to the jurisdictional constraint requiring a connection to a criminal organisation. It would be highly undesirable if such an inquiry were prevented because the very subject matter of the inquiry were a jurisdictional prerequisite to undertake such an inquiry.²⁹⁸

Committee comment

The committee acknowledges the limitations, as outlined by the CCC, are problematic. The committee recommends these provisions be reviewed, with consultation with stakeholders, in order to determine an appropriate legislative amendment through which to address concerns of the CCC regarding intelligence operations.

Recommendation 13

The committee recommends that consideration be given to amending the intelligence operations provisions in the *Crime and Corruption Act 2001*, to enable the Crime and Corruption Commission’s Crime Reference Committee to approve special investigations and special intelligence operations other than in respect of a ‘criminal organisation’, as defined in the *Penalties and Sentences Act 1992*.

5.7.1 Information-gathering powers for monitoring and prevention purposes

Section 55 of the CC Act requires the Commissioner of Police to provide the CCC chairperson with access to intelligence information held by the QPS. Sections 73 and 75 provide for powers of entry, search and seizure (section 73) and powers to require a person to provide information (section 75), but only in relation to corruption investigations.

In the 2016 review of the CCC, the former PCCC made two recommendations (recommendations 14 and 20 respectively) in respect of these provisions, as follows:

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

...

Recommendation 20: The Committee recommends that the government give consideration to amending sections 55, 73 and 75 of the *Crime and Corruption Act 2001* to expressly provide that the powers conferred on the commission by these provisions apply to the performance of the commission’s corruption prevention function.²⁹⁹

While these recommendations were supported by the Queensland Government at the time, they have not been implemented.³⁰⁰

The CCC reiterated its support for recommendations 14 and 20 in its submission to the Review, noting that its monitoring and prevention functions rely on information obtained cooperatively from UPAs and other entities, but that it has no specific powers to compel agencies to provide information for its monitoring and prevention purposes. The CCC stated ‘there will inevitably be instances where such information will not be forthcoming as and when it is required’.³⁰¹

²⁹⁸ Submission 027, p 43.

²⁹⁹ 2016 Review Report pp viii, ix.

³⁰⁰ Queensland Government, 2016 Review Report – Queensland Government Response, December 2016, p 7, 10.

³⁰¹ Submission 027, p 19.

The CCC acknowledged 'that these issues have been ameliorated somewhat by recent amendments to section 33 of the CC Act (which now allows the CCC to deal with conduct liable to allow, encourage or cause corrupt conduct)'.³⁰² However, the CCC still supported further changes.

The CCC submitted that sections 73 and 75 should explicitly state that those provisions apply to the CCC's monitoring role (under sections 47 and 48) and corruption prevention function (under sections 23 and 24), advising that the proposed changes would remove impediments to fulfilling its monitoring and prevention functions.³⁰³

The CCC suggested that amendments to provide for additional information and intelligence gathering powers:

...could be developed in alignment with a whole-of-organisation strategic direction for prevention. The Queensland Audit Office (QAO) encourages, but does not require, all public sector agencies to implement fraud risk assessments and routine data analytics over areas inherently susceptible to fraud. The QAO considers these to be strong techniques that complement each other as part of an effective fraud control plan. These techniques may also be applied to other at-risk areas of corruption.³⁰⁴

The QLS contended, however, that expanding the powers available to the CCC to its monitoring functions and crime prevention functions 'is not justified and may lead to situations where these powers are being used inappropriately'.³⁰⁵

Committee comment

The committee notes recommendations 14 and 20 of the 2016 Review Report have not been implemented by the government, and further notes that the CCC already has a broad range of powers that have the potential to substantially abrogate the rights of individuals.

In the course of this review, the committee's attention has been drawn to significant concerns about the proposals outlined in the 2016 Review Report, in particular by the QLS.

The committee holds significant concern about any extension of the CCC's powers of entry and notice to discover.

The proposal by the CCC to have those powers apply in support of its corruption prevention and monitoring functions rather than corruption investigations is a significant policy shift and could raise further potential breaches of fundamental legislative principles.

The committee notes the *Legislative Standards Act 1992* provides that legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.³⁰⁶ While it is noted that the powers of the CCC to enter and search premises and seize documents under section 73 of the CC Act is limited to 'official premises' of a UPA, no warrant is required by the section, only authorisation by the Chairperson of the CCC.

The QLS in its submission to the Review, noted:

... it is our view that there are sufficient powers and scope for the CCC to investigate the individuals, institutions and the conduct for which the Commission was created. There should be no further broadening of these powers in the absence of a strong evidentiary basis.³⁰⁷

³⁰² Submission 027, p 19.

³⁰³ Submission 027, pp 18-19.

³⁰⁴ Submission 027, pp 18-19.

³⁰⁵ QLS, correspondence, 6 April 2021, p 1.

³⁰⁶ *Legislative Standards Act 1992*, s 4(3)(e).

³⁰⁷ Submission 033, p 2.

Further extension of the CCC's powers under sections 73 and 75 would arguably give rise to an unjustified intrusion on the part of the CCC into the operations of a UPA. Sections 24, 47 and 48 already provide significant scope for the CCC to take action in relation to prevention and monitoring, including by taking over investigations if deemed necessary by the CCC. With respect to the CCC, making coercive measures available to the CCC in the case of preventing acts of corrupt conduct – before they have occurred – or to monitor investigations (where the CCC already has the power under section 47 and 48 to take a very broad range of steps, including taking over the investigation if deemed necessary) is not justified.

The committee considers that it should not be necessary for the CCC to utilise these coercive measures in its monitoring role if the CCC properly utilises the powers already available to it. In the case of police misconduct, the committee considers use of such powers could negatively impact on the co-operative relationship mandated by the CC Act between the Commissioner of Police and the CCC. In relation to monitoring corruption investigations, the committee considers that it is difficult to envisage a scenario where the CCC would consider it necessary to use its significant powers in section 73 or 75, but not to exercise the power in section 48 to assume responsibility of the investigation.

The committee therefore recommends that no changes be made to these provisions of the CC Act.

Recommendation 14

The committee recommends that no changes be made to sections 53, 73 and 75 of the *Crime and Corruption Act 2001*, pursuant to Recommendations 14 and 20 of the 2016 Review Report.

5.8 Notice to discover documents or things

Section 113 of the CC Act requires the CCC to apply to the magistrate for an order, including an order that the CCC keep possession of the thing ('property retention order'), if it has seized anything pursuant to chapter 3 of the CC Act.

The CCC recommended that section 113 of the CC Act be amended to provide a limited exclusion to obtain property retention orders where the UPA or corporate entity has no reasonable expectation of return of the record.³⁰⁸ The CCC suggested this might apply where copies of documents have been provided by a UPA or corporate entity, and 'it would be reasonable to expect that the provider would not require them to be returned or retained'.³⁰⁹

Committee comment

The committee notes limited rationale has been provided by the CCC for its recommendation about limiting when the CCC must apply to a magistrate for an order to retain a seized thing.

The committee considers the current requirement, that an application must be made to a magistrate for the CCC to retain a seized thing (unless meeting one of the exemptions under section 113(1)), is appropriate.

The committee does not support a change whereby the CCC makes a determination about when it considers it 'reasonable' to expect that the provider of the seized thing would not require them to be returned or retained. Further, the committee does not agree that the CCC should be able to retain seized things indefinitely, and considers section 113 facilitates appropriate conditions and timeframes for dealing with seized things.

³⁰⁸ Submission 027, p 44.

³⁰⁹ Submission 027, p 43.

5.9 Use of surveillance device warrants in corruption investigations

Under the CC Act, police officers who are seconded to the CCC continue to have the functions and powers of a police officer, which are provided for in the PPRA.³¹⁰ The PPRA includes numerous functions and powers, including the ability to obtain surveillance device warrants.³¹¹

In making the provision for seconded police officers to maintain their functions and powers, section 255(5) of the CC Act provides the following example:

A police officer seconded to the commission may exercise the powers of a police officer under the *Police Powers and Responsibilities Act 2000* for an investigation of alleged corruption involving a relevant offence as defined in section 323 of that Act.

Section 325 of the PPRA provides further clarification regarding the relationship between the PPRA and other laws for certain purposes. Section 325(4) of the PPRA provides:

- (4) A function conferred under this chapter [Chapter 13 – Surveillance Devices] in relation to the activities of the CCC is only conferred for the purpose of a function conferred on the CCC under the *Crime and Corruption Act 2001* relating to major crime as defined under that Act.

The Parliamentary Commissioner submitted that the current wording of section 325(4) causes some uncertainty, as it suggests that police officers seconded to the CCC can only use surveillance device warrants for the purpose of its major crime function.³¹² The Parliamentary Commissioner noted that this conflicts with the example provided in section 255(5) of the CC Act regarding the use of police powers for investigations of alleged *corruption* – a distinct CCC function. Further, that it can be noted that under section 121 of the CC Act, authorised officers of the CCC can apply, with the CCC Chairperson's approval, for a surveillance warrant in relation to corruption being investigated by the CCC,³¹³ where this does not appear to be clearly the case for a seconded police officer.

The Parliamentary Commissioner submitted that if it was Parliament's intention to restrict the CCC's use of surveillance device warrant powers to major crime investigations only, section 255(5) requires amendment; and alternatively, if it was the Parliament's intention that it not be restricted, legislative amendment to section 325(4) is necessary to remove the present limitation to functions related to major crime.³¹⁴

The Parliamentary Commissioner also noted that the drafting of section 255(5) appears to allow a senior police officer seconded to the CCC to apply for a surveillance device warrant for a corruption investigation, but does not allow a CCC officer who is not a police officer to apply. The Parliamentary Commissioner submitted that there does not appear to be 'any valid reason for that distinction'.³¹⁵

Committee comment

The committee notes the uncertainty and potential conflict caused by the differences between section 255(5) of the CC Act (and its example) and section 325(4) of the PPRA.

While it is acknowledged that the PPRA is explicit in confining surveillance device warrants to the serious category of 'major crime', the CCC continues to use its seconded police officers to obtain surveillance device warrants in relation to corruption investigations, in reliance on the provisions of the CC Act.

³¹⁰ CC Act, 255(5).

³¹¹ PPRA, chapter 13.

³¹² CC Act, s 255(5), PPRA s 325(4).

³¹³ CC Act, s 121.

³¹⁴ Submission 029, p 3.

³¹⁵ Submission 029, p 2.

Given the CCC's focus on more serious cases of corrupt conduct and cases of systemic corrupt conduct, the committee considers it may be appropriate for the CCC to obtain surveillance device warrants in relation to corruption investigations, by application of both seconded police officers and authorised officers of the CCC (pursuant to the CC Act). It is noted, however, that there may be other relevant considerations which should be further explored by the DJAG.

The committee therefore recommends amendment of the PPRA to clarify whether a senior CCC officer (or senior police officer) is able to obtain surveillance device warrants for both its major crime and corruption function.

Recommendation 15

The committee recommends that the government review the uncertainty and potential conflict caused between section 255(5) of the *Crime and Corruption Act 2001* (and its example) and section 325(4) of the *Police Powers and Responsibilities Act 2000*; and whether a senior Crime and Corruption Commission officer, or senior police officer, should be able to obtain surveillance device warrants for both the Crime and Corruption Commission's major crime and corruption function.

5.9.1 Extension or variation of surveillance device warrants

Section 333 of the PPRA deals with applications for the extension and variation of surveillance device warrants.³¹⁶

Section 333 provides that if a judge or magistrate grants an application or variation to a surveillance device warrant, the judge or magistrate must write the new expiry date or the other varied term on the original warrant.³¹⁷

The Parliamentary Commissioner submitted that handwritten amendments and variations can be difficult to decipher, particularly in cases where the warrant conditions are detailed and complex. The Parliamentary Commissioner suggested that it would be preferable for a new warrant to be issued, rather than seeking an extension to an existing warrant.³¹⁸

The Parliamentary Commissioner noted that the CCC has also previously acknowledged that the method for extending warrants under section 333 of the PPRA raises issues. The Parliamentary Commissioner indicated that the CCC supports a legislative change to this provision, but also emphasised that 'any change would be subject to external legislative consideration (such as cross-border recognition of warrants) and consultation with relevant stakeholders'.³¹⁹

Committee Comment

The committee acknowledges the practical issues raised by the Parliamentary Commissioner regarding extensions and variations of surveillance device warrants. Consideration should be given to the appropriate mechanism to address these issues, with any proposed legislative or practice change developed in consultation with relevant stakeholders.

Recommendation 16

The committee recommends that the government consider the most appropriate way to address the issue of handwritten amendments and variations on surveillance device warrants, such as amendment of the *Police Powers and Responsibilities Act 2000*.

³¹⁶ PPRA, s 333.

³¹⁷ Submission 029, p 3.

³¹⁸ Submission 029, p 3. The Parliamentary Commissioner emphasised that amendments and variations 'must be understood and strictly followed by monitoring staff and any technician installing the devices'.

³¹⁹ Submission 029, p 3.

5.9.2 Applications for extension or variation of surveillance device warrants

Section 333(1) of the PPRA states that an application for extension or variation of a surveillance device warrant must be made by the officer to whom the original warrant was issued.

The Parliamentary Commissioner noted that this requirement has caused difficulties for the CCC where the officer who made the original application has left the CCC or is unavailable. In this instance, a different applicant must seek revocation of the previous warrants and the issue of new ones.³²⁰

The Parliamentary Commissioner suggested that consideration be given to amending the PPRA to allow an application for an extension or variation of a surveillance device warrant to be made by any authorised CCC officer. The Parliamentary Commissioner's submission noted that the equivalent provisions in the CC Act and in the Northern Territory and the Commonwealth do not require the original officer to make the application.³²¹

Committee Comment

The committee notes that section 333(1) of the PPRA may give rise to a practical issue when an officer who made an original application for a surveillance device warrant is unavailable when an application for extension or variation of the warrant is needed.

Subject to any issues raised by stakeholders, the committee recommends amendment of the PPRA to address this issue.

Recommendation 17

The committee recommends that the *Police Powers and Responsibilities Act 2000* be amended to remove the requirement that an application for extension or variation of surveillance device warrants must be made by the officer to whom the original warrant was issued.

5.9.3 Notice of revocation of a surveillance device warrant

The PPRA states that a judge or magistrate who revokes a warrant must cause notice of the revocation to be given to the CEO of the law enforcement agency.³²² The Parliamentary Commissioner advised that it is unusual for a legislative provision to require a judge to perform such a role.³²³

The Parliamentary Commissioner suggested that it would be preferable for a formal revocation notice to be prepared by the CCC and signed by the revoking judge, rather than rely on the applicant officer communicating the revocation to the CEO. The Parliamentary Commissioner noted that the CCC has advised her that the usual practice is to prepare a draft notice of a revocation to be signed by the judge as part of the revocation process. The Parliamentary Commissioner advised that this procedure should be required by the PPRA.³²⁴

³²⁰ Submission 029, pp 3-4.

³²¹ Submission 029, p 4.

³²² PPRA, s 334(3).

³²³ Submission 029, p 4.

³²⁴ Submission 029, p 4.

Committee comment

The committee acknowledges the suggestion of the Parliamentary Commissioner in regards to notification of warrant revocations and recommends the government consider the Parliamentary Commissioner's proposal.

Recommendation 18

The committee recommends that the government review the requirement under section 334(3) of the *Police Powers and Responsibilities Act 2000* that a judge or magistrate who revokes a surveillance device warrant, must cause notice of the revocation to be given to the chief executive officer of the law enforcement agency.

5.9.4 Surveillance device warrants in the office of a practising lawyer

Section 330(3) of the PPRA provides that a warrant may be issued for a surveillance device to be placed in the office of a practising lawyer, but only if the application for the warrant relates to the lawyer's involvement in a relevant offence.

The Parliamentary Commissioner acknowledged this provision prevents the use of listening devices in a lawyer's office to monitor legal strategies and other legally professionally privileged conversations. The Parliamentary Commissioner noted, however, that many legal practitioners use mobile telephones to provide legal advice from home or whilst driving. Surveillance devices are currently not permitted in these locations under the current wording of section 330(3) of the PPRA.³²⁵

The Parliamentary Commissioner further explained:

To make the distinction, a surveillance device could not normally go into a lawyer's office while they are meeting with a client because there will be subjects discussed of legal professional privilege. The only reason a device can go in is in circumstances where it is believed the lawyer is involved somehow in committing that offence, so if the lawyer is speaking in the office to the client the present legislation allows for a surveillance device. I am suggesting that, instead of saying 'in the office of a practising lawyer', you will see in my second paragraph I have removed those words and just said 'in relation to a practising lawyer'. That is, it does not just have to be in an office—they can be in a car, they can be in a coffee shop, they can be wherever they are meeting their client—and if there is enough justification for it, the warrant could be issued.³²⁶

The Parliamentary Commissioner suggested that the committee give consideration to rewording section 330(3) of the PPRA to provide that a warrant can be issued for the use of surveillance devices in relation to a practising lawyer if the application for the warrant relates to the lawyer's involvement in a relevant offence.³²⁷

The QLS submitted that further consultation would be necessary before amendments to section 330(3) are progressed.³²⁸

³²⁵ Submission 029, p 4.

³²⁶ Public hearing transcript, Brisbane, 26 March 2021, p 2.

³²⁷ Submission 029, p 4.

³²⁸ Public hearing transcript, Brisbane, 26 March 2021, p 41.

Committee comment

The committee notes the Parliamentary Commissioner's argument that provisions governing the use of listening devices in a lawyer's office should also apply to the use of mobile telephones to provide legal advice from home or whilst driving.

It is acknowledged that extending the use of surveillance devices would impact on a person's rights and liberties, and should only be accepted after thorough consideration and consultation with relevant stakeholders.

Recommendation 19

The committee recommends that consideration be given to enabling the use of surveillance devices in a lawyer's home or car or other relevant place, in accordance with relevant sections of the *Police Powers and Responsibilities Act 2000*, including section 330 that presently permits the use of surveillance devices in the office of a practising lawyer in limited circumstances.

5.9.5 Requirement that the Public Interest Monitor be notified of breaches of warrant conditions

Breaches of telecommunications interception warrant conditions are reported to the Parliamentary Commissioner as the inspecting entity for warrants issued to the CCC under the TI Act.³²⁹ The CCC must notify the Parliamentary Commissioner and the committee if a breach of a telecommunications interception warrant or a surveillance device warrant also constitutes improper conduct.³³⁰

The Parliamentary Commissioner noted in her submission that there is no requirement for the CCC to report breaches of conditions of telecommunications interception warrants and surveillance device warrants to the issuing authority or the Public Interest Monitor (PIM). This is despite the fact that the PIM has the following functions for surveillance warrants and covert search warrants under the CC Act:

- to monitor compliance by the CCC with the CC Act in relation to matters concerning applications for surveillance warrants and covert search warrants
- to appear at any hearing of an application to a Supreme Court judge or a magistrate for a surveillance warrant or covert search warrant to test the validity of the application
- to gather statistical information about the use and effectiveness of surveillance warrants and covert search warrants
- whenever the public interest monitor considers it appropriate—to give to the CCC and the committee a report on noncompliance by the CCC with the CC Act.³³¹

The Parliamentary Commissioner recommended that it be required that the PIM or the issuing authority be immediately informed for breaches of warrant conditions, to ensure they are properly considered.³³² The Parliamentary Commissioner noted that if the PIM is not told there has been a breach, the PIM is unable to assess if there has been another application for the same target, and would not be able to determine whether another breach occurred in the past. There is also no mechanism for ensuring the PIM is advised in a timely way. The Parliamentary Commissioner acknowledged that following an exchange of communication, the CCC recently undertook to inform the PIM of breaches of conditions of these warrants.³³³ However, the Parliamentary Commissioner

³²⁹ CC Act, ss 259, 260.

³³⁰ CC Act, s 329(1).

³³¹ CC Act, s 326.

³³² Submission 029, p 5.

³³³ Submission 029, p 5.

considered that the insertion of a legislative requirement for notification represents ‘the surest way to ensure breaches of warrant conditions are properly considered’.³³⁴

The CCC similarly recommended the TI Act be amended to provide for the CCC to notify the PIM of issues of warrant non-compliance.³³⁵ Noting that ‘the PIM has no general reporting role, or ongoing supervision role’ in relation to CCC telecommunications interception warrants, the CCC submitted:

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

The CCC submits that the TI Act could be amended to include an obligation on the CCC to notify any issues of non-compliance with warrant conditions. While this practice has been adopted (in particular since the issue was raised with the CCC by the PCC Commissioner), it may be prudent to make this an express compliance obligation on the CCC to reflect adopted practice.³³⁶

The Parliamentary Commissioner acknowledged that this issue concerns the exercise of the CCC’s powers under the PPRA and the TI Act and that any amendment to relevant provisions of the PPRA ‘must take into account the need to maintain crossborder recognition of Queensland’s exercise of the powers’.³³⁷

The QLS advised the committee that it supports the intent of this proposal, provided that consultation on the drafting of amendments occur prior to legislation being introduced in Parliament ‘to ensure there are no unintended consequences’.³³⁸

Committee comment

The committee notes the views of the Parliamentary Commissioner and CCC in regards to requiring that the PIM or issuing authority be advised of any breach of a condition of a telecommunications interception warrant or surveillance device warrant.

To ensure the PIM must be advised as soon as possible of any breaches, the committee recommends legislative amendment.

Recommendation 20

The committee recommends consideration be given to legislating a requirement that the Crime and Corruption Commission report breaches of telecommunications interception warrant or a surveillance device warrants to the Public Interest Monitor or issuing authority.

5.10 Jurisdiction of Queensland Civil and Administrative Tribunal proceedings

The CCC previously called for section 50 of the CC Act be amended to allow the CCC to prosecute both corrupt conduct and police misconduct in QCAT (as opposed to corrupt conduct only). This proposal was accepted by the former PCCC, which recommended in its 2016 Review Report:

Recommendation 16

The Committee recommends that section 50 of the Crime and Corruption Act 2001 be amended to enable the Commission to initiate disciplinary proceedings in QCAT’s original jurisdiction in respect of police misconduct.³³⁹

³³⁴ Submission 029, p 5.

³³⁵ Submission 027, p 51.

³³⁶ Submission 027, p 51.

³³⁷ Submission 029, p 5.

³³⁸ QLS, correspondence, 6 April 2021, p 7.

³³⁹ 2016 Review Report, recommendation 16.

The CCC has stated in its submission to the current Review that it no longer seeks amendment to its jurisdiction in QCAT proceedings.

Commentary regarding general resourcing of the QCAT, is outlined at section 6.12 of this report.

Committee comment

The committee notes that recommendation 16 from the 2016 Review Report is no longer supported by the CCC.

In view of submissions received, the committee considers that there is no longer need for amendment to the CCC's jurisdiction in QCAT proceedings.

Recommendation 21

The committee recommends no change to section 50 of the *Crime and Corruption Act 2001*, pursuant to Recommendation 16 of the 2016 Review Report.

6 Corruption functions

The CC Act provides that the CCC is responsible for continuously improving the integrity of, and reducing the incidence of corruption in, the public sector (the 'corruption functions').³⁴⁰

Under the CC Act, the CCC has the following corruption functions:

- to raise standards of integrity and conduct in units of public administration (UPAs), including the QPS³⁴¹
- to ensure a complaint about, or information or matter involving, corruption is dealt with in an appropriate way, having regard to the principles specified in the CC Act.³⁴²

As well as receiving complaints, the CCC investigates allegations of serious and systemic corruption. The CCC can also investigate any person whose conduct adversely affects the performance of a public agency or public official and satisfies the definition of *corrupt conduct*. The CCC advised that, where appropriate, it uses its coercive hearings powers to secure evidence and intelligence when investigating allegations of corrupt conduct.³⁴³

The term *corruption* refers to both *corrupt conduct* (as defined in section 15 of the CC Act) and *police misconduct*, which is defined as conduct, other than corrupt conduct, of a police officer that:

- is disgraceful, improper or unbecoming of a police officer
- shows unfitness to be or continue as a police officer, or
- does not meet the standard of conduct the community reasonably expects of a police officer.

Section 41(1) of the CC Act provides that the Commissioner of Police has primary responsibility for dealing with complaints about police misconduct, subject to the monitoring role of the CCC.

The CC Act specifies the following principles for the CCC performing its corruption functions:

- the **cooperation principle** – the CCC and UPAs should, to the greatest extent possible, work cooperatively to prevent and deal with corruption
- the **capacity building principle** – the CCC has a lead role in building the capacity of UPAs to prevent and deal with cases of corruption effectively and appropriately
- the **devolution principle** – subject to the cooperation and public interest principles and the capacity of a UPA to deal with a complaint about corruption, action to prevent and deal with corruption in a UPA should generally happen within the UPA
- the **public interest principle** – the CCC has an overriding responsibility to promote public confidence in the integrity of UPAs and if corruption does happen within a UPA, the way in which it is dealt with. The CCC should, in exercising its power to deal with cases of corruption, have primary regard to:
 - the capacity of, and resources available to, a UPA to effectively deal with corruption
 - the nature and seriousness of the corruption, particularly if there is reason to believe that corruption is prevalent or systemic within a UPA

³⁴⁰ CC Act, ss 4(1)(b), 7.

³⁴¹ CC Act, s 20.

³⁴² CC Act, s 33(1).

³⁴³ Submission 027, p 101.

- any likely increase in public confidence in having the corruption dealt with by the CCC directly.³⁴⁴

Section 35(3) of the CC Act provides that the CCC must focus on more serious cases of corrupt conduct and cases of systemic corrupt conduct with a UPA. The CCC has identified the following key areas of activity in relation to its corruption functions:

- receipt and assessment of complaints
- oversight role
- corruption investigations
- strategic intelligence, audits and prevention
- research.³⁴⁵

This chapter of the report assesses the CCC's performance of its corruption functions over the review period, discusses issues raised by stakeholders and makes a number of recommendations.

6.1 Issues raised in relation to the Crime and Corruption Commission's performance of its corruption functions

The Speaker of the Legislative Assembly and the Ethics Committee both raised concerns about the CCC's consideration of complaints made against the Premier³⁴⁶ and the former Deputy Premier, Ms Jackie Trad.³⁴⁷ In summary, the Speaker of the Legislative Assembly and the Ethics Committee raised concerns about:

- the distinction between an assessment and investigation by the CCC and the impact on evidence gathering and transmission
- the length of time taken to assess allegations and complaints about corrupt conduct
- the absence of formal reporting ability/requirements by the CCC on matters of significant public interest when there has been an assessment
- the adequacy of the authority under the CC Act for evidence transmission to an appropriate entity (when a matter is referred to the entity)
- the use of prosecutorial discretion
- the method of public reporting on matters of significant public interest.

In light of these concerns, on 16 December 2019, the former committee launched its Inquiry into Corrupt Conduct Complaints. As previously noted, in May 2020, the committee resolved to incorporate this inquiry, including evidence provided in submissions, into this Review.

Submitters to the inquiry and this Review made a range of comments on the CCC's performance of its corruption functions.

³⁴⁴ CC Act, s 34.

³⁴⁵ Submission 027, p 102.

³⁴⁶ Queensland Parliament, Ethics Committee, Report No. 189, *Matter of privilege referred by the Speaker on 12 October 2018 relating to an alleged contempt of Parliament by the Premier and Minister for Trade*, October 2019; Speaker of the Legislative Assembly of Queensland, *Speaker's Ruling - Referral to Ethics Committee, Katter Party Resources*, 12 October 2018.

³⁴⁷ Speaker of the Legislative Assembly of Queensland, *Speaker's Ruling - Referral to Ethics Committee, Crime and Corruption Commission referral regarding the Deputy Premier*, 22 November 2019, p 1.

A number of submitters were complimentary about the CCC's performance in this regard. The former Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP), for example, stated that the CCC provides:

...high quality written information on its website and CCC officers attended relevant Whole of Government community of practice meetings to explain changes to the Act that occurred in November 2018 and March 2019.³⁴⁸

QCS considered that the CCC's objectives consistently align with its corruption functions as set out in sections 33 and 34 of the CC Act. QCS stated:

... the CCC has been instrumental in raising standards of integrity and conduct for QCS, and ensuring complaints involving corruption are dealt with appropriately and in accordance with principles of cooperation, capacity building, devolution and public interest.³⁴⁹

In addition, QCS commended the recent CCC restructure, including expressing support for the improvements being made to CCC's procedures. QCS referred to the CCC's Operation Flaxton, during which there were regular meetings between the QCS and CCC to improve complaint handling and investigations and the timeliness of resolving issues. QCS stated: 'This collaborative relationship has assisted QCS to improve its processes and provide ongoing support to perform its functions.'³⁵⁰

Other submitters raised issues in relation to the definition of corrupt conduct, the CCC's resourcing of, and focus on, its corruption functions, the devolution principle, and the timeliness of the CCC's assessment and investigation of corrupt conduct complaints.

6.2 Crime and Corruption Commission's performance of its corruption functions

The CCC has a number of service delivery standards and operational standards against which the CCC's performance of its corruption functions can be assessed. The CCC reports its performance against these standards in its Annual Reports.

6.2.1 Number of corruption complaints received

The number of corruption complaints received by the CCC has increased each year over the review period:

- 2,674 complaints (consisting of 6,091 allegations) in 2015-16
- 3,041 complaints (consisting of 7,898 allegations) in 2016-17
- 3,098 complaints (consisting of 8,862 allegations) in 2017-18
- 3,109 complaints (consisting of 8,329 allegations) in 2018-19, and
- 3,327 complaints (consisting of 8,726 allegations) in 2019-20.³⁵¹

Complaints received in 2019-20 represents a 7% increase in comparison to 2018-19 and a 9% increase when compared to 2016-17.³⁵²

³⁴⁸ Submission 001 to the Inquiry into Corrupt Conduct Complaints, p 1.

³⁴⁹ Submission 011 to the Inquiry into Corrupt Conduct Complaints, p 2.

³⁵⁰ Submission 011 to the Inquiry into Corrupt Conduct Complaints, p 2.

³⁵¹ CCC, *2019-20 Annual Report*, 24 September 2020, p 23.

³⁵² Submission 027, p 72.

6.2.2 Assessment of corruption complaints

The CCC's website states that it aims to assess complaints within 4 weeks, although it may take longer if the CCC needs to get further information or documents. The CCC's KPI for assessing complaints is 30 days.³⁵³

The committee notes that, in 2016-17, only 48% of matters were assessed within 30 days. This reduced further to 39% in 2017-18. However, over recent years, the timeliness of the CCC's assessment of complaints has improved significantly to 76% of assessments completed within 30 days in 2018-19 and 87% in 2019-20.³⁵⁴

The CCC advised that in 2019-20 it reviewed its assessment processes, utilising the LEAN methodology, to improve the efficiency of the assessment component of corruption investigations and identify redundant process and time efficiencies. The CCC stated that 'These business process improvements have assisted the CCC to meet its assessment timeliness target for the first time in a few years, with 87% of assessments finalised within 30 days'.³⁵⁵

Notwithstanding the improvements stated above, a number of complaints received by the committee about the CCC, during the review period, have related to the timeliness of decision-making and the CCC's communication with complainants during the assessment phase.

The committee notes that in a number of recent high-profile matters, the CCC's assessment of a complaint has taken considerably longer than 30 days to complete. For example, the CCC's assessment of the allegations against the former Deputy Premier in 2019 took 7 weeks to complete (initial allegation received 18 July 2019, determination made 6 September 2019).

Some submissions highlighted issues with the amount of time taken by the CCC to assess matters reported to it.³⁵⁶ The Queensland University of Technology (QUT) submitted that 'The CCC takes far too long to assess matters. This can be weeks, although it is recognised by the University that this is likely due to resourcing issues'.³⁵⁷

This view was shared by South Burnett Regional Council (SBRC), who noted that the CCC generally do not provide a timeframe in which to expect a response, which has led to the council waiting months for a response from the CCC.³⁵⁸ At the public hearing on 26 March 2021, SBRC stated that:

We will often get no guidance on when we can expect a result. These investigations can take considerable time. Quite often they are complex and there are always two sides to every story, so procedural fairness and natural justice absolutely must be attributed. Without talking about a specific case, it is generally about a week and then we just wait until somebody tells us what is going on...³⁵⁹

DSDMIP stated that, in general, 'the CCC's responses and processes for assessing complaints have been of high quality', however, 'In recent times response times have been noticed to take longer compared to previous years'. DSDMIP stated that 'Most matters are assessed within a few weeks of being notified by the department to the CCC but some matters have taken up to two or more months'.³⁶⁰

³⁵³ CCC, 'What happens to your complaint', <https://www.ccc.qld.gov.au/complainants/what-happens-your-complaint>.

³⁵⁴ Submission 027, p 73.

³⁵⁵ Submission 027, p 73.

³⁵⁶ See for example, submissions 013, 015, 018, 019, 031.

³⁵⁷ Submission 013, p 1.

³⁵⁸ Submission 015, p 1.

³⁵⁹ Public hearing transcript, Brisbane, 26 March 2021, p 30.

³⁶⁰ Submission 001 to the Inquiry into Corrupt Conduct Complaints, p 1.

The Department of Transport and Main Roads (DTMR) noted that while the majority of Public Interest Review matters overseen by the CCC have met reasonable timeframes, occasionally the CCC's oversight of these matters could be improved, noting:

Historically, the experience of TMR when notifying the CCC of any matter involving suspected corrupt conduct is that the assessment by the CCC was sometimes not timely. In some cases, CCC Matters Assessed Reports were not provided to TMR until some months after initial notification, leading to unnecessary delays in investigation timeframes. In this review period, TMR has experienced a significant improvement in the assessment timeframes. TMR commends the CCC for its ongoing work in reducing the time taken to assess TMR matters.³⁶¹

At the public hearing on 26 March 2021, the Independent Assessor stated that:

... delays are a product of the number of complaints coming in and the number of resources looking at them. From time to time, there will be delays in any complaint agency, and from time to time we have experienced some delays in matters being referred back.³⁶²

At a public meeting with the committee on 18 October 2019, the CCC Chairperson stated 'You cannot put a time limit, finite time limit on assessment processes. It just depends on the case. Some cases will take longer'.³⁶³

6.2.3 Number of corruption investigations finalised

The CCC's service delivery standard is to finalise 85% of corruption investigations within 12 months. The committee notes that, over the review period, there has been a general decline in the percentage of investigations finalised within 12 months:

- 91% in 2015-16
- 92% in 2016-17
- 63% in 2017-18
- 80% in 2018-19, and
- 51% in 2019-20.³⁶⁴

In relation to the figures for 2019-20, the Service Delivery Statement 2020-21, states that:

This was partly due to the number of open investigations carried into 2019-20 which exceeded 365 days. These corruption investigations continued to be protracted and complex in nature requiring specialist resources shared across multiple investigations. Due to the impacts of COVID-19 there were also some delays in obtaining evidence relevant to investigations, in particular, records from financial institutions. Of the 53 investigations finalised in 2019-20, 74 per cent of these were finalised within 18 months.³⁶⁵

The timeliness of the completion of investigations was also raised by submitters. For example, the Member for Burleigh, Mr Michael Hart MP, referred to an investigation which took 11 months to complete. The Member for Burleigh stated that during that time he was unable to speak about the matter in Parliament. The Member advised that he received no communication from the CCC about the progress of the investigation and that the outcome was reported in the media before interested parties had been informed.³⁶⁶

³⁶¹ Submission 019, pp 1-2.

³⁶² Public hearing transcript, Brisbane, 26 March 2021, p 8.

³⁶³ Public meeting transcript, Brisbane, 18 October 2019, p 6.

³⁶⁴ CCC, *2019-20 Annual Report*, 24 September 2020, p 22.

³⁶⁵ Queensland State Budget, Service Delivery Statement, 2020-21, p 2-77.

³⁶⁶ Submission 009 to the Inquiry into Corrupt Conduct Complaints.

At a public meeting with the CCC on 11 September 2020, in response to a question about whether the CCC had considered revisiting the target of 85%, the CCC Chairperson stated:

We have looked at that. It is always a temptation to change the parameters, but, frankly, I think a better approach is to maintain what I consider to be a very high standard—which it is, of 85 per cent within 12 months—and where we fall short, as we have in the last couple of years, explain why. If the explanation is not sufficient to address the deficiency, then we need to look more carefully at what is happening. I would prefer to do it that way. There are swings and roundabouts. We are going through a particularly busy period where a lot of the things we are dealing with are complex, protracted and large. That explains in large part, if not entirely, the falling below the standard we set. I am comfortable that that is an aberration in one sense and totally explicable. If it continued to be the majority of our work, we would have to seriously consider revisiting. We are setting ourselves up to fail otherwise; it is not good for morale. Currently, I am very content to leave it where it is to make sure we can continue to push and strive for those high performance targets.³⁶⁷

6.2.4 Investigation outcomes

The CCC's service delivery standard is for 75% of corruption investigations to result in significant outcomes. This service delivery standard was introduced in 2018-19.

The term significant outcome means resulting in a charge, report to the Director of Public Prosecutions, recommendation for disciplinary action or procedural improvement, the release of a public report, or referral of a matter to a UPA for further investigation.

In 2019-20, 87% of corruption investigations resulted in significant outcomes, while in 2018-19, the figure was 91%.³⁶⁸

6.3 Definition of *corrupt conduct*

The definition of *corrupt conduct*, as provided in section 15 of the CC Act, has been the subject of a number of amendments. Most recently the definition was amended in March 2019 to broaden its application. The amendments removed the following aspects of the definition of *corrupt conduct*:

- the 'benefit or detriment test' – the requirement that corrupt conduct be 'engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person', and
- a list of example offences at section 15(2) into the CC Act.³⁶⁹

The CCC stated of the changes that:

While the focus of section 15 was previously on the conduct of public sector employees, it now clearly recognises that actions of people outside the public sector can also result in a loss of confidence in agencies, and ensure these actions will fall within the CCC's jurisdiction. In this way, the amendment expands the CCC's investigative jurisdiction with respect to corrupt conduct, providing the CCC with greater scope to reduce the opportunities and incentives for corrupt conduct in the Queensland public sector and allow it to more proactively address corruption risks. The expanded definition of corrupt conduct has limited application to non-criminal action, where it applies to private citizens not susceptible to disciplinary proceedings.³⁷⁰

At the public hearing on 26 March 2021, CCC Chairperson Mr MacSporran stated that the amendment to the definition of corrupt conduct '... provided clarity for our investigations and removed a

³⁶⁷ Public meeting transcript, Brisbane, 11 September 2020, p 4.

³⁶⁸ CCC, *2019-20 Annual Report*, 24 September 2020, p 22.

³⁶⁹ *Crime and Corruption and Other Legislation Amendment Act 2018* and submission 027, p 24.

³⁷⁰ Submission 027, p 24.

notoriously difficult bar to prosecuting corrupt conduct—namely, the proof of the element of intent'.³⁷¹

Section 15 of the CC Act currently defines *corrupt conduct* as:

- (1) **Corrupt conduct** means conduct of a person, regardless of whether the person holds or held an appointment, that—
 - (a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—
 - (i) a unit of public administration; or
 - (ii) a person holding an appointment; and
 - (b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that—
 - (i) is not honest or is not impartial; or
 - (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or
 - (iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and
 - (c) would, if proved, be—
 - (i) a criminal offence; or
 - (ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.
- (2) **Corrupt conduct** also means conduct of a person, regardless of whether the person holds or held an appointment, that—
 - (a) impairs, or could impair, public confidence in public administration; and
 - (b) involves, or could involve, any of the following—
 - (i) collusive tendering;
 - (ii) fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described)—
 - (A) protecting health or safety of persons;
 - (B) protecting the environment;
 - (C) protecting or managing the use of the State's natural, cultural, mining or energy resources;
 - (iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;
 - (iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;
 - (v) fraudulently obtaining or retaining an appointment; and
 - (c) would, if proved, be—
 - (i) a criminal offence; or
 - (ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

³⁷¹ Public hearing transcript, 26 March 2021, p 19.

The QLS considered that the definition of *corrupt conduct* is extremely broad. The QLS noted that the CCC's mandate is to combat and reduce the incidence of major crime and corruption in the public sector; however, in its view, the definition of corrupt conduct allows the CCC 'to investigate almost any grievance involving a public official'. The QLS was of the view that there should be no further broadening of the CCC's powers in the absence of a strong evidentiary basis.³⁷²

The former Department of Local Government, Racing and Multicultural Affairs (DLGRMA) stated that:

The expanded definition of corrupt conduct in section 15(2) of the CC Act that came into force in March 2019 has not at this stage had any significant impact on the number of matters referred to the CCC by the Department.³⁷³

The CCC advised that since the 2019 amendments, it had received 20 referrals of suspected corrupt conduct under section 15(2) of the CC Act. However, of these, only 12 were assessed as corrupt conduct by the CCC. At the time of the CCC's submission, 2 of those matters were under investigation (specifically, the CCC is providing financial investigation assistance to the QPS, which is the lead agency in relation to both investigations) and the remaining matters have been referred back to the referring agencies to deal with. The CCC stated that:

This relatively low number of referrals to the CCC based on the expanded definition of corrupt conduct is consistent with the CCC's submission to the government in 2018 that it did not anticipate a large increase in complaints in relation to this amendment.³⁷⁴

The CCC stated that it continues to monitor the suitability of the definition of corrupt conduct.³⁷⁵

6.4 Proposed prohibition on the publication of allegations of corruption made to the Crime and Corruption Commission

In its submission to the Review, the CCC recommended that the government consider implementing legislation restricting the publication of complaints of corruption made to the CCC.³⁷⁶

The CCC referred to its recent report *An investigation into the appointment of a school principal*,³⁷⁷ which included a recommendation by an Independent Advisory panel regarding the restriction on publication of complaints. The report stated:

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

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

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

663. The Independent Advisory Panel made the following recommendation:

³⁷² Submission 012 to the Inquiry into Corrupt Conduct Complaints, p 1.

³⁷³ Submission 002 to the Inquiry into Corrupt Conduct Complaints, p 1.

³⁷⁴ Submission 027, p 25.

³⁷⁵ Submission 027, pp 4 and 25.

³⁷⁶ Submission 027, p 45.

³⁷⁷ Submission 027, p 44.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

670. The CCC repeats this observation in relation to this matter.³⁷⁸

The CCC noted that the Attorney-General was considering this recommendation at the time of preparation of its submission.³⁷⁹

³⁷⁸ Submission 027, p 44.

³⁷⁹ Submission 027, p 45.

The CCC has publically commented on this issue and stated 'that it is always the preference for complaints and other correspondence relating to assessments and investigations to remain confidential so matters can proceed without allegations being aired publicly'.³⁸⁰

Following the close of the public submissions process for this review, the Crime and Corruption Amendment Bill 2020 (Bill) was introduced into the Legislative Assembly on 13 August 2020 and referred to the former Legal Affairs and Community Safety Committee (LACSC). The LACSC was required to report on the Bill to the Legislative Assembly by 2 September 2020.

According to the explanatory notes, the policy objectives of the Bill were to amend the CC Act to implement the recommendations of the CCC relating to the publicising of allegations and complaints in the following reports:

- *Publicising allegations of corrupt conduct: Is it in the Public Interest?*, December 2016
- *An investigation into allegations relating to the appointment of a school principal*, July 2020.³⁸¹

On 14 August 2020, the former Attorney-General and Minister for Justice, Hon Yvette D'Ath MP, released the following statement:

The government respects the recommendations of the CCC. However, given the limited time for the parliamentary Legal Affairs Committee to consider the law changes the CCC seeks, the CCC Bill introduced yesterday in State Parliament is withdrawn.³⁸²

On 17 August 2020, the LACSC closed its call for submissions and cancelled a scheduled public briefing and public hearing on the Bill. On 10 September 2020, the Legislative Assembly resolved to withdraw the Bill.

At the committee's public hearing on 26 March 2021, when asked who would benefit from a prohibition on disclosing complaints, the CCC Chairperson stated:

It is an absolute massive win for the Queensland community because what it would mean is that we would have the ability to properly understand the allegation, properly assess it and, if necessary, investigate it to uncover and deal with serious misconduct, if not corrupt conduct, before it became public. The problem with an allegation becoming public—that is, that it comes to us and it becomes public that it has come to us—is that if there is corruption and if your real concern is having it dealt with, the last thing you should be doing is making it public before we can deal with it. If there is corrupt conduct happening, or has happened, the perpetrators will be warned that they are under observation, or will be, and have the opportunity to destroy evidence, concoct evidence, get their heads together and stories aligned and, in effect, undermine in a very significant way our ability to deal with it. Why should we be impeded? If there is corrupt behaviour it should be investigated, it should be charged and put before the courts to deal with in the ordinary way.³⁸³

The CCC Chairperson clarified that the CCC is not 'trying to muzzle journalists', but rather '... trying to protect our ability to investigate corrupt behaviour properly and benefit the Queensland community and the investigative journalists who uncover it to deal with people who are corrupt'.³⁸⁴

The SBRC also raised concerns about the publication of allegations. At the public hearing, the SBRC stated:

One final point is in relation to—and you have probably heard it elsewhere; it is the scourge of the modern day—social media in terms of councillors' and senior staff's ability to defend themselves publicly. It seems

³⁸⁰ Submission 027, p 45.

³⁸¹ Crime and Corruption Amendment Bill 2020, explanatory notes, p 1.

³⁸² Attorney-General and Minister for Justice, Hon Yvette D'Ath MP, 'Statement from the Attorney-General', Media release, 14 August 2020.

³⁸³ Public hearing transcript, Brisbane, 26 March 2021, p 25.

³⁸⁴ Public hearing transcript, Brisbane, 26 March 2021, p 25.

to be that we have a range of parties on occasions that agency-shop. Particularly where there is a complaint, we will read about it on social media before we get formal advice that it has happened. I am not saying that that is right or even that the information is correct, but it does do a lot of damage to public confidence.

From previous experience, often if there is no corruption or no issue it is not uncommon for us not to get a final statement to say that it has been dealt with. It just seems to disappear.

...

It does cause problems. There is a lot of public commentary from the complainants about it, so it is nice to put these issues to bed. It would be really nice to be able to put out a statement saying, 'This was investigated. These were the outcomes'.³⁸⁵

The Clerk of the Parliament raised concerns about the proposed prohibition on the disclosure of complaints and stated that:

Increasing calls by the CCC to restrict public commentary about CCC complaints should be ignored. One result of any such legislative action would be to make the CCC less accountable for its actions, or lack of action. It would be a very dangerous road to traverse. I treat with 'a grain of salt', the refrain from the CCC that public airing of complaints hurts their investigations. It may place pressure on the CCC to act more hastily than it otherwise would, but I am yet to be convinced by any hard evidence that public airing of complaints has thwarted an investigation. If that is the CCC's contention, then it needs to back that claim with multiple examples of cases jeopardised. I suspect that delay has caused more issues than public airing.³⁸⁶

The CCC, in its supplementary submission, stated that:

The CCC's submission that publication of complaints should be constrained is on two bases: protection of the integrity of the investigation, and fairness to persons connected with the investigation. These have been dealt with in the CCC's substantive submission, but two brief points bear repeating.

As noted in my oral evidence of 26 March 2021, we know from our own covert investigations that investigative targets do take actions to thwart an investigation when they become aware they are being investigated. Targets may stop talking on phones for fear they are being intercepted, they may collude with other witnesses, or try to silence them, or they may destroy or fabricate records. And it has long been recognised by the courts that persons under investigation may seek to take steps to defeat that investigation if they become aware of it, or the detail of it.

Serious fairness considerations arise when complaints are aired publicly before they can be properly investigated. The public airing that a complaint has been made may of itself cause reputational damage to the person the subject of that complaint. Complaints may be used tactically to cause such reputational damage – such as during the course of an election campaign, where an investigation cannot be practicably undertaken in the time available, and the candidate is left with the 'stench' of an investigation hanging about them into the election.

The CCC does not comment on its own initiative about complaints received or under assessment. It is only in response to public reporting of complaints. And in those circumstances, that commentary is extremely limited. Media reporting on necessarily incomplete information may lead to speculation, which may cause further reputational harm or damage to the investigation.

Otherwise the CCC's process is to assess and investigate matters without publicity. This is in the interests of investigative integrity and fairness to those caught up in the investigation. It is at the conclusion of the investigation that the CCC will comment publicly, whether through commencing criminal or disciplinary proceedings, a public report, or some other means. It is the CCC's view that that is the appropriate way to balance these competing public interests.³⁸⁷

³⁸⁵ Public hearing transcript, Brisbane, 26 March 2021, p 30.

³⁸⁶ Submission 036, p 9.

³⁸⁷ Submission 027A, pp 6-7.

Committee comment

The committee does not support the CCC's recommendation regarding imposition of a restriction on publication of complaints of corruption made to the CCC.

6.5 Assessment of corrupt conduct allegations and complaints

Section 35(1) of the CC Act outlines how the CCC may perform its corruption functions, including by expeditiously assessing complaints about, or information or matters involving corruption. Section 46 of the CC Act provides further details about how the CCC must deal with complaints of *corrupt conduct*, including by:

- expeditiously assessing each complaint about corruption, and
- taking the action the CCC considers most appropriate in the circumstances having regard to the statutory principles at section 34 of the CC Act – cooperation, capacity building, devolution and public interest.

The committee notes that the term 'assessment' or 'assessing' is not defined in the CC Act.

6.5.1 Crime and Corruption Commission's assessment procedures

The CCC's Integrity Services Unit, which sits in the Corruption Division, is responsible for assessing all corrupt conduct complaints received by the CCC. In its submission, the CCC summarised its assessment process as follows:

- **Step 1 – matter is received** – direct complaints (section 36 of the CC Act) and mandatory notifications (sections 37 and 38 of the CC Act).
- **Step 2 – preliminary assessment** – undertaken by the responsible officer to determine whether the matter falls within legal jurisdiction of the CCC by reference to definitions of *corruption*, *corrupt conduct* and *police misconduct* in the CC Act.

Further information may be gathered (eg from complainant), at this stage, to enable the CCC to decide the best course of action. The CCC advised that general practice is to make assessment decisions based on material provided by the complainant, as well as information readily available without resort to compulsory powers.

- **Step 3 – categorisation of matter and allocation** – if the complaint is assessed as falling within the CCC's jurisdiction, the responsible officer categorises the complaint, in accordance with the CCC's *Complaint Categorisation and Prioritisation Model* (CCPM), and allocates it for a decision to be made.

Section 35(2) of the CC Act provides that the CCC, as far as practicable, is to direct its attention to more serious cases of corrupt conduct and systemic corruption in UPAs.

The categories are:

- **High** – categorised as a death or serious injury (or risk thereof) of a member of the public, corrupt conduct by an Executive-level officer, politically sensitive matters, corrupt conduct of elected officials or judicial officers or fraud with monetary value more than \$250,000. The most serious complaints are referred to the Executive Leadership Team (ELT)³⁸⁸ (eg involving death or serious injury or politically sensitive or media scrutiny), with all other complaints categorised as High, but not as not meeting the ELT criteria, referred to the Remainder of High Complaints Committee

³⁸⁸ CCC ELT comprises of: Chairperson; CEO; Executive Director, Crime; Executive Director, Corruption; Executive Director, Operations Support; Executive Director, Strategy and Corporate Services; Director, Financial Investigations; Director, Legal Services; Director, Intelligence and Director, Policy and Research.

- **Medium** – categorised as other injury to a member of the public, fraud with monetary value more than \$50,000, but less than \$250,000, or conduct of public officer that could amount to a reprisal. Such matters are allocated to the responsible officer who uses *General Assessment Criteria for Corruption Matters* to make an assessment decision. The Director, Assessment and Director, Review are briefed on the recommended course of action.
- **Low** – categorised as impacting on one individual only or fraud related to crime of value of less than \$50,000. These matters are allocated to the responsible officer who uses the CCC's *General Assessment Criteria for Corruption Matters* to make an assessment decision.
- **Step 4 – assessment decision** – the responsible officer or committee (ELT or RoHCC) reviews the categorisation and confirms agreement before proceeding. One of the following assessment decisions is made:
 - commence CCC investigation – in which case the matter transitions to the feasibility stage (initial step of the investigation stage)
 - refer for preliminary inquiry – in which case it remains in the assessment stage – RoHCC may refer matter for further preliminary inquiries to establish whether complaint involves suspected corruption
 - refer to UPA to undertake investigation, with or without CCC monitoring
 - refer to another agency for action, or
 - take no further action.
- **Step 5 – implementation** – only the ELT may approve a corruption complaint progressing to an investigation. The CCC advised that the transition from the 'assessment' to the 'feasibility' stage is a 'key decision'. The 'feasibility' or 'preliminary investigation' stage involves: collecting evidence or information; undertaking enquiries and examining additional material to determine, or assure, that an investigation is required or justified and is technically feasible and cost-effective. If the ELT approves the recommendation to investigate, the matter is assigned to the Executive Director, Corruption Operations, to commence the investigation.³⁸⁹

At the public hearing on 26 March 2021, the CCC described the assessment process as follows:

A complaint comes in, it goes to integrity services, it is assessed internally and categorised. Certain high-profile, more important or serious matters are sent to a committee which is staffed by myself, the CEO, the head of corruption operations and staff from integrity services. It is called the early assessment briefing group. Those complaints come at the earliest possible time with a summary and recommendation for how it should be dealt with. That is workshopped, as it were, with that small subgroup, including myself. We endorse or change the recommendation. Then it goes back to integrity services and it is dealt with in the way that we have proposed. All of that in turn is reported to the ELT management group on a weekly basis, and we all get input into whether we endorsed the decision of that earlier assessment briefing group or whether we have any concerns or commentary around that, and all of that is then included in the minutes of that meeting.³⁹⁰

Children's Health Queensland suggested that section 46 of the CC Act should be amended to permit the CCC, following an assessment, to be able to take no further action where it has already dealt with the complaint or subject matter.³⁹¹

³⁸⁹ Submission 008 to the Inquiry into Corrupt Conduct Complaints, pp 8-17.

³⁹⁰ Public hearing transcript, Brisbane, 26 March 2021, pp 23-24.

³⁹¹ Submission 010 to the Inquiry into Corrupt Conduct Complaints.

6.6 Distinction between the Crime and Corruption Commission's assessment and investigation of a complaint

As noted earlier, the CCC's consideration of allegations made against the Premier and the former Deputy Premier raised questions about the distinction between the CCC's assessment and investigation of a corruption complaint.

6.6.1 Complaint about the Premier

In referring an allegation against the Premier in relation to the resources allocated to the Katter Australia Party to the Ethics Committee on 12 October 2018, the Speaker of the Legislative Assembly identified what he considered to be 'a number of extraordinary aspects' to the CCC's consideration of the same matter.³⁹²

The Speaker noted that, on 27 September 2018, the CCC issued a press release advising that it had completed its assessment of the complaint against the Premier and, later on the same day, the CCC Chairperson gave a press conference. The CCC's press release states:

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

...

The information available provides no grounds to suspect that anything said or done inside or outside Parliament by the Premier or members of the LNP involves an offence against ss. 78 or 415 of the Criminal Code. There are no grounds to suspect that members of the LNP committed an offence against s. 60 of the Criminal Code.

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

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

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

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

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

³⁹² Speaker of the Legislative Assembly of Queensland, *Speaker's Ruling - Referral to Ethics Committee, Katter Party Resources*, October 2018.

prosecution. Accordingly, the complaint against the Premier is appropriate for the Parliament to deal with.

Any alleged breach of parliamentary privilege not involving a criminal offence may only be dealt with by the respective parliament or the Senate of Australia. The CCC has no jurisdiction and is unable to take any action in relation to these concerns.³⁹³

During the press conference, the CCC Chairperson, in relation to the potential offence under section 60 of the *Criminal Code Act 1899* (Criminal Code), stated that the matter 'technically satisfies the elements of the offence such that there is what we call as lawyers a prima facie case'.³⁹⁴

The Ethics Committee, in its *Report 189 – Matter of privilege referred by the Speaker on 12 October 2018 relating to an alleged contempt of Parliament by the Premier and Minister for Trade*, raised concerns about the CCC's method of assessment. The Ethics Committee stated:

In this committee's view the CCC's handling of this matter was problematic. It was not fair to the Premier to essentially declare there was prima facie evidence of commission of a crime, but that a prosecutorial discretion would be exercised not to proceed. The CCC also created an expectation that a contempt had been committed, when that was a matter for this committee to examine and ultimately a matter for the Legislative Assembly to determine. There was no correspondence or report to the Speaker, who it appears was simply to act on the press release in the public domain.³⁹⁵

6.6.2 Complaint about the former Deputy Premier

On 6 September 2019, the CCC issued a press release in relation to its consideration of an allegation against the former Deputy Premier in relation to her involvement in decision-making about Cross River Rail and the Inner City South State Secondary College. The press release stated:

Based on the information obtained and assessed by the CCC, no evidence or information was identified that supported a reasonable suspicion of corrupt conduct as defined in section 15 of the *Crime and Corruption Act 2001*.

The jurisdiction of the CCC to investigate suspected corrupt conduct by elected officials is limited to circumstances where the alleged conduct would, if proved, amount to a criminal offence. The CCC's assessment did not identify evidence or information suggesting a criminal offence had been committed.

The CCC will therefore not commence a corruption investigation.

...

During the assessment process, the CCC identified several areas to improve Cabinet's decision-making processes and areas for legislative reform to reduce corruption risks.

The CCC has made five recommendations to the Parliament and others to address these areas.³⁹⁶

6.6.3 Use of the terms assessment and investigation

In its submission, the CCC stated that it uses the terms 'assessment' and 'investigation' to clearly denote specific stages in its Operating Model Lifecycle. The CCC advised that the process for

³⁹³ CCC, Press Release, 'CCC finalises assessment of complaint by Mr Robbie Katter MP', 27 September 2018.

³⁹⁴ Speaker of the Legislative Assembly of Queensland, *Speaker's Ruling - Referral to Ethics Committee, Katter Party Resources*, 12 October 2018.

³⁹⁵ Queensland Parliament, Ethics Committee, Report No. 189, *Matter of privilege referred by the Speaker on 12 October 2018 relating to an alleged contempt of Parliament by the Premier and Minister for Trade*, October 2019, p 3.

³⁹⁶ CCC, Press Release, CCC determines not to investigate the Deputy Premier but calls for improvements to Cabinet processes and legislative reform, 6 September 2019.

assessment and the process by which an assessment becomes an investigation are set out in the CCC's Operations Manual.³⁹⁷ The CCC stated that it is clear that:

... an assessment is, for the purposes of the CCC's work, a preliminary consideration of the known, but necessarily incomplete, information relevant to a complaint. An assessment is undertaken in order to determine how to deal with the matter. This may include referring the matter to another body for investigation, taking no action, or undertaking an investigation. In some circumstances, the CCC may seek further information, or undertake preliminary enquiries, for the purpose of making a better-informed assessment decision.³⁹⁸

A similar description can be found on the CCC's website, which states that it assesses every complaint it receives to decide how serious it is, whether it warrants investigation, how quickly it must be actioned and who is best placed to investigate it. The CCC states that during its assessment it determines whether the complaint:

- appears to be genuine, and made in good faith
- is within the CCC's jurisdiction (that is, whether it has authority to deal with it).³⁹⁹

The CCC advises on its website that, based on its assessment, the CCC may decide to: take no further action; investigate the complaint themselves; refer the complaint to an agency to deal with, subject to its oversight; conduct a joint investigation with the agency; or refer possible criminal activity to the police.⁴⁰⁰

The CCC's website states that the purpose of a corruption investigation is to:

- determine whether people should be charged with criminal offences or face disciplinary action within their agency
- clear a person's name, if no evidence has been found to support allegations made against them, particularly where the matter has been made public
- identify vulnerabilities and gaps in agency policies or systems, and advise agencies about possible corruption risks and recommend solutions to address them.⁴⁰¹

While the term assessment is not defined in the CC Act, the term investigate is defined as including to examine and consider.⁴⁰²

During the committee's public meeting on 23 August 2019, CCC Chairperson Mr Alan MacSporran made the following comments about the distinction between an assessment and investigation:

The difference between an assessment and an investigation is our first task—to assess the material to decide whether it enlivens our jurisdiction, which to do so it must be evidence capable of reaching the threshold of corrupt conduct. If it does not, we simply do not have jurisdiction to look at it and we would not, therefore, launch an investigation. If it does reach the threshold, we would then investigate whether the allegation is substantiated. How long that might take is difficult to say without knowing what those inquiries might require.

That procedure, of assessment first and then investigation if necessary, is a critical part of the separation of the roles. We have different sections of our office that do those assessments and investigations. It is

³⁹⁷ Submission 8 to the Inquiry into Corrupt Conduct Complaints, p 10.

³⁹⁸ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 8.

³⁹⁹ CCC, 'How we assess complaints', <https://www.ccc.qld.gov.au/complainants/how-we-assess-complaints>.

⁴⁰⁰ CCC, 'How we assess complaints', <https://www.ccc.qld.gov.au/complainants/how-we-assess-complaints>.

⁴⁰¹ CCC, 'Purpose of an investigation', <https://www.ccc.qld.gov.au/complainants/about-investigations>.

⁴⁰² CC Act, schedule 2.

not unusual for this to take the five weeks. That might seem like a long time, but it is not, I can assure you, in terms of some of the complexities that are involved in it.⁴⁰³

Mr MacSporran also provided the following illustrative example:

... if someone complains that, for instance, the Deputy Premier failed to declare the purchase of the house and then took part in cabinet discussions about the Cross River Rail project and so forth, that would be a breach of the handbook, the procedures, but it would not be corrupt unless it was done deliberately with the intention of personal gain, to simplify the whole question, if you like. That is why the assessment deals with that question and then if there was evidence that it was done deliberately for personal gain that would be capable of being corrupt and then that would justify us launching an investigation. That is a bit of an illustration of where the difference in the assessment and investigation stage may arise.⁴⁰⁴

In its submission, the CCC stated that many of the corruption functions, listed at section 35 of the CC Act (eg assessing complaints, dealing with complaints, investigating complaints, referring complaints and monitoring UPAs) can, or must, occur simultaneously. The CCC stated that 'Thus the concepts of 'assessment' and 'investigation' may be regarded as complementary or integrated steps, rather than ones which are strictly mutually exclusive of each other'.⁴⁰⁵

In addition, the CCC stated that 'while activities undertaken during an assessment may fall within the statutory definition of an investigation, the CCC draws a practical distinction between the two in its day to day work for a variety of reasons'. The distinction is drawn for ease of administrative and governance processes and ensure accurate and transparent public understanding of the CCC's work.⁴⁰⁶

The CCC acknowledged that, in certain circumstances, preliminary inquiries that inform assessment decisions may meet the statutory definition of *investigate*, as an officer may consider the underlying factual merits of the allegation, and take some steps and review available information to determine whether there is a reasonable basis to suspect an allegation has foundation. The CCC stated that 'While, in a legal sense, an investigation has been conducted, a number of consequences may flow from describing it as such'. These consequences are:

- **skewed perception of number of matters investigated** – if such assessments were described as investigations, it may provide a skewed perception of number of matters investigated by CCC, as the community would understand the use of the term
- **fairness to subject of complaint** – confirmation that a person has been 'investigated' by a law enforcement agency may cause reputational damage. The term 'assessment' carries a more neutral tone, and thus is less likely to cause reputational damage.⁴⁰⁷

The DSDMIP submitted that departmental officers clearly understand difference between assessment and investigation; however public perception may be that all matters are investigated upon receipt.⁴⁰⁸

The CCC advised that the current distinction between 'assessment' and 'investigation' is 'a pragmatic utilisation of those terms, and adopting a 'best fit' use of both expressions. This ensures that, when complaints are first received, they are able to be expeditiously assessed, and a decision made as to how to deal with the matter under section 35 and section 46, in a timely way that considers the most effective use of the CCC's resources'.⁴⁰⁹

⁴⁰³ Public meeting transcript, 23 August 2019, p 5.

⁴⁰⁴ Public meeting transcript, Brisbane, 23 August 2019, p 6.

⁴⁰⁵ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 11.

⁴⁰⁶ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 11.

⁴⁰⁷ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 11.

⁴⁰⁸ Submission 001 to the Inquiry into Corrupt Conduct Complaints.

⁴⁰⁹ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 12.

At the public hearing on 26 March 2021, in response to a question as to whether there is a sufficiently clear distinction between the CCC's assessment and investigation of a complaint, Mr Kunde, Principal Legal Officer, Office of the Parliamentary Crime and Corruption Commissioner stated that 'the distinction seems sometimes difficult to grasp'. The Parliamentary Commissioner added 'it creates a slightly false dichotomy. It is a tricky area and it is something that I think would probably need a fair bit of consideration'.⁴¹⁰

Committee comment

While not commenting on the CCC's decisions in relation to the allegations against the Premier and former Deputy Premier, the committee is concerned that, in both matters, the CCC's assessment made conclusions about the facts, commented on whether an offence had been committed and, in the case of the Premier, determined the likelihood of a successful prosecution of the matter.

This is inconsistent with the CCC's own description of its assessment process, ie an assessment of whether a complaint appears to be genuine, and made in good faith, and is within the CCC's jurisdiction. The committee considers that, in scenarios such as these it is arguable that the CCC's assessment may also involve elements of an investigation.

Whilst such distinctions may appear, on the face of it, to be academic, the committee considers that consistency in the language used by the CCC and a clear distinction between the separate steps of assessment and investigation are important. This is particularly true given the CCC's apparent reliance on the fact that an assessment, not an investigation, was conducted in both the Premier and former Deputy Premier matter, when explaining why it did not produce a publicly available report on either matter.

The committee is also concerned that the CCC's rationale for the use of the term assessment to avoid reputational damage may have resulted in some matters being inaccurately described as being assessed, rather than investigated. The committee considers that the CC Act should be amended to include a clear demarcation of the two distinct processes of assessing and investigating complaints.

The committee notes that sections 45 to 50 of the *Health Ombudsman Act 2013* provide clear parameters for the Health Ombudsman's assessment of complaints, ie the purpose of the assessment is to obtain and analyse information relevant to the complaint and decide the most appropriate way to further deal with it.

Section 49 of the *Health Ombudsman Act 2013* imposes a time limit on the assessment of complaints, providing that assessments must be completed within 30 days. The Health Ombudsman may extend the period for assessing a complaint by a further 30 days, if necessary because of the size or complexity of the complaint or the time taken to obtain additional information about the complaint.

Section 80 of the *Health Ombudsman Act 2013* makes provision for the investigation of matters, following an assessment, including timeframes by which investigations must be completed and a requirement to prepare an investigation report.

The committee considers it necessary to amend the CC Act to clarify the distinction between an 'assessment' and an 'investigation', to avoid scenarios where matters are in effect investigated, but is reported as being an 'assessment' only.

Recommendation 22

The committee recommends the *Crime and Corruption Act 2001* be amended to clarify the distinction between an 'assessment' and an 'investigation'.

⁴¹⁰ Public hearing transcript, Brisbane, 26 March 2021, p 5.

6.7 Devolution principle

The vast majority of complaints received by the CCC are devolved to the relevant UPA, including the QPS. Historically, there have been mixed views among stakeholders about the devolution principle, as discussed in the 2016 Review Report.

Submissions to the Review, received from government agencies were generally supportive of the devolution principle.⁴¹¹ The Queensland Ambulance Service (QAS) noted that liaison between the QAS and the CCC is facilitated via the Ethical Standards Unit of Queensland Health. QAS supported this approach and noted that the effective operation of these governance arrangements continues to support the CCC's corruption prevention functions and the ongoing delivery of the service delivery obligations of the QAS.⁴¹²

Queensland Rail was satisfied with the operation of the current arrangements and the directions issued by the CCC under section 40 of the CC Act.⁴¹³

The Office of the Independent Assessor (OIA) noted:

The section 40 arrangement between CCC and the OIA allows matters to be dealt with expeditiously and strikes a sensible balance between a level of devolvement of complaint and investigation handling, whilst ensuring that the CCC retains active oversight and can resume matters if necessary.⁴¹⁴

Two individuals did not support the devolution principle, stating that the principle allows the system to be abused.⁴¹⁵ Mr Barry Thomas, former Crown Prosecutor and team leader in the former CJC, stated that 'many department's devolved investigations are contracted out to a variety of sole traders and companies who become approved suppliers to the government'.⁴¹⁶ Mr Thomas submitted 'it is vital to cease the direct fee for service arrangement which the CCC has established'.⁴¹⁷ Mr Thomas made a number of suggestions to 'address the ongoing tension arising from the CCC devolving investigations to the body with an investment in covering up any departmental failures'.⁴¹⁸

The Central Queensland University (CQU) advised that 3 cases required referral to CCC, and that each case matter was referred back to university to address. CQU considered that, in each case, the CCC's response was reasonable and timely and the reporting process is simple to understand and complete.⁴¹⁹ Similarly, Queensland Health stated that the majority of corrupt conduct matters relating to department are referred back to department under the devolution principle.⁴²⁰

North West Hospital and Health Service (HHS) and the Public Service Commission raised concerns about the capability and capacity of UPAs to handle matters referred back to them, particularly if the matter related to a CEO or board member.⁴²¹

The North West HHS recommended a review be undertaken of the CCC's criteria and assessment thresholds which determine whether CCC investigates a matter or refers it to another entity. The

⁴¹¹ See, for example, submissions 018, 020 and 028.

⁴¹² Submission 007, p 1.

⁴¹³ Submission 020, p 1.

⁴¹⁴ Submission 028, p 3.

⁴¹⁵ Submission 031, p 6, submission 008.

⁴¹⁶ Submission 031, p 4.

⁴¹⁷ Submission 031, p 6.

⁴¹⁸ Submission 031, p 6.

⁴¹⁹ Submission 004 to the Inquiry into Corrupt Conduct Complaints, p 1.

⁴²⁰ Submission 013 to the Inquiry into Corrupt Conduct Complaints, p 1.

⁴²¹ Submissions 003 and 006 to the Inquiry into Corrupt Conduct Complaints.

North West HHS also recommended the establishment of an 'accountability loop' which requires the entity to confirm that an investigation has been conducted and completed.⁴²²

The SBRC stated in relation to investigating matters:

In human resources we will pull a person offline to do it, depending on the complexity. We have had some that have been very complex; others have been simple. If we have to pull in an external investigator, it is anything from 10 to 20 grand, easily. We take our own legal advice to ensure the council's interests. There would be 10 there, easily. For the complex ones that drag out over a period of years, as some can, you can multiply that tenfold.

...

If we are taken out of the decision-making process and someone else is making the decisions, we are happy to support and offer information and let the investigation be done by those who know what they are doing. It seems a funny old system where if we send something off we have no decision point in it and then it comes back to us and we are told, 'You engage an investigator and you do it and you pay for it and let us know what the outcome is.' We might as well not send it off; we might as well just engage. If someone steals a council tractor we have to not only notify the police but also let the department and everyone know, but we deal with that through our insurers. We are capable and confident of dealing with that through our own process. If we are going to get these things back to investigate, we might as well have control. We are paying the bill.⁴²³

Additionally, SBRC noted that the timeframes imposed by the CCC for UPAs to provide a response are often rapid, requiring the council to redirect resources to meet the timeframes.⁴²⁴

The Clerk of the Parliament, whilst noting the need for many of the complaints receive by the CCC to be referred to agencies for investigation, raised concerns that:

... over the past decade there have been investigations involving serious allegations of police misconduct referred back to the Queensland Police Service (QPS) that would make people that recall the pre-Fitzgerald era scratch their heads.⁴²⁵

The Clerk counselled that '... it must be remembered that public confidence is undermined by agencies investigating themselves'.⁴²⁶

The CCC, in its supplementary submission noted that the referral of complaints to other agencies is consistent with the principles at section 34 of the CC Act. The CCC stated:

When an investigation is referred to the QPS (or any other agency, for that matter) that is not the end of the CCC's involvement in the investigation. Investigations are monitored by the CCC. At any time, the CCC may assume responsibility for that investigation, and may proceed to commence corrupt conduct proceedings in QCAT.

The CCC has, in fact, taken such an approach and assumed responsibility for investigations undertaken by QPS. Disciplinary proceedings in QCAT's original jurisdiction have been undertaken by the CCC in recent matters in which the CCC had concerns about the proposed action by QPS. Such an approach allows for appropriate distribution of resources, while also ensuring that there is oversight of investigations referred to the subject entities. Such an approach also serves to build capacity within those agencies to deal with matters themselves, and thereby to promote public confidence in the integrity of those agencies.⁴²⁷

⁴²² Submission 003 to the Inquiry into Corrupt Conduct Complaints.

⁴²³ Public hearing transcript, Brisbane, 26 March 2021, p 30.

⁴²⁴ Submission 015, p 1.

⁴²⁵ Submission 036, p 9.

⁴²⁶ Public hearing transcript, Brisbane, 14 May 2021, p 2.

⁴²⁷ Submission 027A, p 4.

The referral of allegations and complaints about police misconduct to the QPS is discussed in more detail at Chapter 12 of this report.

Concerns were also raised about the level of involvement by the CCC in investigations being undertaken by government departments. For example, the QLS raised issues regarding what it described as overreach by the CCC in relation to the investigation of matters concerning government departments, stating:

Overall, it is the QLS submission that we have to be careful with overreach with regard to jurisdictions of watchdogs such as the CCC... At the moment—and I use this word—the overreach is, in our submission, impacting upon the efficiency of the departments when matters are being overseen by the CCC and returned to the department for an investigation without them being able to perform any resolution without first getting a review by the CCC. There are occasions where that back and forth can happen 10 or 15 times on a matter. That is why there is no certainty when an investigation starts.⁴²⁸

...That is entirely unacceptable, in our submission. To fix that, in our submission, you first need to stop the overreach, give the power back to the directors-general of the departments and let the CCC do that high-level oversight with regard to systemic issues, major complaints and particularly complaints where conflicts of interest exist.⁴²⁹

6.8 Disclosure of information to entities to which matters are referred

In summary, there are three statutory mechanisms by which the CCC may refer a matter or disseminate information to another entity:

- **section 46(2) of the CC Act** provides that the CCC may, following an assessment, refer a complaint about corrupt conduct to a public official to be dealt with by the public official or in co-operation with the CCC, subject to the CCC's monitoring role. The term *public official* is defined as the chief executive of a UPA (including the Legislative Assembly)
- **section 49 of the CC Act** provides that the CCC may, if it investigates a complaint and decides prosecution or disciplinary proceedings should be considered, report to a prosecuting authority (the QPS to consider referral to Director of Public Prosecution); Chief Justice; Chief Judge of District Court; President of Childrens Court; Chief Magistrate or CEO of relevant UPA.
A report made under section 49 must include all relevant information to support a charge, support a defence available against the charge, supports the start of proceedings and supports a defence available to someone subject to proceedings.
- **section 60(2) of the CC Act** provides that the CCC may give information to other entities as it considers appropriate, including: UPAs; law enforcement agencies; Auditor-General; Electoral Commissioner and the Ombudsman.

Section MM04 of the CCC's Operations Manual provides that 'Primarily, in disseminating information to another body, an assessment must be made that the information in question is relevant to that body and its functions, and to the purpose for which the dissemination is proposed'.⁴³⁰

The CCC advised that where a referral is made to another entity following an assessment, it provides all information which it is able to provide and it considers relevant to the purposes for which the referral is made. The CCC advised, in its submission, that 'Where information critical to the purpose of the referral is unable to be disclosed ... such a referral would not be made'.⁴³¹

⁴²⁸ Public hearing transcript, Brisbane, 26 March 2021, pp 44.

⁴²⁹ Public hearing transcript, Brisbane, 26 March 2021, pp 44.

⁴³⁰ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 20.

⁴³¹ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 20.

During the review period, the Speaker of the Legislative Assembly and the Ethics Committee raised a number of concerns about the CCC's consideration of complaints against the Premier and former Deputy Premier. One of the concerns raised was the CCC's disclosure of supporting information to bodies to which matters are referred.

6.8.1 Complaint about the Premier

As noted previously, the CCC's press release in relation to its assessment of the complaint against the Premier, issued on 27 September 2018, advised that, on the basis of the information available to the CCC, there would be no reasonable prospect of a successful prosecution of the Premier and that the Legislative Assembly was the appropriate entity to deal with the complaint.⁴³²

The Speaker of the Legislative Assembly, when referring the complaint against the Premier to the Ethics Committee, stated that the CCC provided '... no explanation as to why the CCC believes the Legislative Assembly is the appropriate entity to deal with the matter'. The Speaker also noted 'the CCC has not formally referred the matter to me or through me or the Attorney-General, to the Legislative Assembly'.⁴³³

The Speaker of the Legislative Assembly commented that:

The effect of the CCC's media release and the Chair's press conference have, without detailed explanation of evidence or analysis, declared a 'technical' breach of the law whilst at the same time creating a public expectation that this matter will be dealt with by the Legislative Assembly.⁴³⁴

The Ethics Committee raised similar concerns, in its report to Parliament, noting that the CCC provided no correspondence or report (detailing the relevant facts and analysis) to the Speaker, 'who it appears was simply to act on the press release in the public domain'.⁴³⁵

6.8.2 Complaint about the former Deputy Premier

A similar issue arose in relation to the CCC's consideration of complaints made against the former Deputy Premier. In its media release, issued on 6 September 2019, the CCC stated that no investigation would be commenced on the basis that no evidence or information was identified that supports a reasonable suspicion of corrupt conduct.

When referring the allegations against the former Deputy Premier to the Ethics Committee for consideration, the Speaker of the Legislative Assembly noted that, on 9 September 2019, the Acting Chairperson of the CCC, Mr Marshall Irwin QC, had written to him. The Speaker advised that Mr Irwin's letter identified allegations which the CCC asserted were matters that the Parliament should consider and determine whether the former Deputy Premier should be referred to the Ethics Committee.

The Speaker stated:

Whilst I did not agree with all of the CCC assertions, and this was advised to the CCC through correspondence, the practical effect was that the CCC had placed material before me which I was duty

⁴³² CCC, 'CCC finalises assessment of complaint by Mr Robbie Katter MP', media release, 27 September 2018.

⁴³³ Speaker of the Legislative Assembly of Queensland, *Speaker's Ruling - Referral to Ethics Committee, Katter Party Resources*, 12 October 2018, p 5.

⁴³⁴ Speaker of the Legislative Assembly of Queensland, *Speaker's Ruling - Referral to Ethics Committee, Katter Party Resources*, 12 October 2018, p 5.

⁴³⁵ Queensland Parliament, Ethics Committee, Report No. 189, *Matter of privilege referred by the Speaker on 12 October 2018 relating to an alleged contempt of Parliament by the Premier and Minister for Trade*, October 2019, p 4.

bound to consider in terms of exercising the Speaker's initiative in Standing Order 268(2) to refer matters to the Ethics Committee.⁴³⁶

The Speaker stated that his consideration of the matter was complicated by the fact that both the CCC and former Deputy Premier referred in their correspondence to the existence of additional information that had not been provided to the Speaker. The Speaker also advised, in his statement, that in further correspondence with the CCC, Mr Irwin sought to clarify that the CCC was not making a complaint or performing any function under the CC Act, other than to refer information to an entity that it considered appropriate in the circumstances.⁴³⁷

The committee considers that the above two matters highlight issues in relation to the CCC's referral of matters to other bodies to investigate or consider and, in particular, the adequacy of the current provisions of the CC Act to facilitate the referral of matters from the CCC to the Parliament.

The Independent Assessor also raised concerns about the format of the Matters Assessed Report that the CCC provides a UPA or other agency when referring a matter for investigation. At the public hearing on 26 March 2021, the Independent Assessor stated:

... the matters assessed reports are produced by the case management system that the CCC has and that the CCC is moving towards another case management system that was going to improve that. Essentially, the matters assessed report is a dump of certain information that is within that system and is automatically produced. The clarity of those reports is something that I think could be improved, and I understand one of the key objectives of a new system would be to do that.⁴³⁸

At the committee's public meeting on 18 October 2019, the CCC Chairperson advised:

We would not make a referral in that situation if the important part justifying the referral was something we could not share. What we might do in that case, again hypothetically, would be to say to the person who has the documents, it might be cabinet, the government, 'Look, there is no corrupt conduct, but there are issues raised of a professional nature' – relevant to the Law Society or somewhere else – 'that you might think is something you should refer', and for that purpose waive confidentiality of that collection of documents. That would be a matter we might suggest but we would not routinely make the referral if we could not share the information, there would be no point, because it would be just an empty referral.⁴³⁹

Mr Paul Alsbury of the CCC, at the public meeting on 18 October 2019, stated that in relation to the referrals regarding the Premier and former Deputy Premier in his view '... all the information that the decision-maker needs is already on the public record'.⁴⁴⁰

The CCC advised that the information which may be provided to a body following an assessment may be different to the information provided on the completion of an investigation. This relates to the means by which the information was acquired. The CCC advised that evidence obtained during assessment is usually provided voluntarily, but sometimes with conditions attached, (for example, evidence provided for purpose of assessment only, was cabinet in confidence, with no further disclosure).

Mr MacSporran stated, at the public hearing on 26 March 2021, that in relation to the complaint against the former Deputy Premier:

⁴³⁶ Speaker of the Legislative Assembly of Queensland, *Speaker's Ruling- Referral to Ethics Committee, Crime and Corruption Commission referral regarding the Deputy Premier*, 22 November 2019, p 1.

⁴³⁷ Speaker of the Legislative Assembly of Queensland, *Speaker's Ruling - Referral to Ethics Committee, Crime and Corruption Commission referral regarding the Deputy Premier*, 22 November 2019, pp 3-4.

⁴³⁸ Public hearing transcript, Brisbane, 26 March 2021, p 8.

⁴³⁹ Public meeting transcript, Brisbane, 18 October 2019, p 12.

⁴⁴⁰ Public meeting transcript, Brisbane, 18 October 2019, p 12.

... it was not the deputy premier's consent we might have needed. They were cabinet documents, I think. They were provided to us, as is the usual case, on the basis that they were for our use only. If we were going to provide them to anyone else, we would seek the permission of cabinet before we did so.⁴⁴¹

The CCC stated that where information is unable to be provided by the CCC on referral following an assessment (eg Cabinet in Confidence and provided conditionally), it is open to the referred entity to itself approach the holder of the information to seek the information.⁴⁴²

The CCC considered that the current legislative provisions are adequate to cater for referral of matters to the Legislative Assembly. The CCC stated that it understands that, where it decides to refer a matter to Parliament, the appropriate individual to receive it is the Speaker, as the comparable position to the CEO, rather than the Parliament itself. The CCC considered the matter could be clarified through legislative amendment.⁴⁴³

Committee comment

The committee is concerned by the actions of the CCC and the process through which the CCC purported to refer these matters to the Speaker and Parliament. In particular, the referral of matters without adequate explanation, or sufficient supporting documentation, places the Parliament in an invidious position of having the CCC publicly state that the Parliament is required to address a matter, while the Parliament is not fully apprised of the matter.

The committee considers that a recurrence of these events in the future has the potential to impact the reputation of the CCC and the Parliament in the public domain. Accordingly, the committee considers it would be advantageous for the CCC and the Parliament (through the Speaker) to consider the formulation of a memorandum of understanding or information sharing protocol (or similar type of documented agreement), to set out how information held by the CCC that may be relevant to the Speaker, Ethics Committee or other part of the Parliament in relation to the conduct of Members, be shared between the CCC and the Parliament.

Recommendation 23

The committee recommends that the Crime and Corruption Commission and the Queensland Parliament (through the Speaker of the Legislative Assembly) consider the development and implementation of an information sharing protocol for the dissemination of information held by the Crime and Corruption Commission that may be relevant to the Parliament in respect of the conduct of Members of Parliament.

6.8.3 Evidence and information gathering powers available during assessment and investigation

The CCC states on its website that the CC Act and the PPRA provide the CCC, and seconded police officers, with special powers to investigate allegations of corruption. These powers include: search, surveillance and seizure powers and the power to conduct hearings that compel people to attend and give evidence and produce documents and other material.⁴⁴⁴

In its submission, the CCC stated that CCC officers have the same rights and privileges as ordinary members of the public in inquiring into matters, eg they can ask questions, ask to be provided with information and may inquire to determine factual matters. Also police officers seconded to the CCC retain their powers and duties as police officers during secondment.⁴⁴⁵

⁴⁴¹ Public hearing transcript, Brisbane, 26 March 2021, p 29.

⁴⁴² Submission 008 to the Inquiry into Corrupt Conduct Complaints, pp 20, 21.

⁴⁴³ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 24.

⁴⁴⁴ CCC, 'Purpose of an investigation', <https://www.ccc.qld.gov.au/complainants/about-investigations>.

⁴⁴⁵ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 18.

The CCC stated that as a legal proposition, those powers which are available during the 'investigation' stage may also be available during the 'assessment' stage.⁴⁴⁶ At the public meeting on 23 August 2019, the CCC Chairperson suggested that the CCC could use its coercive powers, including section 75 notices to obtain information, when conducting an assessment.⁴⁴⁷

However, in its submission, the CCC stated that investigative powers are not used at the assessment stage for the following reasons:

- **assessments are to be conducted expeditiously and are preliminary** – investigative steps taken in the assessment phase are generally those that can be done quickly, eg for inquiries made of the complainant or written requests to a UPA for the provision of relevant records
- **some powers are more clearly referable to the conduct of an investigation** – powers that are more intrusive (eg telecommunications interceptions, surveillance devices, search warrants and coercive examination powers) are not used in the assessment phase. A rough delineation of investigative activities which may be exercised during the assessment stage is those which are done cooperatively (either person providing information voluntarily or through a request for information from UPA or appointment holders). Such cooperative information gathering does not require the exercise of statutory powers. The CCC stated that information-gathering during the assessment stage is usually on a voluntary/cooperative basis, however, it may be provided conditionally (eg legal professional privilege provided for limited purpose of CCC assessment)
- **exercise of compulsory powers requires decision-maker to form a reasonable suspicion** – in most cases, the exercise of compulsory powers requires a decision-maker to be provided with sufficient information from which they can reasonably suspect, or reasonably believe, the conduct in question has occurred and that evidence may be obtained through the exercise of that power. Such satisfaction would generally require a degree of cogent evidence to be available to the decision-maker which would not necessarily be present before an 'investigation'.⁴⁴⁸

Committee comment

In view of the committee's recommendation to distinguish between an 'assessment' and 'investigation' by the CCC, the committee considers there is a need for clarification about whether coercive powers are available during an assessment stage or only an investigation by the CCC.

Recommendation 24

The committee recommends clarification be provided about whether coercive powers are available during an assessment stage or only an investigation by the Crime and Corruption Commission.

6.9 Prosecutorial discretion

The terms of reference for the Inquiry into Corrupt Conduct Complaints included examining how the CCC may deal with a complaint following an assessment, including referring the matter to another body and the use of prosecutorial discretion. The issue of whether the CCC has prosecutorial discretion and the appropriate use of such a discretion has been raised on multiple occasions over the last parliamentary term.

⁴⁴⁶ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 18.

⁴⁴⁷ Public meeting transcript, Brisbane, 23 August 2019, p 8.

⁴⁴⁸ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 19.

6.9.1 Statutory provisions

Section 35 of the CC Act provides for how the CCC may perform its corruption functions. It enables the CCC, when conducting or monitoring investigations, to gather evidence for the prosecution of persons for offences.⁴⁴⁹

Section 49 of the CC Act provides that, if the CCC investigates or assumes responsibility for the investigation of a complaint about corruption and decides that prosecution proceedings or disciplinary action should be considered, the CCC can report on the investigation to a prosecuting authority (such as the QPS), for the purposes of any prosecution proceedings the authority considers warranted.⁴⁵⁰ Section 49(5) of the CC Act however, explicitly states that a prosecuting authority for that section does not include the Director of Public Prosecutions (DPP).

The CCC has the discretion, at section 50 of the CC Act, to prosecute *corrupt conduct* of an officer of a UPA, where there is evidence to support the start of disciplinary proceedings, at QCAT. However, the CC Act does not provide the CCC with any prosecutorial discretion in relation to potential criminal offences. The decision as to whether to prosecute an individual for a criminal offence sits with the QPS or DPP for more serious offences.

6.9.1.1 History of the statutory provision

The now repealed CJA required that the director of the official misconduct division of the CMC, report to the CMC on every investigation carried out by the official misconduct division.⁴⁵¹ The report was also required to be provided to one or more of the following:

- a) the director of public prosecutions, or other appropriate prosecuting authority, with a view to such prosecution proceedings as the director of public prosecutions or other authority considers warranted;
- c) the Chief Justice of the State, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;
- d) the Chief Judge of District Courts, if the report relates to conduct of a judge of District Courts;
- e) the President of the Childrens Court, if the report relates to a person holding judicial office in the Childrens Court;
- f) the Chief Stipendiary Magistrate, if the report relates to conduct of a person holding judicial office in the system of Magistrates Courts;
- g) in a case to which paragraphs (c), (d), (e) and (f) do not apply—the appropriate principal officer in a unit of public administration, with a view to disciplinary action being taken in respect of the matter to which the report relates.⁴⁵²

From the commencement of the CC Act in 2001, until amendments made by the *Crime and Corruption and Other Legislation Amendment Act 2018* took effect, the CCC was authorised but not required, to report on a misconduct investigation (and then ‘corruption’ complaint) to the DPP (or other appropriate prosecuting authority), ‘for the purposes of any prosecution proceedings the director or other authority considers warranted’.⁴⁵³ Such a report was required to include all relevant information known to the CCC that—

- (a) supports a charge that may be brought against any person as a result of the report; and

⁴⁴⁹ CC Act, section 35(h)(i).

⁴⁵⁰ CC Act, section 49(2)(a).

⁴⁵¹ *Criminal Justice Act 1989* (now repealed) (CJA), s 33(1)-(2).

⁴⁵² CJA, s 33(2).

⁴⁵³ 2001 reprint of the CC Act, s 49(2).

(b) supports a defence that may be available to any person liable to be charged as a result of the report.

During the 2016 Review, the ODPP raised concerns about the practical application of the operation of section 49 of the CC Act (the ability to refer briefs to the ODPP). The ODPP submitted that the process gave rise to time delays and budgetary issues, as well as practical resourcing issues (particularly in regards to compelled evidence).⁴⁵⁴

During a public hearing for the 2016 Review, Mr Michael Byrne QC, Acting DPP, further explained:

Experience dictates that the briefs received from the Crime and Corruption Commission almost always—not always, but almost always—contain compelled evidence. The effect of section 49, where a referral is made, is that senior and experienced prosecutors are effectively taken out of the pool of possible prosecutors if the matter proceeds to a criminal prosecution. It also affects the resort that may be had to legal and other support staff at the consideration stage under section 49 for the same reasons.

...

This is creating an impost on the finite resources that are available in government and available to the Office of the Director of Public Prosecutions.

...

The policy of the office is and has been now for some years however that it is only senior prosecutors who assess these matters so that any time that is taken in that assessment is significant and draws the prosecutors away from court based advocacy and other aspects of their duties.⁴⁵⁵

In its 2016 Review Report, the committee outlined the issues raised by the ODPP and stated that ‘for the reasons articulated by the ODPP, removing the availability of this procedure is worthy of consideration’.⁴⁵⁶

The *Crime and Corruption and Other Legislation Amendment Act 2018* removed the power of the CCC to refer corruption investigation briefs to the ODPP for the purposes of considering prosecution proceedings.⁴⁵⁷ The explanatory notes for the Crime and Corruption and Other Legislation Amendment Bill 2018 stated the amendment would ‘not affect the ability for evidence gathered by the Commission during the course of its corruption investigation to be provided to the QPS and consequentially the ODPP as a part of the usual prosecutorial process’.⁴⁵⁸ The committee recommended in its 2016 Review Report:

... that the government give consideration to amending section 49 of the CC Act to remove the power for the Commission to refer corruption investigation briefs to the ODPP for the purposes of considering prosecution proceedings.⁴⁵⁹

6.9.2 Current review

The interaction between the CCC and ODPP has been further examined since the 2016 Review, at various meetings with the CCC and by other stakeholders who participated in the current review of the CCC’s activities. Consideration has focused in particular, on whether the CCC has prosecutorial discretion.

The issue of whether the CCC has a prosecutorial discretion was raised with the CCC at public meetings with the committee on 19 October 2018, 23 August 2019 and 7 February 2020.

⁴⁵⁴ Submission 024 to the 2016 Review, p 2.

⁴⁵⁵ Public hearing transcript for the 2016 Review, Brisbane, 9 November 2015, pp 14-16.

⁴⁵⁶ 2016 Review Report, p 34.

⁴⁵⁷ *Crime and Corruption and Other Legislation Amendment Act 2018*.

⁴⁵⁸ Crime and Corruption and Other Legislation Amendment Bill 2018, explanatory notes, p 6.

⁴⁵⁹ 2016 Review Report, recommendation 5, p 34.

At the public meeting on 7 February 2020, CCC Chairperson Mr Alan MacSporran stated in response to a question as to whether the CCC has discretion in relation to prosecution, that:

Not really. We do not prosecute. It is just a quirk of fate that we have police officers from the QPS seconded to us. When they are seconded to us, they retain their normal police powers, which include powers of arrest and charge and so forth. What we do, just for convenience, is once we decide, through our chain of command, including up to me, that there is sufficient evidence to charge someone, we then give that material to an independent police officer at the commission and say, 'Would you mind looking at this and exercising your discretion as to whether you think it is one you would be happy to charge or not?' That is how the charge is laid if we lay it. When I say 'we', it is really the police officer. It is then handed over to the DPP.

...

Yes, we never prosecute, yes.⁴⁶⁰

In response to further questioning about whether the CCC has ever prosecuted or holds a prosecutorial authority, Mr MacSporran stated:

We have no power to [prosecute].

...

Yes, we never, ever prosecute ourselves, no

...

If it is a simple offence, the police prosecutor goes to the QPS and Police Prosecutions do it. If it is an indictable offence, it goes to the DPP. The DPP then, under its own guidelines, has the ability to not present an indictment or, if one has been presented by them or a previous DPP, to discontinue it with nolle prosequi.

Mr MacSporran acknowledged that previously the CCC had prosecutorial authority, and would provide information to the DPP before laying a charge, and stated:

I used to [hold a prosecutorial authority]. I used to have the commission to prosecute years and years ago, but that is just for other purposes.

...

In the old days we used to always go to the DPP before we gave it to a police officer to see if they were comfortable with it. We still do it occasionally for more controversial cases. That is just to save the DPP the embarrassment of having to say, 'Well, we don't agree and we don't think this has got legs,' and so forth. Most often the police officer lays the charge and then the brief goes to the DPP. The DPP then has the ultimate say as to whether or not it is a case they feel comfortable prosecuting. If they are not, they don't. That is the first safeguard.⁴⁶¹

In response to a question as to whether the CCC is acting as an arbitrator as to whether to refer a matter to DPP, Mr MacSporran stated:

We are making the call as to whether we should commence the proceedings, whether we think there is sufficient evidence. We have a body of senior lawyers, including myself, in the organisation that have a clear interest in that. We make the determination or judgment to give it to a police officer who then exercises their police discretion as to whether or not to charge. If they charge, it then goes to either the police prosecution corps or the DPP who then have the final say.

...

There is nothing stopping anyone from making a complaint to the QPS, or even to go directly to the DPP, but they would say, 'Where is the evidence?'

⁴⁶⁰ Public meeting transcript, Brisbane, 7 February 2020, pp 12-13.

⁴⁶¹ Public meeting transcript, Brisbane, 7 February 2020, pp 12-13.

...

Yes. For all of the ones in the public arena, particularly, there is nothing stopping anyone making a referral or an official complaint to the QPS which then has to deal with it. They might have come to us and said, 'Can we have all the material you have gathered to make our decision?' 'Yes, here it is. That is the purpose we disseminate,' and so on.⁴⁶²

6.9.2.1 *Allegations against the Premier*

The CCC provided its views on prosecutorial discretion, specifically in regards to allegations against the Premier. In its media release, on 27 September 2018, in relation to the allegations against the Premier, the CCC stated:

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

...

In considering whether an investigation should be commenced, and/or a prosecution launched, the CCC has had regard to the guidelines issued by the Office of the Director of Public Prosecutions which refer to the requirement for there to be not only a prima facie case but a reasonable prospect of a successful prosecution. Given the above considerations, the CCC has concluded that there would be no reasonable prospect of a successful prosecution.⁴⁶³

In a press conference on 27 September 2018, the CCC Chairperson stated in relation to the section 60 offence, the matter '... technically satisfies the elements of the offence such that there is what we call as lawyers a prima facie case'.

On 19 October 2018, in response to a question as to why, if there was sufficient evidence to establish a prima facie case of an offence in the Premier matter, it was appropriate for the CCC not to refer the matter to the DPP and instead exercise a 'prosecutorial discretion', Mr MacSporran stated:

What we used to do before my time was routinely and certainly in the more contentious matters refer under that section a report of the investigation with our recommendations and observations to the director's office to allow him or her to assess the evidence and make a decision as to whether the charges should be laid. My view was, and my commissioners supported me in this, that given who we are and the staffing we have, which includes senior lawyers, including myself, and commissioners, we thought that was a bit of an unnecessary aspect to the way we operate. We took the view that where the evidence in our view was sufficient we should and could lay charges ourselves and then hand the prosecution itself over to the prosecuting authority, which would either be the police if it was a simple offence or the Director of Public Prosecutions if it was an indictable offence. It is then a matter for the director as to whether they think the matter should proceed.

If we decide that the matter has a prima facie case but has no reasonable prospects of success for the stated reasons that we conclude and it is therefore not in the public interest to prosecute, we make that decision ourselves and decline to charge and forward the matter to the prosecuting authority. That is quite within our jurisdiction. It is the way we operate and have done for some years now. It does not prevent a prosecution being launched. It is really just an exemplified form of the individual police officer's discretion to charge or not. We have police at our agency who have that power and they exercise it routinely with our guidance. That is how we manage all of that.⁴⁶⁴

⁴⁶² Public meeting transcript, Brisbane, 7 February 2020, pp 12-13.

⁴⁶³ CCC, 'CCC finalises assessment of complaint by Mr Robbie Katter MP', media release, 27 September 2018. Note, also, Section 60 of the Criminal Code – bribery of member of Parliament.

⁴⁶⁴ Public meeting transcript, Brisbane, 19 October 2018, pp 7-8.

In response to a question as to whether the CCC takes into account the primary public interest test when reaching such decisions, Mr MacSporran stated:

Absolutely. These guidelines are not only guidelines for the office of the DPP, they are routinely guidelines whenever you are considering whether a prosecution should be launched. On page 2 under section 4—it is actually misnumbered, but the bold heading is 'Sufficient Evidence.' It says—

- A prima facie case is necessary but not enough.
- A prosecution should not proceed if there is no reasonable prospect of conviction before a reasonable jury (or Magistrate).

Without speaking about any given matter, if you find there is evidence satisfying the elements of the offence, that is what is called a prima facie case. All that means is that there is enough evidence upon which a jury, reasonably instructed, could—not would, but could—convict. That is the first stage. Then you say if that is the case is it in the public interest, are there reasonable prospects, if someone was charged, that they would be convicted. That is where you assess the public interest. For instance, our conclusion might be that whilst the evidence satisfies those elements we do not think that offence is meant to apply to that particular circumstance. That would be one suggestion. That would go to the heart of whether we think there are prospects of conviction. Because if it goes to a jury and the jury thinks, well, yes, the evidence does satisfy that as a prima facie case but we cannot see how that evidence was intended to apply to this situation so we are not going to convict, and that is two years down the track, you have wasted huge resources, not only of ours but of the Director of Public Prosecution's office and the jury and the court.

We assess all of these things according to these guidelines. That is part of our role. It does not prevent the thing going further, but it means that we will not send it further. That is our right. If we are wrong, fair enough.⁴⁶⁵

Mr MacSporran further advised, in response to a question as to whether the CCC routinely pass matters to the DPP:

No. Can I say this: one of the reasons for that is, and this is meant to be no criticism of the director's office because they are busy as we are, what was tending to happen is we would send some of the stuff that was contentious, which would be huge piles of material, we would send the brief over and say, 'Look, can you look at this and see what you think? These are our views but it is up to you.' Understandably, that would not be always their first priority so we might wait six, 12 months before we get an answer. We thought that was undesirable for them and us. It was not fair to them. We have the staffing and the capability to make those decisions ourselves. If they disagree with them they can still enter what is called a no true bill and refuse to indict or they can discontinue a prosecution. They can do whatever they like. They are independent of us, as they should be. That was one of the reasons we decided it was more appropriate for us to step up to the plate and do our part in that process.⁴⁶⁶

The Ethics Committee Report and Mr Speaker raised concerns about the CCC exercising prosecutorial discretion in relation to the allegations against the Premier. The Ethics Committee Report suggests that the CCC's handling of this matter was 'problematic'. In particular, the Ethics Committee considered that it was not fair to the Premier to essentially declare there was prima facie evidence of commission of a crime, but that a prosecutorial discretion would be exercised not to proceed.⁴⁶⁷

In its submission to the Inquiry into Corrupt Conduct Complaints, the CCC advised that the statement in the media release dated 27 September 2018 'that there would be no reasonable prospect of a successful prosecution' was in the performance of the CCC's corruption function, and was made in the

⁴⁶⁵ Public meeting transcript, Brisbane, 19 October 2018, pp 7-8.

⁴⁶⁶ Public meeting transcript, Brisbane, 19 October 2018, pp 7-8.

⁴⁶⁷ Queensland Parliament, Ethics Committee, Report No. 189, *Matter of privilege referred by the Speaker on 12 October 2018 relating to an alleged contempt of Parliament by the Premier and Minister for Trade*, October 2019, p 4.

context of explaining its decision on how the matter would be dealt with pursuant to section 46 of the CC Act.

The CCC stated 'To be entirely clear – in making such a statement, the CCC was not, itself, making any prosecutorial decision, nor exercising any power to prosecute or decline to prosecute a matter criminally'. The CCC stated that it does not as an agency generally commence a criminal prosecution.⁴⁶⁸

The CCC also commented on its decision to make such a determination during an assessment phase.

The CCC advised that assessing complaints involves a consideration as to whether conducting an investigation is in the public interest. Further, consideration must be given as to whether evidence which may be gathered is likely to result in any prosecution of offences, or in disciplinary proceedings.⁴⁶⁹

The CCC stated that 'It would be an unusual circumstance in which such an assessment [no prospect of successful prosecution] could be made at a relatively early stage, but the present case [Premier matter] was an unusual one in which all the relevant facts were not only known, but on the public record'.⁴⁷⁰

The CCC explained that the question then arose, at the assessment stage, as to what action, if any, should be taken. The CCC considered 'whether an investigation should be commenced, and/or a prosecution launched for potentially criminal conduct'. The CCC's view was 'that there is no point in referring a complaint that may involve criminal activity to the police if there are no reasonable prospects of conviction'. The CCC stated that its media release sets out the reasons why it concluded there were no reasonable prospects of conviction by reference to the DPP guidelines.⁴⁷¹

The CCC's Operations Manual – Part 2: Management Matters, Section 2: Matter briefs (MM02) outlines the following factors in considering a criminal prosecution:

- Is there sufficient evidence?
- Does the public interest require a prosecution?

The CCC advised that the CCC has jurisdiction to investigate allegations of corrupt conduct, however, it has no jurisdiction to investigate members of Parliament for breaches of parliamentary rules.

Having concluded, in the Premier matter, that there were no reasonable prospects of conviction, the CCC advised that is where the CCC's jurisdiction ended. The CCC advised that no analysis of a potential breach of parliamentary rules was undertaken because that is not in the CCC's functions.⁴⁷²

The CCC reiterated that its decision not to refer the Premier's matter to the police to consider criminal prosecution in no way prevented a criminal complaint being made by another person, including the complainant. The CCC stated: '... the CCC does not itself either commence, or decline to commence, criminal proceedings. That decision is reserved to a 'prosecuting authority'.⁴⁷³

6.9.2.2 *Other matters*

In considering the general interaction between the CCC and DPP, the committee considered the CCC's actions in other recent matters.

⁴⁶⁸ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 33.

⁴⁶⁹ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 33.

⁴⁷⁰ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 33.

⁴⁷¹ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 34.

⁴⁷² Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 28.

⁴⁷³ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 35.

Between April 2018 and April 2019, following a major corruption investigation into Logan City Council (referred to as Operation Front), the former Logan mayor and seven councillors were charged with criminal offences, including fraud.⁴⁷⁴ In April 2021, prosecutions in the Brisbane Magistrates Court against the seven former Logan City councillors for fraud, were discontinued.⁴⁷⁵ Following the reporting of the matter, stakeholders including the Local Government Association of Queensland (LGAQ), lawyer Calvin Gnech and Gold Coast Mayor Tom Tate Mayor commented publically, raising concern about the CCC's prosecuting practices and decision to charge the former councillors.⁴⁷⁶

The CCC released a media statement on 14 April 2021, clarifying its role and distinction between the CCC and the ODPP in the matter:

It is the role of the independent ODPP to prosecute criminal matters, not the CCC, and for this reason the CCC accepts the decision of the ODPP to discontinue the prosecutions.

...

At the completion of the investigation, lawyers within the CCC reviewed the material gathered to assess whether the elements of a fraud offence had been met. Consistent with all CCC investigations that lead to criminal charges, a police officer seconded to the CCC reviewed the evidence to make an assessment of whether charging was warranted based on the evidence. I also reviewed the material. Consistent with the ODPP's prosecution guidelines, based on the evidence before the CCC at the time, the CCC took the view that there were reasonable prospects of a conviction and that the charges were in the public interest.

The ODPP considered the briefs of evidence and decided to prosecute these matters, as in their view at that time, there was a prima facie case and reasonable prospect of convictions.

...

The facts are these. The CCC investigates allegations of corrupt conduct but does not prosecute. Once the CCC charged these eight individuals, the briefs of evidence were forwarded to the ODPP in order for them to independently assess the evidence and decide whether or not to prosecute. In these cases, they went ahead with the prosecutions and it was only when the committal proceedings in the Magistrates Court were well advanced that the charges were discontinued. The CCC, as it must, accepts the decision of the independent prosecutor in these matters.⁴⁷⁷

⁴⁷⁴ CCC, 'Eight elected officials at Logan City Council charged (Operation Front)', <https://www.ccc.qld.gov.au/corruption/outcome/eight-elected-officials-logan-city-council-charged-operation-front>.

⁴⁷⁵ ABC News, 'Fraud charges against eight former Logan City councillors dropped almost two years after sacking', <https://www.abc.net.au/news/2021-04-14/fraud-charges-logan-councillors-dropped/100067622>

⁴⁷⁶ See for example, Courier Mail, 'Lawyer Calvin Gnech says CCC did not have right to bring fraud charges', <https://www.couriermail.com.au/news/queensland/lawyer-calvin-gnech-says-ccc-did-not-have-right-to-bring-fraud-charges/news-story/e2dd4abfcc5fbad67f1a973924f20a47>; ABC News, 'Fraud charges against eight former Logan City Councillors have been dropped', <https://www.abc.net.au/news/2021-04-14/fraud-charges-logan-councillors-dropped/100067622>; Local Government Association of Queensland, 'LGAQ Policy Executive doubles down on independent inquiry call', media release, 16 April 2021; Gold Coast Bulletin, 'Tom Tate: Why CCC boss should stand down and be investigated', <https://www.goldcoastbulletin.com.au/news/opinion/tom-tate-why-ccc-boss-should-stand-down-and-be-investigated/news-story/a306426b2e9579c3dfc60af615476683>.

⁴⁷⁷ CCC, 'Statement from CCC Chairperson – Alan MacSporran QC', media release, 14 April 2021.

Committee comment

The committee acknowledges the functions of the CCC include the gathering of evidence for prosecution purposes, and that the CC Act provides for police officers seconded to the CCC to have the functions and powers of a police officer (including the power to charge persons for relevant offences).⁴⁷⁸

The committee notes the distinction between the CCC's role in investigating, assessing and potentially charging persons; and the DPP's ultimate decision to pursue prosecutions.

It is noted that while the CCC does not have discretion to prosecute, it does have the discretion to:

- gather evidence and refer a matter to an entity who does have discretion to prosecute
- charge a person before referring a matter to an entity who has the discretion to prosecute

The committee questions why, in the Premier and former Deputy Premier matters, the CCC publicly commented on the likelihood of prosecution and stated, in regards to the Premier matter that there was a 'prima facie case' but did not refer the matter to a prosecuting authority or the DPP. It is the committee's view that the reporting of this matter at the least provides a perception that the CCC does have discretion in regards to whether a matter is prosecuted, as it has the discretion to refer its evidence and briefs to an entity who can prosecute.

The committee considers more fulsome consideration of the interaction between the CCC and ODP is warranted.

On 28 May 2021, the committee launched an Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters. This inquiry will consider aspects of the CCC's practices including:

- the CCC's use of coercive powers and matters relating to the dissemination of information obtained under coercion to parties in non-criminal proceedings;
- the process by which the CCC considers and determines whether to refer matters to the DPP;
- the CCC's interaction with the DPP more broadly, including existing information sharing and other processes that facilitate interaction, and whether the current processes and guidelines are appropriate;
- whether current provisions enabling the CCC to report on an investigation to particular entities under section 49 of the Crime and Corruption Act 2001 is appropriate and sufficient; and
- the CCC's role in charging persons with an offence arising from its investigations.⁴⁷⁹

Recommendation 25

The committee recommends that further consideration of the Crime and Corruption Commission's prosecutorial practices and interaction with the Director of Public Prosecutions, be reported on as part of the committee's Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters.

⁴⁷⁸ CC Act, ss 35(1)(h), 255(5).

⁴⁷⁹ Queensland Parliament, PCCC, 'Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters', <https://www.parliament.qld.gov.au/work-of-committees/committees/PCCC/inquiries/current-inquiries/InquiryCCCLCC2021>.

6.10 Crime and Corruption Commission's public reporting of its determinations

Section 64 of the CC Act provides that the CCC may report in performing its functions. The power to make reports under the CC Act is discretionary, and there does not appear to be any provision in the CC Act to compel the CCC to report on its consideration of an allegation of corrupt conduct – either an assessment or investigation.

The CCC submitted that the decision as to whether, when and how to report on the outcome of an assessment or investigation is informed by a variety of factors, and may be different in different circumstances, depending on the context of the matter.⁴⁸⁰

The CCC stated that the decision about what, and how, to report is informed primarily by the CCC's core functions and considerations of section 57 of the CC Act (ie the CCC must, at all times, act independently, impartially and fairly and having regard to importance of protecting the public interest).⁴⁸¹ The CCC stated:

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

Similarly, where an investigation is limited or foreclosed by jurisdictional limitations, or where the fact pattern revealed allows for a clear assessment, the public interest may be best served by communicating succinctly and expeditiously, by a media release, rather than a lengthier report.⁴⁸²

The CCC's Operations Manual – Part 2: Management of Matters – Section 3: Matter reports and publications (MM03) outlines the general principles the CCC considers in deciding what to publish and how best to communicate, including:

- the status of an operational matter and related activities
- considerations of equity to all stakeholders who have an interest in a matter
- considerations of any criminal prosecution
- the need to afford natural justice to persons adversely affected by a proposed publication
- obligations arising from legislative provisions
- how best to communicate the work of the CCC to its stakeholders and increase public confidence about the use of our powers
- the opportunities to maximise our reach to a particular audience
- timeliness and cost
- longevity of the published material

The CCC stated that the above considerations require careful balancing of the competing demands before decisions are made about what, when, where and how to publish.⁴⁸³

The CCC notes that what constitutes a 'report' is not defined in the CC Act and the CCC considers that it should not be. The CCC stated that the particular form which a report takes should be within the CCC's discretion, having regard to appropriate considerations.⁴⁸⁴

During the Review, a number of stakeholders commented on the CCC's approach to public reporting of its determination.

⁴⁸⁰ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 8.

⁴⁸¹ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 8.

⁴⁸² Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 8.

⁴⁸³ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 27.

⁴⁸⁴ Submission 008 to the Inquiry into Corrupt Conduct Complaints, pp 26-33.

DSDMIP noted that the CCC's public reporting of matters supports openness and transparency,⁴⁸⁵ while QCS considered that the CCC's public reporting of assessment determinations is integral to upholding principles of transparency, accountability, ethics, professional and leadership; which serves to enhance public confidence.⁴⁸⁶ Queensland Health stated that the public reporting of outcomes is an important education and prevention tool for all public sector agencies.⁴⁸⁷

The Speaker and the Ethics Committee raised concerns about the reporting of the outcome of the consideration of the allegations against the Premier by media release and press conference, rather than by tabling a report in Parliament. The Ethics Committee considered that this approach meant '... there is no report detailing the information (evidence) available to the CCC nor detailing the analysis of relevant facts (evidence) against the elements of each offence'. The Ethics Committee Report noted that:

There was no explanation as to why the CCC believes the Legislative Assembly is the appropriate entity to deal with the matter, when it believes that there is no reasonable prospect of a successful prosecution for an offence.⁴⁸⁸

The Speaker raised similar concerns in relation to the CCC's media release reporting on the finalisation of the CCC's consideration of the allegations against the former Deputy Premier. In particular, the Speaker was concerned about the absence of a formal requirement for CCC to publish a report on a matter of significant public interest.⁴⁸⁹

The Clerk of the Parliament also noted an 'increasing trend for the CCC to not publically and comprehensively report on its investigations, especially regarding high profile or 'political' inquiries. The Clerk stated that 'Instead there has been a trend to issue a press statement, followed by a press conference'. The Clerk noted that 'Often the information revealed at the press conference is far more detailed (and damaging) than the matters detailed in the press release'.⁴⁹⁰

The Clerk considered that:

Without a detailed, publically available report, matters may never be properly closed and the failure to comprehensively report can lead to their continual reopening. Without a final comprehensive report, information about an investigation is at risk of being drip fed to the public via press release, press statement, follow-up questioning at PCCC or estimates hearings. A comprehensive report is in my opinion the most effective and fairest way to bring matters to an end when there is no criminal sanction to be undertaken.⁴⁹¹

At the public hearing on 14 May 2021, the Clerk referred to the CCC's investigation of allegations made against the Minister for Transport and Main Roads, Hon Mark Bailey MP in 2016, stating:

As a fairly keen observer of the CCC and being in the parliament all the time and listening to what is going on, I have struggled to understand exactly what the form of that investigation was. I think that is because there was never a report into it. Here in 2021 we are still talking about issues arising from that. That matter should have been dead a long time ago, and it could have been dead if the CCC had tabled a comprehensive report of what the investigation was, what the investigation found—end of. The reason

⁴⁸⁵ Submission 001 to the Inquiry into Corrupt Conduct Complaints, p 2.

⁴⁸⁶ Submission 011 to the Inquiry into Corrupt Conduct Complaints, p 2.

⁴⁸⁷ Submission 013 to the Inquiry into Corrupt Conduct Complaints.

⁴⁸⁸ Queensland Parliament, Ethics Committee, Report No. 189, *Matter of privilege referred by the Speaker on 12 October 2018 relating to an alleged contempt of Parliament by the Premier and Minister for Trade*, October 2019, p 4.

⁴⁸⁹ Speaker of the Legislative Assembly of Queensland, *Speaker's Ruling - Referral to Ethics Committee, Crime and Corruption Commission referral regarding the Deputy Premier*, 22 November 2019.

⁴⁹⁰ Submission 036, p 9.

⁴⁹¹ Submission 036, p 9.

it has dragged on for years and keeps reappearing is that there was never a final report. There was never a report. There were press releases and statements. Then there was drip feeding of information through the committee. One week I heard there were 20 emails in question and the next week it was four. That should have been a report to the parliament to say, 'This is what happened, this is how it was investigated, this is how it was supervised,' or whatever the case may be, and 'this is what was found'—end of.⁴⁹²

The QLS recommended that the committee assess whether CCC's media policy, and the CCC's adherence to it, is having a perceived or practical effect on the progress and outcome of investigations.⁴⁹³ Dr Dan Morgan submitted that, in regards to the media statement issued by the CCC regarding the allegations against the Premier, that 'it is hard to see how the contents of that release are not a prima facie breach of Article 9 Bill of Rights 1688'.⁴⁹⁴

The CCC, in its supplementary submission, stated that 'It may be that in some (or many) cases, a public report will allow a full ventilation of the issues identified in an investigation, but that will not always be the case'. The CCC stated that '... considerations about what to report and when are nuanced, and involve a multitude of competing factors'.⁴⁹⁵

The CCC advised that, since September 2015, it had tabled 12 reports in Parliament: 7 resulting from investigations, 4 from public hearings and one legislative review report. The CCC stated that it has never been more open and transparent about its work.⁴⁹⁶

During the public meeting on 23 August 2019, the CCC referred to the distinction between an assessment and investigation when discussing whether a report on the CCC's determinations should be issued. The CCC Chairperson, Mr Alan MacSporran stated that:

... we issued a very detailed statement about that [the Premier matter] which went through all the ins and outs of it. That is equivalent to a report.

...

I have taken the view, since I have been there, that where we decide the investigation should not involve a fully-blown examination of something it is incumbent upon us to give reasons why that is so. We do that routinely by way of either press release, statement or press conference... There is no policy not to report on government matters.

...

If we assess something as not reaching our threshold in that the reasons that it cannot, on any view of the material we have seen, amount to corrupt conduct, we just do not have jurisdiction. As you say, we flick it on that basis and say so. Where we investigate something and it turns out to be unsubstantiated, we usually go a bit further and give some reasons why, by reference to a summary of the evidence or whatever that we have looked at. Where we conduct a public hearing, we actually give a public report. That has been done in Flaxton, Belcarra and the public forum we conducted and will happen with the information access project later this year.⁴⁹⁷

Mr MacSporran contended, for example, that in the assessment of the allegations against Minister Bailey, 'there is sufficient detail in the press release in that we craft those particularly carefully so that they reveal the salient points that were considered'.⁴⁹⁸

⁴⁹² Public hearing transcript, Brisbane, 14 May 2021, p 3.

⁴⁹³ Submission 012 to the Inquiry into Corrupt Conduct Complaints, pp 2-3.

⁴⁹⁴ Submission 023 to the Inquiry into Corrupt Conduct Complaints, p 2.

⁴⁹⁵ Submission 027A, p 6.

⁴⁹⁶ Submission 027A, p 6.

⁴⁹⁷ Public meeting transcript, Brisbane, 23 August 2019, pp 8-9.

⁴⁹⁸ Public meeting transcript, Brisbane, 23 August 2019, p 9.

The former committee also raised concerns about the CCC issuing media releases, rather than reports, with the CCC at its meetings on 18 October 2019. In response to a question as to whether he conceded that a press release cannot be a substitute for a report, the CCC Chairperson stated:

No, I do not; it just depends on the circumstances. This is more fulsome [Deputy Premier media release] because of its high-profile nature and the amount of public interest in it, but all press releases that take the place of a full report of an investigation are designed to inform and be transparent and to hold us to account for what we have done in assessing and, if necessary, investigating a complaint. If we were to produce a public report consequent upon every investigation we conducted, we would never get anything done.⁴⁹⁹

In response to the concerns raised by the Speaker about the media release in the matter regarding the Premier, the CCC stated that the media release expressly stated the scope of the information that was considered in the CCC assessment, eg relevant records of parliamentary proceedings (Hansard), associated media statements, media reports and correspondence between the Premier and Mr Robbie Katter MP. The CCC stated that all of this information was publicly available.⁵⁰⁰

The CCC submitted that 'any concerns that the CCC created an expectation that the Premier be dealt with for contempt, or that the CCC should have provided a detailed evidentiary analysis of the matters concerning Premier to the Speaker, misunderstands the role of the CCC in that situation'.⁵⁰¹

The CCC advised that it has jurisdiction to investigate allegations of corrupt conduct, but has no jurisdiction to investigate Members of Parliament for breaches of Parliamentary rules. Having concluded there was no reasonable prospect of conviction, that is where the CCC's jurisdiction ended. No analysis of a potential breach of parliamentary rules was undertaken as it is not in the CCC's functions, nor would it be an efficient use of resources. The CCC advised that it decided and stated that Parliament was the appropriate body to deal with the question of contempt, and left it to do so because by the time of the media release, Parliament was already seized of the issue.⁵⁰²

The CCC stated that, in relation to the matter regarding the former Deputy Premier, the decision (having conducted an assessment of the allegations) was that the matter fell outside the CCC's jurisdiction. The CCC advised that:

The media release explained the information considered and the basis for that decision. Further, having identified an opportunity for legislative reform which was both a) consistent with, and foreshadowed in, the CCC's earlier and comprehensive Operation Belcarra report, and b) a self-evident 'gap' in the integrity framework, the media release was accompanied by recommendations.⁵⁰³

The CCC stated that the media release:

... would have provided the public with a thorough explanation and better understanding as to the reasons for the assessment outcome. The assessment was a matter of significant public interest and it would have been inconsistent with the CCC's purpose of combating crime and reducing corruption for the benefit of the Queensland if recommendations were not made to prevent any future similar occurrences.⁵⁰⁴

The CCC stated that if there had been a trend recently towards issuing comprehensive media releases or statements, rather than reports, then this reflects the CCC's effort to be more transparent, to

⁴⁹⁹ Public meeting transcript, Brisbane, 18 October 2019, p 7.

⁵⁰⁰ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 28.

⁵⁰¹ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 28.

⁵⁰² Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 28.

⁵⁰³ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 29.

⁵⁰⁴ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 32.

communicate its work more effectively, and to make the most effective use of its limited resources.⁵⁰⁵
The CCC advised:

The 'trend' towards media releases and press conferences is in addition to, not derogation from, the CCC's public reporting. To the extent that this criticism refers to particular matters, those are addressed in the CCC's substantive submission. But it must be acknowledged that, in some circumstances, informing the public of the CCC's activities may be better served by a press release or media conference.⁵⁰⁶

The CCC stated that lengthy reports, such as those on Operation Belcarra, Operate Windage and Taskforce Flaxton, require a substantial investment of resources.⁵⁰⁷

The CCC advised that it has issued detailed media releases in the past regarding assessments as the occasion and the public interest demanded, including assessments of allegations of official misconduct by Hon Campbell Newman, while he was Lord Mayor of Brisbane, the conduct of dam engineers following the 2011 floods, complaints about Gold Coast police and Hon Mark Bailey.⁵⁰⁸

Committee comment

The committee acknowledges the decision of the CCC to report on its determinations, is a matter for the CCC.

The committee considers, however, that the absence of a detailed report on matters of significant public interest can affect public confidence in the CCC, as evidence and conclusions are not fully disclosed publicly, and can lead to confusion or misinterpretation of information as it emerges through other public forums (such as media releases and statements made at media conferences).

Matters of concern raised by the Ethics Committee and the Speaker also need to be considered where there is to be a referral of conduct to the Parliament for consideration. While it is acknowledged that this may be, to an extent, achieved through implementation of an information sharing process between the CCC and the Parliament, the issuing of fulsome public reports by the CCC may also assist matters.

6.11 Crime and Corruption Commission's development and announcement of recommendations for legislative amendments arising from its assessment of complaints

Sections 4, 5, 24 and 33 to 51 of the CC Act provide that the CCC's objectives in performing its corruption functions include raising standards of integrity and conduct in UPAs, providing advice and recommendations to UPAs and reporting on ways to prevent major crime and corruption. The CCC advise that making recommendations about legislative reform is one way it achieves these objectives.

The CCC advised that there are no formalised procedures for developing recommendations for legislative amendments arising from the consideration of a complaint. Broadly speaking, recommendations for reform arising from a matter are encompassed within the 'delivery' stage of matter management and planning.⁵⁰⁹

The CCC Operations Manual - MM03 at 4.2.3 states:

⁵⁰⁵ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 29.

⁵⁰⁶ Submission 027A, p 6.

⁵⁰⁷ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 29.

⁵⁰⁸ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 32.

⁵⁰⁹ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 25.

Where an investigation or assessment is likely to, or will, involve the making of a recommendation(s) for law reform in relation to a Cabinet process or a matter involving a constitutional convention, refer to MM01 – Matter management, planning and conduct.⁵¹⁰

MM01 requires external constitutional advice and consultation with Professor Tiernan, a commissioner with particular expertise in the area.⁵¹¹

The committee notes that the CCC's 6 September 2019 media release, outlining its determination in relation to the former Deputy Premier made a number of recommendations, including recommendations for legislative reform to create criminal offences for a failure to declare a conflict of interest or register an interest.⁵¹²

The CCC acknowledges that in the former Deputy Premier matter, recommendations were included in a media release, rather than in a lengthier report. The CCC stated 'In that particular instance, the basis for the recommendations made was thought to be sufficiently clear'.⁵¹³ The CCC stated:

The CCC had already conducted an extensive inquiry into corruption risks in local government (Operation Belcarra), which produced a comprehensive report, including detailed recommendations.

Operation Belcarra focussed on integrity in local government election campaigning, and also improvement of transparency and accountability in local government decision-making. Operation Belcarra noted a failure of many councillors to adequately deal with their conflicts of interest. The report from Operation Belcarra noted that the recommendations in relation to local government, if adopted, may give rise to a disparity between the obligations relevant to state and local government. It is suggested that the Queensland Government may consider it appropriate to also adopt these recommendations at the state government level.⁵¹⁴

The CCC stated that the proposed recommendations in the former Deputy Premier matter were consistent with the observations made in the Operation Belcarra report.

The Queensland Government accepted the CCC's recommendations and introduced amendments in the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019. The CCC submitted that it did not support the government's amendments, as they do not achieve the purpose of the CCC's recommendations.⁵¹⁵

In its submission to the Inquiry into Corrupt Conduct Complaints, the CCC stated that recommendations for legislative amendment are simply that. Parliament is the sovereign deliberative body responsible for the introduction, debate, adoption and/or rejection of proposed legislative amendment. The CCC stated 'It is never for the CCC to develop government policy – merely to identify what it sees as opportunities to improve integrity and transparency, and make recommendations accordingly'.⁵¹⁶

The CCC stated that 'The deliberative process about what recommendations should be adopted, and in what form, is the Executive arm of Government's prerogative. But that does not detract from the need for public bodies with experience and expertise in relevant areas, to seek to inform that process'.⁵¹⁷

⁵¹⁰ CCC, Operations Manual – IM03: Assessment of Matters, p 8.

⁵¹¹ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 31.

⁵¹² Submission 008 to the Inquiry into Corrupt Conduct Complaints, pp 25-26.

⁵¹³ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 25.

⁵¹⁴ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 26.

⁵¹⁵ Submission 051 to the Economics and Governance Committee's inquiry into the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019.

⁵¹⁶ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 26.

⁵¹⁷ Submission 008 to the Inquiry into Corrupt Conduct Complaints, p 26.

At the public meeting on 7 February 2020, when asked if he agreed with the Clerk of the Parliament's submission about the CCC's recommendations for legislative change in the former Deputy Premier matter, the CCC Chairperson, Mr Alan MacSporran stated:

Not at all. The submission completely misconceives our function. Firstly, a major and critically important part of the CCC's work, mandated by its own statute, is to reduce, prevent and reduce the incidents of corruption in the public sector. Part of that function necessarily from time to time will involve bringing to light, exposing, for public gaze corruption risks, if not corrupt conduct. That can on occasions like the incident case result in our making recommendations in a media release report, public statement, press conference, whatever vehicle we choose, and within our criteria to recommend, if necessary, legislative reform. We do that. We then are invited and are glad to take up the opportunity to be consulted, to make submissions about the bill that might be in response to those recommendations and, ultimately, we welcome the opportunity to give evidence at the committee stage to further answer any queries there might be. That is all quite a normal part of our functioning.

It is not up to us, firstly, to draft a particular offence to point out the elements other than a general discussion. It is not up to us to take away the parliament's role in properly assessing and analysing the recommendations and coming to its own conclusion. It is for parliament to decide whether those recommendations have substance or not and for reasons they might give in that process. We are not frustrated. We are not impotent in doing our work. I think we are doing a fine job, frankly, in the way that we should be doing it under our statute. If the parliament decides that the recommendation is variously described as overreach, too strong, in breach of conventions that have stood for a long time, well, that is parliament's prerogative. We understand that; that is part of the democratic process. Whether or not parliament gets it right is judged by the voters at the voting occasion.⁵¹⁸

In response to a question as to whether any analysis had been undertaken of the interaction of the recommendations and the register of interests, Mr Marshall Irwin, Commissioner stated:

The answer to that is 'no'. The reason for that is that, as the chairperson of the commission just indicated, we did not intend to pre-empt the parliament's consideration of these matters. As a result of that investigation, we saw the need to make that recommendation but, so far as the actual implementation of the recommendation, so far as the elements of the offence were concerned and so forth, we were leaving all those policy matters to the normal parliamentary process that Mr MacSporran has described.⁵¹⁹

DSDMIP expressed its support for the CCC's efforts to make recommendations for legislative amendments arising from assessment of complaints: '...to ensure a focus on continuous improvement and to identify and address areas where legislative amendments can prevent corruption'.⁵²⁰ The QLS submitted that:

... policy development is best achieved through the relevant government department and requires extensive consultation with relevant stakeholders. Policy relating to the integrity and powers of a body should be developed in consultation with that body, however should be driven by the Minister and Department based on cogent, independent evidence.⁵²¹

Committee comment

In relation to the former Deputy Premier matter, the committee has concerns regarding the process by which the CCC delivered its recommendations for legislative change at the conclusion of the assessment of the former Deputy Premier matter, noting the absence of a formal report on that assessment.

⁵¹⁸ Public meeting transcript, Brisbane, 7 February 2020, p 5.

⁵¹⁹ Public meeting transcript, Brisbane, 7 February 2020, p 6.

⁵²⁰ Submission 001 to the Inquiry into Corrupt Conduct Complaints, p 2.

⁵²¹ Submission 012 to the Inquiry into Corrupt Conduct Complaints, p 2.

The committee notes these recommendations were developed in the context of an assessment of a very specific set of allegations and/or circumstances concerning the former Deputy Premier, rather than in a wider context which would have seen a fulsome report developed by the CCC setting out the entire logic and rationale for the recommendations, including competing considerations and submissions from other parties, and considers that the development of a more fulsome report and recommendations would be beneficial for future recommendations.

6.12 Proceedings before the Queensland Civil and Administrative Tribunal

A person may make a complaint to QCAT about regulatory body oversight of certain occupation groups, including police officers.⁵²² The CCC can apply to QCAT to hear and decide an allegation of official misconduct against a police officer.⁵²³

The CCC recommended the government consider whether insufficient resourcing is contributing to delays in the efficient resolution of matters in QCAT.⁵²⁴

The QPU similarly raised concerns, stating:

I agree with the CCC's submission with regard to the delays in having some disciplinary matters resolved in QCAT. It would appear that the tribunal's workload across all of its areas of responsibility has grown significantly and I urge the committee to recommend an increase in resourcing for the tribunal to allow speedier decisions.⁵²⁵

The CCC noted that statistics published by QCAT indicate that the average time to finalise applications for complaints within the 'occupational regulation' category (including disciplinary proceedings against police officers), is 37 weeks.⁵²⁶ The CCC raised concerns with the timeframes for resolving those applications, stating it 'is concerned about fairness to officers as a result of delay in resolving discipline matters' and suggested the delay could 'undermine public confidence in the QPS and the overarching discipline system'.⁵²⁷

Committee comment

The committee notes resourcing concerns, but acknowledges that other factors such as commencement of proceedings before parties are fully prepared can also contribute to time delays in QCAT.

⁵²² QCAT, 'Occupational regulation', <https://www.qcat.qld.gov.au/matter-types/occupational-regulation-matters>.

⁵²³ QCAT, 'Police officers and other prescribed persons', <https://www.qcat.qld.gov.au/matter-types/occupational-regulation-matters/prescribed-persons>.

⁵²⁴ Submission 027, p 46.

⁵²⁵ Public hearing transcript, Brisbane, 26 March 2021, p 37.

⁵²⁶ Submission 027, p 45; QCAT, 'Timeframes', <https://www.qcat.qld.gov.au/applications/timeframes>.

⁵²⁷ Submission 027, p 46.

7 Civil confiscation function

The CPCA enables the confiscation of property derived directly or indirectly from illegal activity, property used in committing an offence, property of serious drug offenders, and amounts of unexplained wealth. The CPCA provides for 3 separate confiscation schemes – a civil confiscation scheme in Chapter 2, and conviction-based schemes in Chapters 2A and 3. The schemes in Chapters 2 and 2A of the CPCA are administered by the CCC.

The scheme in Chapter 2 allows for confiscation of property derived from an illegal or a serious crime related activity and does not depend on a charge or conviction. Property can be restrained where there is reasonable suspicion of someone having engaged in illegal or serious crime related activity. Property is permanently confiscated by the Supreme Court making a forfeiture order, a proceeds assessment order or an unexplained wealth order.⁵²⁸

The scheme in Chapter 2A relates to confiscation of the property of a person charged or convicted of particular serious drug offences where the court has made a serious drug offender confiscation order against them. Assets may be confiscated in these circumstances, even where the assets may have been lawfully acquired.⁵²⁹

The scheme in Chapter 3 of the CPCA, which enables the confiscation of property after a person has been charged with or convicted of a confiscation offence,⁵³⁰ is administered by the DPP.

The CCC receives referrals from the QPS and other law enforcement agencies to consider taking confiscation actions under the CPCA or may itself initiate proceeds of crime investigations and associated confiscation action.⁵³¹ The CCC's Crime Division conducts proceeds of crime investigations.⁵³²

The report of the Queensland Organised Crime Commission of Inquiry in 2015 stated the following in relation to the administration of the confiscation schemes under the CPCA:

Court proceedings under chapters 2 and 2A are conducted by officers of the ODPP, who act on instructions provided by the CCC. This situation comes about by virtue of a provision of the Act, notwithstanding that the Act provides that the chapters 2 and 2A schemes are to be administered by the CCC. Court proceedings under chapter 3 are also conducted by officers of ODPP; however, in those proceedings, the officers act on the instructions of the Confiscations Unit in the ODPP.

In submissions made to this Commission, both the former Director of Public Prosecutions, Mr AW Moynihan QC, and the CCC contend that greater efficiencies could be achieved if the CCC administered all three schemes, and if it conducted court proceedings in relation to the schemes.⁵³³

The Queensland Organised Crime Commission of Inquiry recommended that that CPCA be amended to provide for administration of the Chapter 3 scheme by the CCC.⁵³⁴

⁵²⁸ CPCA, Chapter 2; CCC, *2019-20 Annual Report*, 24 September 2020, p 10. The Criminal Proceeds Confiscation (Corresponding Laws and Serious Criminal Offences) Amendment Regulation 2020 expanded the civil confiscation scheme to a broader range of offences in providing for the confiscation of property without conviction in relation to tainted property offences.

⁵²⁹ CPCA, Chapter 2A; CCC, *2019-20 Annual Report*, 24 September 2020, p 10.

⁵³⁰ CPCA, Chapter 3.

⁵³¹ CCC, *2019-20 Annual Report*, 24 September 2020, p 30.

⁵³² Submission 027, p 98.

⁵³³ Queensland Organised Crime Commission of Inquiry, October 2015, p 552.

⁵³⁴ Queensland Organised Crime Commission of Inquiry, October 2015, p 552.

When asked during the 2016 Review about the merits of removing the responsibility for administering the Chapter 3 scheme from the DPP and providing for all 3 confiscation schemes to be administered by the CCC, the Acting Director of Public Prosecutions, Mr Michael Byrne QC, told the former PCCC:

The position of our office has been for some little time—and I had not researched the point, so I cannot be more precise—that there are difficulties created by the placement of that unit within our organisation, which is essentially a criminal prosecution agency. As far as I am aware, we have never recommended or suggested where the unit should be placed save for in response to a specific question from the commissioner from the Queensland Organised Crime Commission of Inquiry where we were asked in relation to a CCC submission certain matters. It is accepted that if that unit were placed within the CCC there would likely be some efficiencies gained. Our position remains that the unit is better placed outside of the DPP for a number of reasons...⁵³⁵

The 2016 Review Report made the following recommendation about the administration of the confiscation schemes under the CPCA:

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

As noted in section 1.3.1 of this report, this recommendation has not yet been implemented.

Stakeholder views

The CCC submitted to the current review that it continues to support the creation of a single confiscation agency to administer the schemes under Chapters 2, 2A and 3 of the CPCA, provided it is supported by a budget re-allocation to fund the additional activity.⁵³⁶ The CCC stated:

Advantages of this proposal include:

- the CCC is the only agency with the investigative powers (contained within the *Crime and Corruption Act 2001* and the CPCA, as well as ordinary police powers) to achieve optimal results under all proceeds of crime recovery schemes
- efficiencies would be gained with the solicitor on the record being in-house at the CCC
- the Queensland confiscation regime is the only one in Australia where the agency responsible for the administration of the scheme(s) and the solicitor on the record are in different agencies.⁵³⁷

The CCC also submitted with regard to the CPCA that the definition of ‘money laundering’ in section 250 of that Act requires review.⁵³⁸ This matter is discussed in section 4.2.1 of this report.

Committee comment

The committee notes that previous recommendations that a single confiscation agency administer the schemes under the CPCA have not been progressed.

The committee supports the administration of the confiscation schemes under the CPCA by a single agency.

⁵³⁵ Public hearing transcript for the 2016 Review, Brisbane, 9 November 2015, p 16.

⁵³⁶ Submission 027, p 20.

⁵³⁷ Submission 027, p 20.

⁵³⁸ Submission 027, pp 40-41.

8 Telecommunication interception powers

The *Telecommunications (Interception and Access) Act 1979* (Cth) and the TI Act enable the QPS and the CCC to use telecommunications interception as a tool for the investigation of serious offences.⁵³⁹ The TI Act provides for the recording, reporting and inspection regime required by the Commonwealth Act, including the obligations on the QPS and CCC in regard to documentation of interception warrants, records of each interception and use of the intercepted information, reporting in relation to each warrant, and annual reporting.⁵⁴⁰ To inspect and report on the compliance with the TI Act, the PIM is the inspecting entity of the QPS and the Parliamentary Commissioner is the inspecting entity of the CCC. Applications for interception warrants in Queensland must be examined by the PIM.⁵⁴¹

As noted in section 5.9.5 of this report, both the Parliamentary Commissioner and the CCC submitted that the TI Act should be amended to require the CCC to report any breach of a warrant condition immediately to the PIM, to ensure breaches of warrant conditions are properly considered.

Further discussion regarding breaches of telecommunications interception warrants are discussed in section 5.9 of this report.

⁵³⁹ TI Act, s 5.

⁵⁴⁰ TI Act, part 3.

⁵⁴¹ TI Act, part 4.

9 Research and intelligence functions

As previously noted, the CCC has specific research and intelligence functions under the CC Act, which call for the CCC to:

- carry out the following research functions:
 - undertake research to support the proper performance of CCC functions, including (but not limited to) research into police service methods of operation; police powers and the use of police powers; law enforcement by police; and the continuous improvement of the police service
 - undertake research into the incidence and prevention of criminal activity
 - undertake research into any other matter relating to the administration of criminal justice or relating to corruption referred to the commission by the Minister
 - undertake research into any other matter relevant to any of CCC functions⁵⁴²
- carry out the following intelligence functions:
 - undertake intelligence activities, including specific intelligence operations authorised by the reference committee, to support the proper performance of CCC functions
 - hold intelligence function hearings
 - analyse the intelligence data collected to support CCC functions
 - minimise unnecessary duplication of intelligence data
 - ensure that intelligence data collected and held to support CCC functions is appropriate for the proper performance of CCC functions.⁵⁴³

As part of its intelligence function, section 54 of the CC Act also requires the CCC to:

... build up a database of intelligence information for use in support of all of its functions using for the purpose information acquired by it from any source available to it, including, for example—

- (a) its own operations; and
- (b) the police service; and
- (c) sources of the Commonwealth or any State supplying intelligence information to it.⁵⁴⁴

9.1 Stakeholder views

The CCC's stated in its submission that it 'has a range of ancillary functions which support its primary statutory objectives'⁵⁴⁵ and proposed that the 'functions which are closely tied to the core functions of the CCC should be subsumed within those core functions'.⁵⁴⁶ The CCC considered that this would 'provide greater clarity and control over how these activities are undertaken, and ensure that they are closely aligned with the strategic priorities of the core functional areas'.⁵⁴⁷

In particular, the CCC suggested that 'consideration be given to amending the references to research function and intelligence function in sections 52 and 53 of the CC Act by making reference to 'activities'

⁵⁴² CC Act, s 52.

⁵⁴³ CC Act, s 53.

⁵⁴⁴ CC Act, s 54.

⁵⁴⁵ Submission 027, p 46.

⁵⁴⁶ Submission 027, p 46.

⁵⁴⁷ Submission 027, pp 46-47.

or 'auxiliary functions'.⁵⁴⁸ The CCC suggested that 'moving the prevention, research and intelligence functions within the ambit of the crime and corruption functions would provide clarity as to the use of these powers in aid of these activities to support those core functions',⁵⁴⁹ contending that 'changing the way in which these activities are described, and subsuming them as activities or ancillary functions which support the primary functions of the CCC, better reflects the purpose of those activities'.⁵⁵⁰

In regard to the CCC's submission that the CC Act be amended to refer to the research and intelligence functions as 'activities' or auxiliary functions', the QLS advised the committee:

QLS considers that the research function of the CCC is an incredibly important one and this role supports our submission that the Commission's focus should be on systemic crime and corruption, rather than low-level disciplinary matters which are appropriately handled by departments and agencies.

However, we also note our other concerns about the extension of some of the CCC's powers to other areas. Careful consideration should be given to any broadening of the scope of where these powers can be used. For example, it may be inappropriate and unreasonable to compel information about certain matters or individuals for research purposes, particularly if this information then leads to investigations.⁵⁵¹

The QPU submitted that the CCC is not best placed to impartially investigate the methods of operation of the QPS or police powers, as the CCC's corruption investigative function 'has potential to sway such research and undermines its independence'.⁵⁵² The QPU suggested a government research centre be established at an academic institution to conduct research on behalf of the government on a wide range of policy issues.⁵⁵³

Committee comment

The committee acknowledges the CCC's submission that the intelligence function and the research function of the CCC contribute to the performance of other functions, however the committee considers that these functions, and the research function in particular, serve a broader purpose.

On this point, the committee notes the submission by the Clerk of the Parliament in regard to the focus of the CCC over the years and whether that focus has altered. The Clerk noted that 'major crime and confiscation of assets takes precedence of order to public sector corruption and police misconduct' in the CCC's current strategic plan and that 'importantly, the strategy indicates that the CCC will only involve itself in serious or systemic corruption and misconduct'.⁵⁵⁴ The Clerk further stated:

From a long time observer's point of view, it is my perception that the CCC's focus since its establishment has drifted from an independent agency to fight organised crime and corruption to restore and maintain confidence in public institutions, to an agency increasingly focussed on major and serious crime. Whether this trend has been driven by demand, internal focus or legislative change requires further inquiry and the PCCC is probably better placed to make that assessment.⁵⁵⁵

The concerns raised by the QPU and QLS regarding the focus of the CCC, suggest limited support for an extension of the CCC's intelligence and research functions and associated powers.

⁵⁴⁸ Submission 027, p 48.

⁵⁴⁹ Submission 027, p 47.

⁵⁵⁰ Submission 027, p 47.

⁵⁵¹ QLS, correspondence, 6 April 2021, p 6.

⁵⁵² Submission 025, p 4.

⁵⁵³ Submission 025, p 4.

⁵⁵⁴ Submission 036, pp 4-5.

⁵⁵⁵ Submission 036, p 6.

The committee also notes that the Fitzgerald Report recommended the establishment of separate divisions within the then CJC for 'Research and Co-ordination' and 'Intelligence'.⁵⁵⁶ The Fitzgerald Report considered it necessary for 'continual review of the suitability of criminal law, the exercise of investigative powers, and the effective use of resources' and research 'into the changing nature and incidence of crime, the roles and methods of various agencies and how their efforts are best co-ordinated'.⁵⁵⁷ An Intelligence Division within the CJC was recommended to 'provide an effective criminal intelligence service as a hub of an integrated approach to major crime, especially organized crime, and criminal activity transcending the normal boundaries associated with local policing'.⁵⁵⁸

The committee considers that the purposes of the CC Act, to combat and reduce major crime and corruption and continuously improve the integrity of the public sector, rely on the CCC's performance of the intelligence and research functions and that maintaining focus on these important aspects of the role is necessary. The committee therefore does not support the CCC's proposal to subsume these functions within its core functions.

⁵⁵⁶ Fitzgerald Report, pp 316-317.

⁵⁵⁷ Fitzgerald Report, p 316.

⁵⁵⁸ Fitzgerald Report, p 317.

10 Witness protection function

The CCC administers the Witness Protection Program in Queensland under the *Witness Protection Act 2000*. The CCC undertakes activities related to personal protection, court security, video evidence management, secure relocation, management of welfare needs and identity changes for witnesses and others who have assisted a law enforcement agency and have consequently placed themselves and their families at risk.⁵⁵⁹

Applications for protection generally come to the CCC on behalf of a witness from a law enforcement agency that can verify the risk. In other jurisdictions in Australia, witness protection programs are managed by state and territory police forces.⁵⁶⁰

10.1 Stakeholder views

The CCC reported in its submission to the Review, that it 'has maintained a 100 percent success rate in keeping and maintaining the safety of witnesses of more than 1800 protected persons since its inception'.⁵⁶¹ The CCC notes that under its witness protection function, it provides full protection, interim protection and short term protection for court security; and 'has committed to providing interim protection within 48 hours to any eligible applicant within Australia'.⁵⁶²

The QPU submitted that the witness protection function should return to the QPS as there is 'no reason' which justifies the CCC performing the witness protection function 'where appropriate safeguards and confidentiality provisions can be imposed regardless of which agency is responsible for witness protection'.⁵⁶³ The QPU noted that the witness protection unit 'is currently staffed by police officers on secondment to the CCC'.⁵⁶⁴

In regard to the QPU's suggestion, Deputy Commissioner Smith advised the committee that the QPS was very supportive of the current witness protection program arrangements, noting the benefits of multidisciplinary teams in this area.⁵⁶⁵

Committee comment

The committee notes the CCC's important role in providing witness protection services, and commends the CCC for its 100% success rate.

⁵⁵⁹ CCC, 'Witness protection', <https://www.ccc.qld.gov.au/about-us/witness-protection>.

⁵⁶⁰ CCC, 'Witness protection', <https://www.ccc.qld.gov.au/about-us/witness-protection>.

⁵⁶¹ Submission 027, p 109.

⁵⁶² Submission 027, p 109.

⁵⁶³ Submission 025, p 4.

⁵⁶⁴ Submission 025, p 4.

⁵⁶⁵ Public hearing transcript, Brisbane, 26 March 2021, p 13.

11 Crime and Corruption Commission's broader role in the criminal justice system

The QPS is a key partner agency to the CCC. In accordance with section 255 of the CC Act, a Memorandum of Understanding exists between the QPS and the CCC for the secondment of police officers to the CCC. According to the QPS, there are currently 85 police officers seconded to the CCC who fill roles such as 'investigators, physical surveillance operatives, technical surveillance operatives, forensic computing practitioners, intelligence officers, human source practitioners and witness protection officers'.⁵⁶⁶

In relation to the CCC's crime functions, the QPS has stated that 'both the QPS and the CCC play a crucial role in the prevention, disruption, response and investigation of criminal behaviour and keeping the Queensland community safe' with the QPS supporting 'the function of the CCC to combat and reduce the incidents of major crime'.⁵⁶⁷

The Commissioner of Police is a member of the Crime Reference Committee,⁵⁶⁸ and therefore has an active role in the discussion of referrals to the CCC for major crime investigations. The involvement of the Commissioner of Police 'ensures that QPS and CCC resources target the highest risk criminal networks and individuals whose criminal conduct is a risk to the safety and wellbeing of the Queensland community'.⁵⁶⁹ The QPS describes its relationship with the CCC as a 'collaborative and cooperative working relationship'.⁵⁷⁰

Both agencies can initiate and lead investigations utilising the CCC's capabilities and according to the QPS, they regularly undertake significant joint investigations. The QPS has stated its belief that the CCC 'has been extremely astute in its unique identification of strategic areas of focus', and that this 'capability enhances the coordinated fight against major and organised crime'.⁵⁷¹ The QPS provided an example of this shift, that being 'the deliberate intention to defeat specific systems, business models and expertise that exists to build and support organised crime syndicates'.⁵⁷²

The QPS advised it has undertaken significant joint multidisciplinary task forces with the CCC during the review period to investigate:

- serious cold-call investment fraud
- criminal paedophilia throughout Queensland and internationally
- high-threat drug trafficking networks
- the disruption of outlaw motorcycle gangs.⁵⁷³

The QPS also noted an internal review of the CCC priorities has streamlined and reduced the duplication of investigative efforts and allowed the CCC to focus on areas of unique support. The QPS stated this 'assists in increasing capability and the solvability of serious crime'.⁵⁷⁴

⁵⁶⁶ Public hearing transcript, Brisbane, 26 March 2021, p 9.

⁵⁶⁷ Public hearing transcript, Brisbane, 26 March 2021, p 9.

⁵⁶⁸ The CRC oversees the general conduct of the CCC's functions in relation to major crime.

⁵⁶⁹ Public hearing transcript, Brisbane, 26 March 2021, p 9.

⁵⁷⁰ Public hearing transcript, Brisbane, 26 March 2021, p 9.

⁵⁷¹ Public hearing transcript, Brisbane, 26 March 2021, p 9.

⁵⁷² Public hearing transcript, Brisbane, 26 March 2021, p 9.

⁵⁷³ Public hearing transcript, Brisbane, 26 March 2021, p 9.

⁵⁷⁴ Public hearing transcript, Brisbane, 26 March 2021, p 9.

Over the review period (from 2016-17 to 2019-20), the QPS referred to the CCC:

- 118 major crime investigations
- 8 intelligence operations
- 357 proceeds of crime matters.⁵⁷⁵

In turn, the CCC supports the functions of the QPS in the investigation and resolution of cases through the use of the CCC's coercive hearing powers. The QPS stated that the use of coercive hearings 'can be invaluable at early phases of the investigative process when time is critical or at the latter stages of an investigation when existing police lines of inquiry have stalled, such as with cold case murder investigations'.⁵⁷⁶

The QPS specifically noted the assistance the CCC provides QPS investigations such as those into 'violent crimes committed against vulnerable victims, including children aged under 16, elderly people aged over 70 and those in a position of particular vulnerability because of a physical disability or mental impairment'.⁵⁷⁷

11.1 Foreign influence

During the Review, questions were raised about the capacity of the CCC to respond to corrupt conduct of a foreign actor.

The submission from Mr Mark Clark raised concerns about the activity of agents of foreign countries in Australia and queried the CCC's ability to respond to threats of corruption from foreign agents.⁵⁷⁸

Research & Policy House similarly raised concerns that the CCC may not be well enough equipped in terms of finances and resources, to deal with international corruption and crime within Queensland, and questioned the capacity of the CCC to deal with 'corruption and crime strategically focussed and initiated by a foreign actor'.⁵⁷⁹

At its public meeting on 26 February 2021, the committee asked the CCC if it considers it has adequate powers to deal with foreign actors, whether they are states or organised crime overseas; and about the level of cooperation and information sharing between federal and state authorities. The CCC acknowledged that 'foreign actors are outside our jurisdiction and that is an area for the Commonwealth authorities'. The CCC did note, however, that it works closely with the Commonwealth authorities including through the national serious and organised crime forums and arrangements.⁵⁸⁰

⁵⁷⁵ Public hearing transcript, Brisbane, 26 March 2021, p 9.

⁵⁷⁶ Public hearing transcript, Brisbane, 26 March 2021, p 9.

⁵⁷⁷ Public hearing transcript, Brisbane, 26 March 2021, p 9.

⁵⁷⁸ Submission 002.

⁵⁷⁹ Submission 017, pp 4-5.

⁵⁸⁰ Public meeting transcript, Brisbane, 26 February 2021, p 17.

Committee comment

The committee recommends there be an ongoing dialogue between the CCC and relevant Queensland and Commonwealth authorities to ensure all possible forms of foreign influence or interference are adequately monitored by investigatory bodies.

Recommendation 26

The committee recommends there be an ongoing dialogue between the Crime and Corruption Commission and relevant Queensland and Commonwealth authorities to ensure all possible forms of foreign influence or interference are subject to scrutiny and investigation by relevant agencies.

12 Oversight of the police service, including the management of police discipline and misconduct matters

The CCC is Queensland's police integrity oversight body. It deals with complaints against police, is advised of and may attend serious police-related incidents such as shootings or deaths in custody, and is a key partner in the police discipline system.

12.1 Complaints against police officers

The CCC deals with the most serious complaints against police, which may include assault/excessive use of force, abuse of the trust placed in them, or failure to perform their duty to the standard expected of them. Depending on the type of behaviour exhibited by the police officer, it may be considered corrupt conduct or police misconduct.⁵⁸¹

According to the QPS, the CCC has taken an active role in assisting the QPS response to allegations of excessive use of force by police officers. The QPS noted that in the review period 2016-17 to 2019-20, the number of allegations made to the CCC relating to the excessive use of force by police officers has 'reduced considerably'.⁵⁸²

The QPS and CCC have also undertaken joint investigations into allegations concerning the misuse of confidential information, which the QPS has advised 'enabled not only the investigation of allegations but also service-wide prevention strategies to support the continuous improvement of QPS policies and procedures'.⁵⁸³

12.2 Oversight of serious police-related incidents

The CCC also has oversight of serious police-related incidents such as a shooting or a death in custody, including having oversight of the subsequent police investigation. Under an MOU between the CCC, the Coroner and the QPS, the QPS is required to inform and brief the CCC about such an incident as soon as practicable. The CCC may decide to attend an incident to ascertain if there is any concern about the circumstances which led to the death.⁵⁸⁴

If there is a concern that the death or incident may have involved corrupt conduct or police misconduct, the CCC and the State Coroner can determine if the CCC should assume control of the investigation.⁵⁸⁵ Alternatively, the CCC may continue to closely monitor the police investigation.⁵⁸⁶

According to the QPS, 'In the period 2016-17 to 2019-20, there have been 55 police related deaths and 155 significant events reported to the CCC during the review period'.⁵⁸⁷

12.3 Police discipline system

The CCC is also a key partner in the police discipline system. On 16 October 2017, the Chairperson of the CCC announced that a revised police discipline system had been negotiated with bipartisan support and the support of the CCC, QPS, QPCOUE and QPU. The revision to the police discipline system was negotiated as a result of numerous reviews by the QPS and the CCC (including its previous iterations as the CMC, and the CJC) and roundtable discussions to address areas of general stakeholder

⁵⁸¹ CCC, 'Police oversight', <https://www.ccc.qld.gov.au/corruption/police-oversight>.

⁵⁸² Public hearing transcript, Brisbane, 26 March 2021, p 10.

⁵⁸³ Public hearing transcript, Brisbane, 26 March 2021, pp 10-11.

⁵⁸⁴ CCC, 'Oversight of serious police-related incidents', <https://www.ccc.qld.gov.au/corruption/police-oversight/oversight-serious-police-related-incidents>.

⁵⁸⁵ Public hearing transcript, Brisbane, 26 March 2021, pp 10-11.

⁵⁸⁶ CCC, 'Oversight of serious police-related incidents', <https://www.ccc.qld.gov.au/corruption/police-oversight/oversight-serious-police-related-incidents>.

⁵⁸⁷ Public hearing transcript, Brisbane, 26 March 2021, pp 10-11.

dissatisfaction. The Police Service general stakeholder dissatisfaction. The Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019 was then introduced and passed in 2019. This Bill contained amendments designed to:

- ensure the public's confidence in the QPS is maintained
- provide efficiencies in the investigation of complaints and hearing of allegations
- educate officers and improve their performance
- suitably discipline officers, if required.⁵⁸⁸

Amendments were designed to improve key facets of the police discipline system by:

- reducing delays in finalising discipline investigations
- modernising the discipline sanctions that can be imposed upon a subject officer
- formalising the role and range of management strategies available as part of the discipline process, and
- addressing review provisions that apply to the CCC.

The QPS described the CCC's functions in relation to overseeing the police service as follows:

Turning to the CCC's functions to continuously improve the integrity of and reduce the incidents of corruption in the public sector, the CCC provides an oversight role over the QPS regarding allegations of misconduct or corruption of QPS members. While the CCC has primary responsibility for dealing with corrupt conduct, the Crime and Corruption Act provides that the Police Commissioner has primary responsibility for dealing with complaints about police misconduct. This is subject to the monitoring role of the CCC whereby the CCC can monitor the progress and outcome of investigations, issue guidelines, review and audit the handling of complaints, and require the QPS to report to the CCC about an investigation.

The CCC can also assume responsibility for and complete investigations into police misconduct.⁵⁸⁹

The new process aims to ensure that disciplinary investigations will be shorter, more consistent and more targeted.⁵⁹⁰ A key focus of the new system is to 'improve performance by providing appropriate training and guidance to members whose conduct has come into question due to an identified underlying issue'.⁵⁹¹ The CCC referred to it as 'a remedial and educative focus for disciplinary matters, with an emphasis on identifying and correcting inappropriate conduct early'.⁵⁹²

However, it is recognised that 'there will be instances of misconduct which are so serious, repeated in nature or of such public concern that a sanction/penalty provided for in the PSAA or PSA, may need to be imposed'.⁵⁹³ The sanction or penalty is 'not meant to be punitive in nature and any strategies or

⁵⁸⁸ Police Service Administration (Discipline Reform) and Other Legislation Amendment Bill 2019, explanatory notes, pp 2-3.

⁵⁸⁹ Public hearing transcript, Brisbane, 26 March 2021, p 10.

⁵⁹⁰ Submission 027, p 25.

⁵⁹¹ QPS, *Management Support Manual*, Issue 34 Public Edition, Effective 26 March 2021, Chapter 16 (Standards and Discipline), p 2.

⁵⁹² Submission 027, p 25.

⁵⁹³ QPS, *Management Support Manual*, Issue 34 Public Edition, Effective 26 March 2021, Chapter 16 (Standards and Discipline), p 3.

sanctions/penalties must be imposed with the objectives of improving performance and protecting the reputation of the Service'.⁵⁹⁴

The CCC has advised that it:

... remains confident that we will see more streamlined police disciplinary investigations, faster and more consistent outcomes being delivered, and enhanced CCC oversight of the QPS. I believe the reforms will deliver a fairer and more efficient system, which is in the best interests of everyone involved.⁵⁹⁵

Key features of the new system include internal governance processes, such as the the Joint Assessment of Complaints and Moderation Committee (JAMC) and the Investigative Consultation Process (ICP), together with legislative reforms, including:

- an Abbreviated Discipline Process (ADP)
- an expansion in the scope of 'reviewable decisions' that may be appealed in QCAT.⁵⁹⁶

12.3.1 Internal governance processes

For serious complaints, the JAMC reviews how the complaints are triaged and monitored, and aims to improve the timeliness and consistency in approach when the QPS investigates complaints against its own officers.⁵⁹⁷ The JAMC includes representatives from the CCC and the QPS Ethical Standards Command (ESC). This process gives both the CCC and the QPS an assurance that complaints are being appropriately assessed and clearly establishes the responsibilities of each agency.

The ICP is the second tier of the JAMC process. Since its commencement in September 2017, the ICP has enabled the QPS and the CCC to collaborate on contemporary investigative methodologies in matters that are the subject of the CCC's statutory monitoring function.⁵⁹⁸

As part of the ICP, the progress of matters and the CCC's expectations regarding investigations and/or criminal, disciplinary and managerial processes are tabled. In addition, the QPS can raise issues that are contentious or that impact on their resources so that an effective resolution may be achieved.

The ICP does not meet on every matter. It only meets when there is a stakeholder necessity or public interest in gaining a joint commitment to processes that will meet stakeholder expectations.⁵⁹⁹

According to the CCC, the implementation of the JAMC has resulted in:

an increase in prosecutions of both sworn and unsworn officers for identified data breaches and other police conduct which involves criminal offending. The JAMC has also proved to be a useful mechanism for communicating CCC expectations to regional QPS Professional Practice Managers, increasing their awareness of disciplinary standards. The CCC has observed an increased consistency with findings and sanctions following the creation of the Office of State Discipline. The relationship with ESC and the CCC has generally proven to be a positive and collegiate one, and minor issues are often resolved between the respective lawyers and, where relevant, via the ICP.⁶⁰⁰

⁵⁹⁴ QPS, *Management Support Manual*, Issue 34 Public Edition, Effective 26 March 2021, Chapter 16 (Standards and Discipline), p 3.

⁵⁹⁵ CCC, *2019-20 Annual Report*, 24 September 2020, p 13.

⁵⁹⁶ Submission 027, p 26.

⁵⁹⁷ CCC, 'Police discipline system', <https://www.ccc.qld.gov.au/corruption/police-oversight/police-discipline-system>.

⁵⁹⁸ Public hearing transcript, Brisbane, 26 March 2021, p 10.

⁵⁹⁹ CCC, 'Police discipline system', <https://www.ccc.qld.gov.au/corruption/police-oversight/police-discipline-system>.

⁶⁰⁰ Submission 027, p 26.

12.3.2 Legislative reforms

12.3.2.1 *Abbreviated discipline process*

The ADP introduced by the *Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019* aims to enable ‘the quicker resolution of matters where sufficient evidence exists at the outset circumventing the need for a full and lengthy investigation’.⁶⁰¹ According to the QPS, the ADP ‘seeks to finalise disciplinary proceedings in a more simplified and timely manner where there is little doubt that the conduct occurred and the subject officer readily admits the conduct’.⁶⁰²

When a complaint is received by the QPS commissioner (regardless of who first received the complaint), the commissioner must consider whether to impose a professional development strategy on the subject officer.⁶⁰³ If the complaint cannot be substantiated or can be resolved by professional development strategies, the subject member’s discipline record is to clearly indicate that no decision concerning substantiation was made.⁶⁰⁴

In the situation in which professional development strategies or management actions are ‘insufficient to address the alleged conduct and a sanction/penalty is required to resolve a matter to fulfil the purpose of discipline’, the commissioner must decide whether to refer the complaint to a prescribed officer, who may start a disciplinary proceeding (ADP) against the subject officer.⁶⁰⁵ If a disciplinary proceeding is required, one may be commenced with the agreement of the CCC.⁶⁰⁶ Under this process, the ESC first consults with the CCC ‘about the proposed disciplinary sanction or management action to be offered to a subject officer’.⁶⁰⁷

A disciplinary proceeding notice is then given to the subject officer stating the particulars of the alleged ground for disciplinary action, and the subject officer has a right to respond to show why disciplinary action should not be taken.⁶⁰⁸ The prescribed officer must decide whether the disciplinary charge, or another ground for disciplinary action, is proved.⁶⁰⁹ The standard of proof for disciplinary proceeding is the civil standard on the balance of probabilities.⁶¹⁰

If the prescribed officer is not reasonably satisfied the disciplinary charge is proved, or the prescribed officer is reasonably satisfied the disciplinary charge is proved but does not propose to impose a disciplinary sanction or professional development strategy on the subject officer, the prescribed

⁶⁰¹ Public hearing transcript, Brisbane, 26 March 2021, p 10.

⁶⁰² Public hearing transcript, Brisbane, 26 March 2021, p 10.

⁶⁰³ *Police Service and Administration Act 1990* (PSA Act), s 7.9; If a disciplinary complaint leads to substantiation of a criminal (or regulatory) offence as well as grounds for discipline, consideration will be given to the criminal allegations before the disciplinary matters.

⁶⁰⁴ QPS, *Management Support Manual*, Issue 34 Public Edition, Effective 26 March 2021, Chapter 16 (Standards and Discipline), p 3.

⁶⁰⁵ QPS, *Management Support Manual*, Issue 34 Public Edition, Effective 26 March 2021, Chapter 16 (Standards and Discipline) p 3; *Police Service and Administration Act 1990*, ss 7.10, 7.11. A prescribed officer may be the commissioner, deputy commissioner, an executive police officer, or a commissioned officer who holds a rank above the rank of the subject officer.

⁶⁰⁶ QPS, *Management Support Manual*, Issue 34 Public Edition, Effective 26 March 2021, Chapter 16 (Standards and Discipline), p 3.

⁶⁰⁷ CCC, ‘Police Discipline System’, <https://www.ccc.qld.gov.au/corruption/police-oversight/police-discipline-system>.

⁶⁰⁸ PSA Act, ss 7.25, 7.26.

⁶⁰⁹ PSA Act, s 7.27.

⁶¹⁰ QPS, *Management Support Manual*, Issue 34 Public Edition, Effective 26 March 2021, Chapter 16 (Standards and Discipline), p 3.

officer must give the subject officer written notice of the decision and give the CCC a QCAT information notice for the decision.⁶¹¹

Alternatively, if the prescribed officer is reasonably satisfied the disciplinary charge is proved, the prescribed officer may give the subject officer a proposed sanction notice. The subject officer may then make a written submission in response.⁶¹²

If the subject officer accepts the proposed sanction or strategy, they are taken to have admitted the alleged ground for disciplinary action stated in the abbreviated process notice. The imposition of the disciplinary sanction or professional development strategy finalises the complaint to which the proceeding relates.⁶¹³ If this indicative sanction is accepted by the subject officer and the CCC, there are no review rights for any party unless new evidence comes to light.⁶¹⁴

If a disciplinary sanction or professional development strategy has been imposed but then new evidence later emerges that, had it been considered by the prescribed officer in deciding the disciplinary sanction or professional development strategy to be imposed, would have affected the decision, the CCC, the commissioner or the subject officer may apply to QCAT for an order quashing the proceeding. If QCAT makes an order quashing the disciplinary proceeding, the proceeding is taken to have never occurred and a new disciplinary proceeding may be started against the subject officer in relation to the same matter or a substantially similar matter.⁶¹⁵

If the subject officer does not accept the proposed sanction or strategy, they must respond in writing to show why disciplinary action should not be taken. The prescribed officer must then decide whether to impose the proposed sanction or strategy, another disciplinary sanction or professional development strategy (that is no more detrimental than the proposed sanction or strategy), or not to impose a disciplinary sanction or professional development strategy on the subject officer.⁶¹⁶

The matter may then proceed to a full disciplinary hearing before the prescribed officer. If the CCC disagrees with the results of the disciplinary hearing, the result may be taken to QCAT for review.

Disciplinary sanctions include the following:

- dismissal
- suspension from duty without pay for not longer than 12 months
- probation for not longer than 12 months
- demotion, whether permanently or for a stated period
- comprehensive transfer
- local transfer
- performance of up to 100 hours of community service
- a fine of up to 50 penalty units
- a reprimand.⁶¹⁷

⁶¹¹ PSA Act, s 7.27.

⁶¹² PSA Act, s 7.28.

⁶¹³ PSA Act, s 7.23.

⁶¹⁴ QPS, public hearing transcript, Brisbane, 26 March 2021, p 10.

⁶¹⁵ PSA Act, s 7.24.

⁶¹⁶ PSA Act, ss 7.29, 7.30.

⁶¹⁷ PSA Act, s 7.34.

The QPS Commissioner has made guidelines to assist officers with implementing the disciplinary process, including the way investigations of complaints and disciplinary proceedings are to be conducted, and matters to which a prescribed officer must have regard when imposing a disciplinary sanction.⁶¹⁸

Since the implementation of the ADP, the CCC has advised there has been a significant increase in police discipline matters being referred to the CCC:

Fewer matters now move to formal discipline hearings in the first instance, as QPS and the Subject Member seek to negotiate a prompt resolution of the disciplinary matter. In most cases, the CCC either accepts the proposed sanction or offers an alternative sanction, which is then accepted. Matters that are rejected proceed to full hearing before a Prescribed Officer. Those decisions may be reviewed in QCAT.⁶¹⁹

The CCC anticipates that this will 'significantly reduce the need for the review of outcomes by the CCC, and will ensure uniformity of sanctions offered under an ADP'.⁶²⁰

The QPS advised that in the review period 2016-17 through to 2019-20, 'the QPS referred 2,485 misconduct complaints to the CCC and, of those, 305 complaint matters actually had QPS oversight'.⁶²¹

12.3.2.2 Reviewable decisions and sanctions

Other legislative reforms addressed a number of recommendations contained in the 2016 Review Report, namely recommendations 15, 17 and 18.

For recommendation 15, the committee recommended that:

... the definition of 'reviewable decision' in section 219BA of the *Crime and Corruption Act 2001* be amended to specify that the Commission may apply to QCAT for the review of a decision by the QPS not to initiate disciplinary proceedings against an officer for police misconduct.⁶²²

The QPS advised that this recommendation was addressed by way of:

... a new review entitlement allowing the CCC to review a QPS decision not to institute misconduct proceedings. This provision provides the CCC with the ability to review a sanction imposed, review a decision that allegations are not substantiated or review a QPS decision not to institute any disciplinary proceedings.⁶²³

The 2016 Review Report recommendations 17 and 18 related to the use of suspended sanctions. Recommendation 17 proposed 'that the government give consideration to a comprehensive review of the use of suspended sanctions within the police discipline system – in particular, whether the use of suspended sanctions is appropriate where the sanction is dismissal'.⁶²⁴

Recommendation 18 proposed 'that the government consider amending section 12(2) of the Police Service (Discipline) Regulations 1990 to ensure that a suspended sanction remains on the subject officer's record'.⁶²⁵

⁶¹⁸ PSA Act, s 7.44.

⁶¹⁹ Submission 027, pp 25-26.

⁶²⁰ CCC website, 'Police Discipline System', <https://www.ccc.qld.gov.au/corruption/police-oversight/police-discipline-system>.

⁶²¹ Public hearing transcript, Brisbane, 26 March 2021, p 10.

⁶²² 2016 Review Report, p 76.

⁶²³ Public hearing transcript, Brisbane, 26 March 2021, p 10.

⁶²⁴ 2016 Review Report, p 79.

⁶²⁵ 2016 Review Report, p 79.

The QPS advised the following regarding the implementation of the two recommendations:

The act implements those recommendations as dismissal and disciplinary probation cannot be suspended. The suspension of any sanction will remain on an officer's discipline history regardless of whether or not they complied with the terms of the suspension. Under the new police discipline model, the role of the CCC as the oversight body was not changed and in some respects it has been enhanced as it brings the CCC into the decision-making process at an earlier stage.⁶²⁶

12.4 Stakeholder views

Both the CCC and QPU expressed support for the reforms made to the police disciplinary system. The CCC referred to the reforms as a 'substantial achievement' that represents a 'significant body of work between the CCC, the QPS and police union representatives'.⁶²⁷

QPU President Mr Ian Leavers APM referred to the reformed system as a great improvement, telling the committee:

... I often laugh when I consider what some of my predecessors would think when I say that the QPU enjoys a close relationship with the CCC. That was evident in the recent review of the discipline system where the chair and I, amongst others, were able to work cooperatively and obtain an outcome which brought the police discipline system into line with modern management practices. I fully support the existence of a powerful anti-corruption body and believe Queensland is a better place for it. The Police Union will continue its trend of working with the CCC to ensure the police force is one Queenslanders can not only rely on but also be proud of.⁶²⁸

...

It has certainly worked well and was a great improvement on what we had. Although it was 2019, it is still relatively new and we are still working through the process and looking to identify any issues which are not working. On a positive note, it requires the agreement of all to be involved in that process, so I see it as a positive thing. The changes were welcomed, and we are starting to see that some matters are being dealt with in a more expedient manner compared to the past, where there were unnecessary delays which were detrimental not only to the police officer but also to their families and their work organisations. Police discipline matters used to go on for five years and now not one has gone on longer than 12 months, apart from predeceasing investigations which predated the new discipline system.⁶²⁹

The QPCOUE also considered that the new system represented an improvement on previous arrangements, citing its focus on timeliness and efforts to reduce the length of an investigation.⁶³⁰

However, the CCC raised concerns that since the reform of the discipline system 'there has been no discernible change in the number of referrals to QCAT', due to the CCC's tendency to disagree with the sanction imposed after an initial ADP is rejected by the subject officer.⁶³¹ The CCC advised the committee:

An emerging issue is that officers in many cases achieve a lower sanction when they reject an ADP and proceed to a disciplinary hearing. In such circumstances this operates as a powerful disincentive for officers to agree to an ADP, and fails to achieve the object of efficient resolution of matters. Where sanctions imposed after such a hearing are inadequate, the matters inevitably progress to reviews in QCAT.⁶³²

⁶²⁶ Public hearing transcript, Brisbane, 26 March 2021, p 10.

⁶²⁷ Public hearing transcript, Brisbane, 26 March 2021, p 19.

⁶²⁸ Public hearing transcript, Brisbane, 26 March 2021, p 37.

⁶²⁹ Public hearing transcript, Brisbane, 26 March 2021, p 37.

⁶³⁰ Public hearing transcript, Brisbane, 26 March 2021, p 16.

⁶³¹ Submission 027, p 26.

⁶³² Submission 027, p 26.

The CCC stated: 'It is hoped that as the system matures, these issues will be addressed'.⁶³³

Other teething issues identified by CCC with the new disciplinary system included:

- suggestions the QPS is performing 'selective reading' of DPP guidelines and relying heavily on one narrow aspect of the 'public interest' test under those guidelines, to the extent to that criminal proceedings may not be pursued because disciplinary proceedings are considered adequate to deal with the misconduct (the CCC submitted that the fact that a criminal prosecution is not commenced in turn is used to ameliorate the seriousness of the underlying conduct, which may result in sanctions which do not adequately reflect the true gravity of the misconduct)
- when QPS officers are criminally prosecuted, the penalty can be reduced to reflect that the officer will likely also face disciplinary proceedings; however, the leniency of the sentence can then be taken into account in disciplinary proceedings when determining the seriousness of the underlying misconduct, which can then result in sanctions which do not reflect the true gravity of the misconduct
- the use of community service periods being undertaken exclusively at Police and Community Youth Clubs establishments – the CCC raise questions about the use of these arrangements, suggesting there are many circumstances in which community service could be better served where it will have some connection to the underlying misconduct.⁶³⁴

The CCC suggested these issues will reduce in frequency and scale as the new system is 'bedded down'.⁶³⁵ However, as a result of the above, 'the number of disciplinary proceedings in QCAT has remained static as the CCC continues to review QPS decisions'.⁶³⁶

The QPCOUE also raised issue with the consistent numbers of referrals to QCAT, but from a distinctly different perspective. The QPCOUE expressed concerns about what it described as 'the continual appealing of police discipline outcomes to QCAT without sound legal reasons', which it stated significantly extends 'the stress and anxiety being felt by members of the union and their families and the cost of legal representation for members of the union'.⁶³⁷

Both the CCC and the QPU also raised issues about the length of time a disciplinary proceeding takes to resolve once it is referred to QCAT. The CCC noted that despite QCAT reporting that the average time to finalise an application relating to 'Occupational regulation' (which includes disciplinary proceedings against police officers) is 37 weeks, many QCAT matters relating to police discipline take substantially longer than 37 weeks from application to finalisation regardless of these matters being variable in their seriousness and complexity.⁶³⁸ The CCC provided the following example:

...in the matter of *Crime and Corruption Commission v Assistant Commissioner Codd & Anor*, the CCC filed proceedings on 29 May 2017. A hearing took place on 9 May 2018 and QCAT's decision was not delivered until 22 January 2019. There are many other examples of such delay.⁶³⁹

⁶³³ Submission 027, p 26.

⁶³⁴ Submission 027, pp 26-27.

⁶³⁵ Submission 027, pp 26-27.

⁶³⁶ Submission 027, pp 26-27.

⁶³⁷ Public hearing transcript, Brisbane, 26 March 2021, pp 15-16.

⁶³⁸ Submission 027, pp 45-46.

⁶³⁹ Submission 027, p 46.

The CCC raised concerns about fairness to officers as a result of delay in resolving discipline matters, as well as:

potential to undermine public confidence in the QPS and the overarching discipline system. Given that the protection of the public is the primary objective of disciplinary proceedings, delays in resolution of these matters have the potential to compromise that important public purpose.⁶⁴⁰

The QPCOUE also raised its own concerns about the procedural fairness afforded to police officers under investigation, albeit pointing to the CCC's involvement in QPS investigations as potentially having negative effects in this respect. That is, the QPCOUE submitted:

... there appears to be a lack of procedural fairness that is currently being exercised by the CCC with respect to the way they attempt to influence the decision-making within the QPS Ethical Standards Command in relation to criminal and/or discipline matters—for example, letters under the hand of the CCC chair being sent to ESC recommending certain outcomes that the CCC wants to see before the matter is even investigated. It is concerning that such a practice appears to be becoming a regular occurrence.⁶⁴¹

...

It has emerged as a policy type position that has happened since the reviews of the disciplinary process. The concern is that we think it is flawed that the CCC should not be doing that. It should not be exercising that influence over the decision-making back inside the QPS. It is a matter that has been raised by the members a number of times and we are seeing a continual increase in the number of times that is occurring.⁶⁴²

In response to the QPCOUE's comments, CCC Chairperson Mr Alan MacSporran told the committee:

I take issue with that. That is a bald statement which ignores entirely the important context around it. The whole purpose behind the Joint Assessment Moderation Committee meetings, most of which I attend and certainly the ones we are talking about here I attend deliberately, as does the assistant commissioner in charge of the Ethical Standards Command, is to escalate at the earliest possible time, for a matter that either has been reported to us and referred back or we have taken on of our own volition and given to them to investigate, to compare notes as it were about our expectations at the earliest time. We might say, 'We think this is very serious. We think you should, as you would ordinarily do anyway, investigate this as a criminal offence firstly so be careful not to interview them in a disciplinary sense which is not admissible in the criminal case and might taint the evidence. What do you think as the investigator and ESC about that proposal?' and they might say, 'Well, we don't agree because we think it is not that serious for these five reasons,' and then we talk about it.

The understanding is, and this might even be documented in the terms of reference for that meeting or those meetings, that at the end of the day it is designed to assist the ESC understand very early in the piece what we think to give them some help to expeditiously and consistently and fairly investigate every matter they get. It is always on the understanding that if they do not agree with what our expectation is they simply say that and if we cannot resolve it by beneficial mutual discussion and collaboration we simply agree to disagree and they will know that if they go ahead and produce a result that we do not agree with we might take it to QCAT, which is undesirable because it takes further time and it might result in a different outcome that is embarrassing to everyone and undermines the initiative that we have put in place to reform the entire disciplinary system. So if it is being interpreted that way I am shocked, frankly, to hear that. That would be a minority view. I can guarantee you that. It would not be the view.⁶⁴³

The QPCOUE further raised concerns about 'a perceived blurring of the lines of independence between the CCC chair and the QPS by the CCC chair sitting on the assistant commissioner and deputy commissioner selection panels recently'.⁶⁴⁴ The QPCOUE submitted in this regard that it doesn't think

⁶⁴⁰ Submission 027, p 46.

⁶⁴¹ Public hearing transcript, Brisbane, 26 March 2021, p 15.

⁶⁴² Public hearing transcript, Brisbane, 26 March 2021, p 16.

⁶⁴³ Public hearing transcript, Brisbane, 26 March 2021, p 27.

⁶⁴⁴ Public hearing transcript, Brisbane, 26 March 2021, p 15.

the CCC Chair 'sitting on those panels is an appropriate use of his resources', and 'the role of the CCC is to overview the QPS, not be involved in the appointment of influential leaders into the future'.⁶⁴⁵

Additionally, the QPCOUE raised issues regarding the CCC's civilian investigators and their application of the rules of evidence when questioning police officers. The QCPOUE considered that there is an apparent lack of necessary skill sets within the civilian corruption investigations within the CCC, stating:

When the union members are contacted by these investigators, it is becoming more readily apparent that these investigators are not aware of the rules of evidence with respect to the investigation of criminal matters and/or the legal requirements when conducting criminal interviews with union members.

...

There seems to be some blurring of the procedural issues around the rules of evidence when civilian investigators are conducting inquiries or investigations of our members. Whether it is just experience or not, I do not know. It is a matter that we have raised.⁶⁴⁶

The CCC responded to the QPCOUE's comments in this respect, with Chairperson Mr MacSporran stating:

Many of our civilian investigators are ex-police officers, so they are very much aware of the rules of evidence. There would be very few civilian investigators. I can only think of one who would not have police experience in some jurisdiction in Australia or overseas.⁶⁴⁷

Committee comment

The committee acknowledges the divergent views of the QPS and CCC about suitability of disciplinary measures, which appears to contribute to the CCC's number of QCAT appeals.

The committee notes the concerns raised by the QPCOUE about potential blurring of lines of independence between the CCC and the QPS, particularly in disciplinary matters as well as selection and appointment processes of QPS Assistant Commissioner and Deputy Commissioner roles. In this regard, the committee considers that while cooperation and collaboration is required between the CCC and QPS to implement the new disciplinary process, it would seem inappropriate for the CCC to be interfering or exerting influence over the QPS's ESC, before the ESC has made its own determinations.

The committee acknowledges that matters of public interest are always going to be a contested viewpoint, and as the new discipline regime is in effect a joint enterprise, the CCC and QPS should continue dialogue about these matters.

Further, it is acknowledged that the QPS is the primary body for police discipline, and matters such as the type of community service to be undertaken where community service is ordered, should rightly be a decision of the QPS.

⁶⁴⁵ Public hearing transcript, Brisbane, 26 March 2021, p 17.

⁶⁴⁶ Public hearing transcript, Brisbane, 26 March 2021, p 17.

⁶⁴⁷ Public hearing transcript, Brisbane, 26 March 2021, p 29.

13 Oversight arrangements

Various oversight bodies and mechanisms provide for scrutiny of the CCC's activities and its officers. This includes the committee, Parliamentary Commissioner, the PIM and the courts. Further detail about the entities that inspect and report on the CCC's activities, and the CCC's reporting obligations, are provided below. The CCC states that this detail 'illustrates the extensive oversight and scrutiny of the CCC's activities – particularly as it relates to the exercise of its powers'.⁶⁴⁸

Table 1 - Source: CCC Submission

Oversight entity	Activity
Parliamentary Committee	General responsibility for oversight of CCC (s292 CC Act)
	May take action to investigate complaint or report of improper conduct (s295 CC Act)
	May inspect any non-operational records (s293 CC Act)
Parliamentary Crime and Corruption Commissioner	Inspection of, and report on, surveillance device warrant records (s362 PPRA)
	Inspection of assumed identities records (s314 PPRA)
	Inspection of covert search records
	Inspection of Telecommunications Interception records (twice annually) (Part 4 Telecommunications Interception Act (Qld) (TI Act)
	Inspection of controlled operations records (s272 PPRA)
	Inspection of register of confidential information (s67 CC Act) – as required
	General power to audit records and operational files to ensure powers used appropriately and in compliance with law (s314 CC Act)
Public Interest Monitor	Attendance on surveillance warrant applications (s122 CC Act, s329 PPRA)
	Attendance on covert search applications (s149 CC Act, s213 PPRA)
	Attendance on TI warrant applications (Part 2 TI Act)
	Monitor compliance with, and report on covert search, and surveillance activities
Commonwealth Ombudsman	Inspection of Telecommunications Data records (once annually) (Chapter 4A TIA Act)
	Inspection of Stored Communications records (once annually)(Chapter 4A TIA Act)
	Inspection of Journalist Information Warrant records (once annually)(Chapter 4A TIA Act)
Public Interest Advocate	Appearance on Journalist Information Warrant applications (ss180T and 180 X TIA Act)
	Report on Journalist Information Warrant Applications (s180X)

⁶⁴⁸ Submission 027A, p 6.

The Clerk noted the various accountability mechanisms applying to the CCC but stated that these mechanisms 'are often focussed on individual or specific matters and are always restricted by resources'. The Clerk emphasised that 'transparency of the CCC's operations is, at the end of the day, the best form of accountability'.⁶⁴⁹

13.1 Parliamentary Crime and Corruption Committee

As previously noted, the committee is provided for under Chapter 6, Part 3 of the CC Act, which sets out the functions, powers and membership of the committee.

Previous iterations of the committee were legislated in both the CJA and Crime and Misconduct Act, as equivalent oversight bodies of the former CJC and CMC.

13.1.1 Role of the committee

The CC Act states that the committee has the following functions:

- (a) to monitor and review the performance of the commission's functions;
- (b) to report to the Legislative Assembly, commenting as it considers appropriate, on either of the following matters the committee considers should be brought to the Assembly's attention—
 - (i) matters relevant to the commission;
 - (ii) matters relevant to the performance of the commission's functions or the exercise of the commission's powers;
- (c) to examine the commission's annual report and its other reports and report to the Legislative Assembly on any matter appearing in or arising out of the reports;
- (d) to report on any matter relevant to the commission's functions that is referred to it by the Legislative Assembly;
- (e) to participate in the selection of commissioners and the chief executive officer, and the removal from office of a commissioner or the chief executive officer, as provided under this Act;
- (f) to review the activities of the commission by 30 June 2016, and by the end of each 5-year period following that day, and, for each review, to table in the Legislative Assembly a report about any further action that should be taken in relation to this Act or the functions, powers and operations of the commission;
- (g) to periodically review the structure of the commission, including the relationship between the types of commissioners and the roles, functions and powers of the commission, the chairperson and the chief executive officer, and, for each review, to table in the Legislative Assembly a report about the review, including any recommendations about changes to the Act;
- (h) to issue guidelines and give directions to the commission as provided under this Act.⁶⁵⁰

The CCC acknowledged the 'crucial oversight role played by this committee',⁶⁵¹ including oversight of the CCC's investigative activities while those investigations are being conducted.⁶⁵²

The QLS highlighted the work of the committee in its role in monitoring and reviewing the CCC, which combined with the work of the Parliamentary Commissioner is 'critical and should continue'.⁶⁵³ The QLS raised some concern, however, with the overall oversight of the CCC by the committee and

⁶⁴⁹ Submission 036, p 16.

⁶⁵⁰ CC Act, s 292.

⁶⁵¹ Public hearing transcript, Brisbane, 26 March 2021, p 19.

⁶⁵² Submission 027A, p 6.

⁶⁵³ Public hearing transcript, Brisbane, 26 March 2021, p 41.

suggested 'there needs to be a more adequate way of dealing with complaints of the oversight body in circumstances where they have such extreme powers'.⁶⁵⁴ The QLS suggested the creation of an additional independent monitor, similar to the Commonwealth Inspector-General of Intelligence and Security, should be considered. The QLS explained:

As noted in our earlier submission, the Commonwealth Inspector General can undertake a formal inquiry into the activities of an Australian intelligence agency in response to a complaint or a reference from a minister. The Inspector General also has capacity to act independently to initiate inquiries, conduct regular inspections and monitor agency activities. This type of Office could also respond to complaints. Currently, complaints are directed to the CCC's chief executive and this Committee. While this Committee is independent from the CCC, it may not always be appropriate for it to consider a complaints made against the CCC and the OIA.

Establishing this additional monitor in Queensland would contribute to public confidence in these bodies and would provide further assistance to the Committee in ensuring their activities are being carried out appropriately and in accordance with the law.⁶⁵⁵

In the public hearing for the Review, the QLS further emphasised a need for an oversight body of the CCC which 'has the ability to investigate serious complaints with regard to the use of the powers by the CCC and any serious complaints with regard to the use of those powers'. In its view, the existing oversight bodies of the CCC (primarily the committee) do 'not have substantial investigative powers',⁶⁵⁶ with the QLS suggesting that '...there could be legitimate complaints that are simply not being investigated'.⁶⁵⁷

The QLS acknowledged their recommended change to oversight may be addressed by refining the role of the Parliamentary Commissioner.⁶⁵⁸

In response to the QLS proposal for the establishment of an additional monitoring body, the CCC stated that it was 'difficult to see how this would provide any meaningful further or necessary oversight'.⁶⁵⁹

Committee comment

The committee does not consider there is need for another separate oversight body of the CCC.

The committee suggests there could be opportunity to expand the role of the Parliamentary Commissioner, including by enabling the Parliamentary Commissioner's own initiative powers to be expanded. This is further outlined in section 13.2 below.

13.1.2 Committee membership – composition

The CC Act provides for the membership of the committee, and requires that the committee consists of 7 Members of Parliament, with 4 members nominated by the Leader of the House, and 3 members nominated by the Leader of the Opposition.⁶⁶⁰ Pursuant to the CC Act, the chairperson of the committee must be the member nominated as chairperson by the Leader of the House.⁶⁶¹

⁶⁵⁴ Public hearing transcript, Brisbane, 26 March 2021, p 43.

⁶⁵⁵ Submission 033, p 2.

⁶⁵⁶ Public hearing transcript, Brisbane, 26 March 2021, p 43.

⁶⁵⁷ Public hearing transcript, Brisbane, 26 March 2021, p 43.

⁶⁵⁸ Public hearing transcript, Brisbane, 26 March 2021, p 44.

⁶⁵⁹ Public hearing transcript, Brisbane, 26 March 2021, p 19.

⁶⁶⁰ CC Act, s 300.

⁶⁶¹ CC Act, s 300(2).

The requirement that the chairperson of the committee be nominated as chairperson by the Leader of the House was previously provided for in the Crime and Misconduct Act which replaced the CJA in 2001.

The Clerk noted that the report on the Review of the Queensland Parliamentary Committee System in 2010 (Committee System Review Report) included a recommendation that 'the *Crime and Misconduct Act 2001* be amended to provide that the chair of the Parliamentary Crime and Misconduct Committee be a Member nominated by the Leader of the Opposition'.⁶⁶² In 2016, the Committee of the Legislative Assembly, in its Review of the Committee System Review Report, also endorsed the Legislative Assembly's appointment of a non-government chairperson to the Parliamentary Crime and Corruption Committee.⁶⁶³

The Clerk noted that while 'there has been a "convention" established that a non-government member be appointed Chair', the recommendation has not been implemented through legislative amendment. The Clerk submitted that 'there have been difficulties with this provision and other provisions of the Act that require bipartisan votes', and that the CC Act 'requires amendment to entrench the Chair of the PCCC as the nominee of the Leader of the Opposition'.⁶⁶⁴ The Clerk suggested such a provision could also provide an ability for required endorsement by the government and stated reasons for lack of endorsement.⁶⁶⁵

The Clerk further submitted that 'tactical substitutions to avoid bipartisan provisions also need to be addressed in the legislation'.⁶⁶⁶

Committee comment

The committee notes the practice of the appointment of a non-government Member as chairperson of the committee, and the support for such a practice provided by the CLA of the 56th Parliament, and the former Committee System Review Committee.

Recommendation 27

The committee recommends the *Crime and Corruption Act 2001* be amended to require that the chairperson of the Parliamentary Crime and Corruption Committee is a member of the Opposition, and also one of the members nominated by the Leader of the Opposition to the Parliamentary Crime and Corruption Committee.

13.1.3 Committee membership – continuity of membership

As set out in the CC Act, a member of the committee remains a member until the member resigns, dies, or the Electoral Commission of Queensland (ECQ) is notified that the member has not been re-elected.⁶⁶⁷

The Parliamentary Commissioner submitted that during her tenure there have been significant changes in the membership of the committee.⁶⁶⁸ The Parliamentary Commissioner considered that these changes meant 'a loss of corporate knowledge ... and long-term appreciation of what are certainly subtle appreciations of how the act works, how the parliamentary committee works and how

⁶⁶² Legislative Assembly of Queensland, Committee System Review Committee, *Review of the Queensland Parliamentary Committee System*, December 2010, recommendation 18, p 23.

⁶⁶³ Queensland Parliament, Committee of the Legislative Assembly, Report No. 17, *Review of the Parliamentary Committee System*, February 2016, p 31.

⁶⁶⁴ Submission 036, p 18.

⁶⁶⁵ Submission 036.

⁶⁶⁶ Submission 036, p 18.

⁶⁶⁷ CC Act, s 301.

⁶⁶⁸ Submission 029, p 1.

my role works'.⁶⁶⁹ The Parliamentary Commissioner suggested that it would be preferable to appoint not more than 4 committee members at any one time (or in a short space of time), to allow for continuity of membership and shared knowledge to enhance the committee's oversight of the CCC.⁶⁷⁰

Committee comment

The committee acknowledges the views of the Parliamentary Commissioner, and acknowledges the importance of continuity of committee membership, particularly during parliamentary terms.

The committee notes however, that any changes in committee membership, including to address situations where Members are fulfilling duties on portfolio committees as well as vital oversight roles on the Parliamentary Crime and Corruption Committee, are a matter for the Legislative Assembly.

13.1.4 Public meetings

Pursuant to section 302A of the CC Act, the committee is required to generally hold its meetings in public, but can decide to hold its meeting (or part thereof) in private.

The Clerk commented on this requirement and submitted that this provision 'has improved the transparency and accountability of both the committee and the CCC' and 'arrested the trend in the previous decade or more of the committee and CCC operating largely in secret'.⁶⁷¹

13.1.5 Section 329 notifications

Section 329 of the CC Act sets out requirements for the following members of the Commission and ELT to notify the committee and Parliamentary Commissioner about any conduct of Commission members, the CEO, or other commission officers that is suspected to involve, or may involve, corrupt conduct:

- Chairperson – notification requirements in respect of a commissioner other than the chairperson and of the CEO
- Deputy Chairperson – notification requirements in respect of the Chairperson
- CEO – notification requirements in respect of a commission officer other than a commissioner or the CEO.

During the 56th parliament, the committee completed a Review of the operation of section 329 of the CC Act (Section 329 Review). In its Section 329 Review Report, the committee acknowledged there had been an increase in section 329 notifications following legislative amendments implemented in 2014, including a number of notifications relating to what could be referred to as bureaucratic, administrative or procedural matters. The committee concluded however, that amendments were not required to section 329 of the CC Act at that stage. The committee considered it appropriate for the CCC to continue to notify the committee of such matters, stating 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.⁶⁷²

⁶⁶⁹ Public hearing transcript, Brisbane, 26 March 2021, p 1.

⁶⁷⁰ Submission 029, p 1.

⁶⁷¹ Submission 036, p 17.

⁶⁷² Queensland Parliament, PCCC, Report No. 104, 56th Parliament, *Review of the operation of Section 329 of the Crime and Corruption Act 2001*, December 2019, pp 25-26.

The committee recommended in its Section 329 Review Report, 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.⁶⁷³

The Section 329 Review Report stated that the committee would continue to monitor the operation of section 329 of the CC Act and would further consider whether the legislation should be amended as part of this Review. The committee agreed however, that changes should be made to the protocols to facilitate the efficient administration of the section notification process, while ensuring the CCC remains accountable to the committee for its actions.

The protocols for reporting suspected improper conduct of officers of the Crime and Corruption Commission were updated in September 2020, following a collaborative approach to reviewing and drafting, between the committee, Parliamentary Commissioner and CCC. The update included changes to enable the CCC to take managerial action prior to the relevant individual notifying or receiving a response from the committee and Parliamentary Commissioner, if the notifier considers that the suspected improper conduct relates only to improper conduct defined at section 329(4)(d) to (h) of the CC Act, as follows:

- (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
- (a) exercise of a power without obtaining the required authorisation, whether inadvertently or deliberately; or
- (b) 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
- (c) exercise of a power conferred on the person under this or another Act in a way that is an abuse of the power.

Committee comment

The committee notes there have been 31 new section 329 notifications received from July 2020 to March 2021, in comparison to 29 in the full 2019-20 financial year and 27 in 2018-19.

The committee maintains, however, that the current operation of section 329 provides it with an important opportunity to identify and consider systemic issues, as well as allowing the committee to effectively monitor more significant issues arising from individual matters.

Accordingly, the committee does not propose any change to section 329 of the CC Act.

13.1.6 Section 69 directions

Section 69 of the Act relates to CCC reports to be tabled in the Legislative Assembly, and states:

- (1) This section applies to the following commission reports—*
- (a) a report on a public hearing;*
 - (b) a research report or other report that the parliamentary committee directs be given to the Speaker.*

⁶⁷³ Queensland Parliament, PCCC, Report No. 104, 56th Parliament, *Review of the operation of Section 329 of the Crime and Corruption Act 2001*, December 2019, recommendation 2, p 26.

- (2) *However, this section does not apply to the commission's annual report, or a report under section 49 or 65, or a report to which section 66 applies.*⁶⁷⁴
- (3) *A commission report, signed by the chairperson, must be given to—*
 - (a) *the chairperson of the parliamentary committee; and*
 - (b) *the Speaker; and*
 - (c) *the Minister.*
- (4) *The Speaker must table the report in the Legislative Assembly on the next sitting day after the Speaker receives the report.*
- (5) *If the Speaker receives the report when the Legislative Assembly is not sitting, the Speaker must deliver the report and any accompanying document to the clerk of the Parliament.*
- (6) *The clerk must authorise the report and any accompanying document to be published.*
- (7) *A report published under subsection (6) is taken, for all purposes, to have been tabled in and published by order of the Legislative Assembly and is to be granted all the immunities and privileges of a report so tabled and published.*
- (8) *The commission, before giving a report under subsection (1), may—*
 - (a) *publish or give a copy of the report to the publisher authorised to publish the report;*
and
 - (b) *arrange for the prepublishing by the publisher of copies of the report for this section.*

Section 71A of the CC Act provides that the CCC must not make adverse comment about a person in a report to be tabled in Parliament, or published to the public, unless, before the report is prepared, the CCC gives the person an opportunity to make submissions about the proposed adverse comment. If the person makes submissions and the CCC still proposes to make the adverse comment, the CCC must ensure the person's submissions are fairly stated in the report.

The Clerk of the Parliament queried the committee's role in providing a direction pursuant to section 69 of the CC Act, and questioned the need for the committee's involvement at all, where the CCC intends to table a report in the Parliament.

The Clerk noted the original provisions of the CJA enabled the CCC to reach a determination regarding the provision of a report to the Legislative Assembly while preserving 'the duties of the CCC to act in the public interest and ensure procedural fairness to those the subject of inquiry'.⁶⁷⁵ The Clerk contrasted those provisions with the current provisions under the CC Act, in particular section 69(1) of the CC Act which provides a mechanism for the committee to direct the CCC to table a report in Parliament.⁶⁷⁶

The Clerk also raised concerns about the committee 'essentially also endorsing that there has been procedural fairness', by 'endorsing the tabling of a report', and stated:

The committee cannot do that. They have to rely on the CCC to do that. It is the CCC's report. The obligation of procedural fairness is on the CCC, and they should take responsibility for that should it be found after the tabling that it was not provided. I think the act needs to be changed back to what it was, or something similar to what it was, pre 1997.⁶⁷⁷

⁶⁷⁴ Note: sections 49, 65 and 66 of the CC Act, as referenced in section 69(2), relate to reports about complaints dealt with by the CCC, reports related to court procedures, and reports to which confidentiality of information applies respectively.

⁶⁷⁵ Submission 036, p 10.

⁶⁷⁶ Submission 036, p 13.

⁶⁷⁷ Public hearing transcript, Brisbane, 14 May 2021, p 5.

Committee comment

The committee acknowledges the views expressed by the Clerk regarding section 69 of the CC Act. However, the committee notes that there has never been an issue with the CCC being unable to obtain a direction of the committee to table a report pursuant to section 69 of the CC Act.

The committee also notes its practice, in providing a direction under section 69 of the CC Act, of explicitly stating to the CCC that the committee does not endorse or adopt the report of the CCC in any way as a report of the committee. In this way, it is clearly communicated that it remains the responsibility of the CCC to ensure that procedural fairness has been afforded to all relevant parties.

13.1.7 Five year review

Section 292 of the CC Act states that the committee is to undertake a review of the activities of the CCC every five years and, for each five-year review, 'table in the Legislative Assembly a report about any further action that should be taken in relation to this Act or the functions, powers and operations of the commission'.

Under the CC Act, a number of functions of the committee require bipartisan support (as defined in the CC Act). This requirement does not extend, however, to the five-yearly review.

13.2 Parliamentary Crime and Corruption Commissioner

The Office of the Parliamentary Crime and Corruption Commissioner is established by the CC Act. The Parliamentary Commissioner is appointed as an officer of Parliament.

13.2.1 Assistance to the Parliamentary Crime and Corruption Committee

The Parliamentary Commissioner can be appointed only with the bipartisan support of the committee,⁶⁷⁸ and can be appointed on a part-time basis for a term of not less than 2 years and not more than 5 years (the Parliamentary Commissioner must not hold office for more than 5 years in total).⁶⁷⁹

The primary role of the Parliamentary Commissioner is to assist the committee in enhancing the accountability of the CCC, including by acting as the agent of the committee. That is, the Parliamentary Commissioner assists the committee by undertaking a range of important functions on behalf of the committee, at its direction, and by reporting back to the committee. These key functions include:

- conducting audits of records, operational files and other material held by the CCC including current sensitive operations for the purpose of determining, amongst other things:
 - whether the way the CCC has exercised power is appropriate
 - whether matters under investigation are appropriate for investigation by the CCC or are more appropriately the responsibility of another law enforcement agency
 - whether registers are up to date and complete and all required documentation is on the file and correctly noted on the registers
- investigating, including by accessing operational files of the CCC to which the committee is denied access, complaints made against, or concerns expressed about, the conduct or activities of the CCC or a CCC officer
- independently investigating allegations of unauthorised disclosure of confidential information
- inspecting the register of confidential information kept by the CCC to verify the CCC's reasons for withholding certain information from the committee

⁶⁷⁸ CC Act, s 306.

⁶⁷⁹ CC Act, ss 309, 310.

- reviewing reports given by the CCC to the committee to verify their accuracy and completeness, particularly in relation to an operational matter
- reporting and making recommendations to the committee on the results of performing the above functions, and
- other functions the committee considers necessary or desirable.⁶⁸⁰

In 2014, the Parliamentary Commissioner was given further responsibilities and powers, including own motion investigation powers in relation to notifications of corrupt conduct within the CCC and own motion hearing powers.

When asked about any proposals for changes to the Parliamentary Commissioner's role, the Clerk of the Parliament suggested the Parliamentary Commissioner and the committee could 'work together a lot more'.⁶⁸¹

Committee comment

The committee notes the important role of the Parliamentary Commissioner, including to assist the committee to fulfil its functions to the greatest extent possible.

The committee considers the Parliamentary Commissioner's role could be improved by having the Office of the Parliamentary Commissioner further resourced. This would allow for more collaboration and input of the Parliamentary Commissioner's expertise.

13.2.2 Responsibilities of the Parliamentary Crime and Corruption Commissioner

The Parliamentary Commissioner is required to conduct certain audits and inspections of CCC records under the PPRA, the CC Act, and the TI Act.

The Parliamentary Commissioner must inspect the records of the CCC to decide the extent of the CCC's compliance with the legislative requirements relating to surveillance device warrants, retrieval warrants and emergency authorisations. The Parliamentary Commissioner must then make written reports to the committee at 6 monthly intervals on the results of each inspection.

The Parliamentary Commissioner must inspect the records of the CCC at least once every 12 months to find out the extent of the CCC's compliance with the legislative requirements relating to controlled operations. As soon as practicable after 30 June each year, the Parliamentary Commissioner must prepare a report of the work and the activities of the CCC under the controlled operations provisions for the preceding 12 months. The Parliamentary Commissioner must give a copy of the report to the CCC Chairperson and the Chair of the committee.

The Parliamentary Commissioner must audit the CCC's records relating to assumed identities at least once every 6 months. The Parliamentary Commissioner must give the CCC Chairperson a written report of the results of the audit.

The Parliamentary Commissioner must also conduct an annual review of the intelligence data held by the QPS and the CCC to consider:

- whether the intelligence data held by each agency is appropriate having regard to its functions
- whether there is any unnecessary duplication of intelligence data
- whether the agencies are working cooperatively in the collection, management, and use of intelligence data, or whether either agency is placing inappropriate restrictions on access to intelligence data by other agencies.

⁶⁸⁰ CC Act, s 314.

⁶⁸¹ Public hearing transcript, Brisbane, 14 May 2021, p 3.

The Parliamentary Commissioner must then prepare a written advice on the review to be given to the CCC Chairperson, the Police Commissioner and the Chair of the committee.

With the CCC declared an eligible agency under the Commonwealth telecommunications legislation on 7 July 2009, the Parliamentary Commissioner became the inspection entity of the CCC under the TI Act. This involves 6-monthly inspections of the Commission's telecommunications interception records and the preparation of an annual report to be provided to the State Attorney-General.

The Parliamentary Commissioner also has a role under the CC Act in relation to the records of the former Commission of Inquiry into the effectiveness of the CJC (the Connolly/Ryan Inquiry). This role includes having possession and control of those records and permitting access to those records only to those persons who are able to satisfy the Parliamentary Crime and Corruption Commissioner that they have a legitimate need of access.

13.2.3 Own-initiative investigations

Pursuant to legislative amendments made in 2014, from 1 July 2014 the Parliamentary Commissioner has had a function under section 314(4) of the CC Act to commence investigations, on their own initiative, into:

- complaints made against, or concerns expressed about, the conduct or activities of the CCC or a CCC officer
- allegations of possible unauthorised disclosure of information or other material that is confidential under the CC Act
- a matter notified to the Parliamentary Commissioner under section 329 of the CC Act (involving suspected improper conduct of a member of the Commission or the CEO of the CCC).⁶⁸²

However, the Parliamentary Commissioner is able to commence an investigation into such matters only if:

- the matter relates to conduct of a CCC officer that involves corrupt conduct, and
- the Parliamentary Commissioner is satisfied on reasonable grounds that the CCC has not or may not adequately deal with the matter, or
- it is in the public interest.⁶⁸³

As previously noted, section 15 of the CC Act defines corrupt conduct as conduct of a person '...that adversely affects, or could adversely affect ... the performance of functions or the exercise of powers of a unit of public administration'.⁶⁸⁴ As the CCC is not considered a UPA under the CC Act, purely internal conduct of a CCC officer cannot be corrupt conduct and cannot be investigated by the Parliamentary Commissioner under the own-initiative provisions.⁶⁸⁵

The Parliamentary Commissioner noted that this issue was recognised in the 2014 amendments to the definition of 'improper conduct' in section 329 of the Act. While at that time 'improper conduct' under section 329 did not include conduct of a CCC officer as the CCC is not a UPA, the section was amended to provide that it includes conduct of a CCC officer.

Ms Carmody, the Parliamentary Commissioner, suggested that section 314 of the CC Act be amended to include conduct that would be corrupt conduct if the CCC officer were an officer in the UPA, so as

⁶⁸² CC Act, s 314(4).

⁶⁸³ CC Act, s 314(4).

⁶⁸⁴ CC Act, s 15(1).

⁶⁸⁵ CC Act, s 20(2)(a); Submission 029, p 2.

not to restrict the Parliamentary Commissioner's own-initiative jurisdiction.⁶⁸⁶ Ms Carmody explained that in her view, it was possibly an oversight that amendments were not made to section 314 at the time amendments to 329 were made in 2014, and that her proposal to amend section 314 'is simply to tighten up the act and make sure it reflects accurately what the purpose of that investigation is'.⁶⁸⁷

Ms Carmody acknowledged there had not been any instances in which section 314(4) investigations have been restricted or slowed because of the limits of the applicable definition of corrupt conduct for that section, but that it was possible that this may occur in the future, and is something that could be prevented if changes to legislation were made.⁶⁸⁸ Ms Carmody provided an example of when section 314 may be unclear and cause concern:

If a complaint were made about a politician and a CCC officer did an investigation and then said that they did not feel it was necessary to pursue that further, I might look at it and think, 'Well, is there some political agenda there? Is that CCC officer of that political persuasion and they do not want the politician to be exposed? Is that why they have chosen not to investigate?' That might be something that would cause me to say, 'Well, I would like to look at that again and make sure that the decision was objective.' I would turn to the act and I would see that I am restricted by the fact that the commission is not a unit of public administration. I would not then be able to conduct an investigation.⁶⁸⁹

Mr Kunde, Principal Legal Officer in the Office of the Parliamentary Commissioner, noted existing provisions would still allow the Parliamentary Commissioner to investigate a matter, by having the Parliamentary Commissioner ask the committee to refer a matter to it (presuming the committee would agree). However, an amendment to section 314 would provide certainty in this regard.⁶⁹⁰

Committee comment

The committee is of the view that section 314(4) should be amended to align with similar amendments made in 2014 to section 329 of the CC Act, by including that the Parliamentary Commissioner has the function to investigate on his or her own initiative a matter which relates to the conduct of a CCC officer. This could be achieved by inserting a subsection which states that 'corrupt conduct' includes conduct of a CCC officer 'that would, if the person were an officer in a unit of public administration, be corrupt conduct'.

While the committee recognises that the Parliamentary Commissioner is still able to ask the committee to investigate a matter, it would be preferable and prudent to amend the legislation to provide the Parliamentary Commissioner with the initial discretion.

Recommendation 28

The committee recommends that section 314 of the *Crime and Corruption Act 2001* be amended, to clarify that the parliamentary commissioner has the function to investigate on his or her own initiative a matter which relates to the conduct of a Crime and Corruption Commission officer, that would, if the person were an officer in a unit of public administration, be corrupt conduct.

13.3 Public Interest Monitor

The PIM has a role under the CC Act, PPRA, and the TI Act, particularly in relation to the CCC's applications for surveillance device warrants, covert search warrants, and telecommunications interception warrants.

⁶⁸⁶ Submission 029, p 2.

⁶⁸⁷ Public hearing transcript, Brisbane, 26 March 2021, p 2.

⁶⁸⁸ Public hearing transcript, Brisbane, 26 March 2021, p 3.

⁶⁸⁹ Public hearing transcript, Brisbane, 26 March 2021, p 4.

⁶⁹⁰ Public hearing transcript, Brisbane, 26 March 2021, p 4.

As previously noted, the CC Act provides that the PIM has the following functions for surveillance warrants and covert search warrants:

- to monitor compliance by the CCC with the CC Act in relation to matters concerning applications for surveillance warrants and covert search warrants
- to appear at any hearing of an application to a Supreme Court judge or a magistrate for a surveillance warrant or covert search warrant to test the validity of the application
- to gather statistical information about the use and effectiveness of surveillance warrants and covert search warrants
- whenever the public interest monitor considers it appropriate—to give to the CCC and the committee a report on noncompliance by the CCC with the CC Act.⁶⁹¹

The PIM must prepare an annual report on the use of surveillance warrants and covert search warrants, which must be tabled by the Minister.⁶⁹²

Section 5.9.5 of this report discusses reporting of breaches of conditions of surveillance device warrants and telecommunications interception warrants to the PIM.

13.4 Role of the responsible Minister

The Minister (currently the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) is responsible for approving the CCC's budget and for ensuring the CCC operates to best practice standards.⁶⁹³

The CCC must develop, adopt and submit a budget to the Minister for approval. The CCC may also submit amendments to its budget to the Minister, for which the Minister must give approval. The budget, or any subsequent amendments, have no effect until approved by the Minister.⁶⁹⁴

To assist the Minister with the responsibility of ensuring the CCC operates to best practice standards, the CCC must report on the efficiency, effectiveness, economy and timeliness of its systems and processes, when and in the way required by the Minister. The report must be accompanied by any financial or other reports the Minister requires to assess the aforementioned report.⁶⁹⁵

The committee recommends that consideration be given to amending the budgetary process for the CCC to provide a significant amount of funding independence for the CCC (see Recommendation 7 of this report).

13.5 Interaction with other entities

13.5.1 Office of the Independent Assessor

The Independent Assessor investigates and assesses complaints about councillor conduct and, where appropriate, refers inappropriate conduct complaints to the relevant local government to deal with.⁶⁹⁶
The Independent Assessor also:

⁶⁹¹ CC Act, s 326.

⁶⁹² CC Act, s 328.

⁶⁹³ CC Act, ss 259-260.

⁶⁹⁴ CC Act, s 259.

⁶⁹⁵ CC Act, s 260.

⁶⁹⁶ Queensland Government, OIA, 'About us', <https://www.oia.qld.gov.au/about-us>; Ms Kathleen Florian, Independent Assessor, public hearing transcript, Brisbane, 26 March 2021, p 6.

- provides advice, training and information about dealing with alleged or suspected inappropriate conduct, misconduct or corrupt conduct to councillors, local government employees and the public
- prosecutes misconduct offences via the Councillor Conduct Tribunal.⁶⁹⁷

The OIA can also investigate allegations of misconduct and corrupt conduct if referred by the CCC.⁶⁹⁸

According to the Independent Assessor, Ms Kathleen Florian, the OIA has frequent engagement with the CCC in the performance of their statutory functions related to local government councillors:

The OIA and the CCC have entered into an arrangement pursuant to section 40 of the Crime and Corruption Act. It provides clarity around the types of corrupt conduct matters that the OIA immediately refers to the CCC and the matters which, while falling within the definition of corrupt conduct, the OIA can commence an investigation on. These lower level corruption matters are reported to the CCC at the end of each month, and the CCC can resume responsibility for a case at its discretion. This arrangement improves complaint handling efficiencies for both agencies and allows for matters to be dealt with as expeditiously as possible. It also strikes a sensible balance between a level of devolvement of complaint and investigation handling whilst ensuring the CCC retains active oversight.⁶⁹⁹

Ms Florian advised the committee that if a matter is referred by the OIA to the CCC, the OIA does not have any statutory monitoring or oversight role for that matter. However, Ms Florian advised that there is an ongoing exchange via regular meetings, so that if a matter is returned to the OIA, it can be returned 'seamlessly'.⁷⁰⁰

If the CCC refers a matter to the OIA, the CCC retains oversight. Ms Florian advised that there are 'various levels of oversight that can be placed on such matters, depending on the seriousness of the matter and the ability of the agency to be able to conduct those investigations'.⁷⁰¹ Ms Florian noted that the exchanges between the OIA and CCC were 'working well'.⁷⁰²

Since the OIA's inception in December 2018, the CCC has referred 258 matters to the OIA to deal with.⁷⁰³ In turn, Ms Florian noted the following about referrals from the OIA to the CCC:

Since the OIA's inception in December 2018, the OIA has immediately referred 131 matters to the CCC following an assessment that raised a reasonable suspicion of corrupt conduct. Five of these matters were referred to the CCC in circumstances where the OIA was undertaking an investigation and as a result of that investigation a reasonable suspicion of corrupt conduct was raised. Where the OIA has identified more serious allegations of corrupt conduct that have been beyond the resources of the OIA to progress, the CCC has accepted and progressed these matters. In the 2019-20 financial year, the OIA reported a further 39 complaint matters to the CCC under section 40 arrangements, while 25 such matters have been reported so far this year.⁷⁰⁴

Ms Florian also told the committee that the OIA also works collaboratively with the CCC in relation to a number of prevention matters, and that the OIA 'has benefited from a strong and collegiate relationship with the CCC where we have been able to work effectively together to make the best use of our respective resources and to undertake our respective responsibilities in the public interest'.⁷⁰⁵

⁶⁹⁷ Queensland Government, OIA, 'About us', <https://www.oia.qld.gov.au/about-us>.

⁶⁹⁸ Ms Kathleen Florian, Independent Assessor, public hearing transcript, Brisbane, 26 March 2021, p 6.

⁶⁹⁹ Public hearing transcript, Brisbane, 26 March 2021, p 6.

⁷⁰⁰ Public hearing transcript, Brisbane, 26 March 2021, p 7.

⁷⁰¹ Public hearing transcript, Brisbane, 26 March 2021, p 7.

⁷⁰² Public hearing transcript, Brisbane, 26 March 2021, p 7.

⁷⁰³ Ms Kathleen Florian, Independent Assessor, public hearing transcript, Brisbane, 26 March 2021, p 7.

⁷⁰⁴ Public hearing transcript, Brisbane, 26 March 2021, p 6.

⁷⁰⁵ Public hearing transcript, Brisbane, 26 March 2021, p 7.

The OIA made suggestions for the CCC to improve the clarity of Matters Assessed Reports, noting that the CCC is transitioning towards a different case management system which should improve the clarity of those reports.⁷⁰⁶

13.5.2 Electoral Commission of Queensland

Under section 38 of the CC Act, public officials have a duty to notify the CCC if they reasonably suspect that a complaint or information involves, or may involve, corrupt conduct. Furthermore, section 40 of the CC Act provides that the CCC may issue directions about the kinds of complaints a public official must notify, or need not notify, the CCC of, as well as how and when a public official must notify the CCC of complaints.

In relation to the Electoral Commission of Queensland (ECQ), the CCC advised that under the aforementioned sections of the CC Act, if the ECQ felt a matter they were investigating was becoming more serious, they could, and have, referred the matter to the CCC. The CCC may also intervene and assist with/take over investigations, or if the ECQ refers a matter, the CCC may refer it back the ECQ but provide oversight and monitoring.⁷⁰⁷

13.5.3 Queensland Ombudsman

The CC Act and the *Ombudsman Act 2001* (Ombudsman Act) include a number of provisions which provide for the CCC and Queensland Ombudsman to cooperate and share information in their performance of their respective roles.

Specifically, the CC Act establishes an obligation for the CCC to work cooperatively with the Ombudsman (and other UPAs) and to liaise and coordinate activities to avoid duplication (under section 59); and a specific authority (under section 60) to give information to the Ombudsman. The Ombudsman Act provides that the Ombudsman may liaise with the CCC about the exercise of their respective functions (section 15) and may disclose information to the CCC (section 91A).

Additionally, the liaison arrangements that are in place between the CCC and the Ombudsman to avoid duplication, include:

- the chairperson of the CCC and the Ombudsman being members of the Integrity Committee that is chaired by the Integrity Commissioner
- the conduct of meetings between senior officers of the CCC and the Office of the Ombudsman to discuss strategic and operational issues, including liaison about specific complaints where the need arises.⁷⁰⁸

The Queensland Ombudsman submitted that these current arrangements were considered to 'effectively facilitate the sharing of information on issues of mutual interest to the two organisations and avoid unnecessary duplication of investigative work'.⁷⁰⁹ The Queensland Ombudsman further expressed support for the CCC continuing to exercise its police oversight role, and for:

... the continuation of the stipulation in s.16 of the Ombudsman Act that the Ombudsman must not investigate administrative action taken by a member of the police service, if the action may be investigated by the CCC.⁷¹⁰

⁷⁰⁶ Ms Kathleen Florian, Independent Assessor, public hearing transcript, Brisbane, 26 March 2021, p 8.

⁷⁰⁷ Mr Alan MacSporran, CCC, public hearing transcript, Brisbane, 26 March 2021, p 28.

⁷⁰⁸ Submission 024, p 1.

⁷⁰⁹ Submission 024, p 1.

⁷¹⁰ Submission 024, p 2.

14 Prevention function – education and training

As previously noted, the CCC has a function (its 'prevention function') of helping to prevent major crime and corruption.⁷¹¹ The CC Act recognises that this function may be performed in a number of ways, which include (but are not limited to):

- providing information to, consulting with, and making recommendations to, units of public administration
- providing information relevant to its prevention function to the general community
- generally increasing the capacity of units of public administration to prevent corruption by providing advice and training to the units and, if asked, to other entities
- reporting on ways to prevent major crime and corruption.⁷¹²

14.1 Stakeholder views

A number of submissions commented on the education, guidance and support currently provided by the CCC.⁷¹³

Some agencies highlighted the benefits of the CCC's current educational materials. Queensland Health commented broadly that it continued to find value in the prevention guidance and resources made available by the CCC to public sector employees.⁷¹⁴ The OIA stated that it considered:

Publications including newsletters, reports into CCC investigations and operations provide valuable insights into corruption risks and corrupt activities, and may also serve as a deterrent. The CCC's corruption allegations data dashboard highlights activities in various sectors, including local government.⁷¹⁵

The OIA also noted the CCC's collaboration with its office and with the then DLGRMA (now the Department of State Development, Infrastructure, Local Government and Planning) to develop training resources for local government councillors on legislation governing conflicts of interest, as well as engaging directly with newly-elected and returning councillors regarding their obligations and key misconduct and corruption risks following the March 2020 council elections.

QCS commended the value of online guidance materials such as the CCC's *Prevention in focus* series (which 'draws on CCC investigations to highlight specific prevention lessons for the Queensland public sector'), and *Fraud and Corruption Best Practice Guide* (which provides a framework of key elements in developing an effective fraud and corruption control program, including various practice tips and checklists).⁷¹⁶

Other submitters expressed concern about a decrease in the educational materials produced by the CCC, or otherwise considered existing efforts could be bolstered or refocussed.⁷¹⁷

The Queensland University of Technology (QUT) submitted: '... previously, the CCC used to provide information, advice, training and support in the Prevention space. Recently there has been limited

⁷¹¹ CC Act, s 23.

⁷¹² CC Act, s 24(e)-(i).

⁷¹³ See for example, submissions 013, 015, 018, 019, 025, 026, 027.

⁷¹⁴ Submission 018, p 2.

⁷¹⁵ Submission 028, p 4.

⁷¹⁶ Submission 026, p 2.

⁷¹⁷ Submission 013, submission 015.

guidance in this area'.⁷¹⁸ Citing concerns about a lack of clarity around when a matter should be reported to the CCC, QUT stated:

More clarity with examples on when a matter should be reported to the CCC is needed, In addition to this, at times it is not clear whether the matter needs to be reported. The CCC should have a provision to allow an internal preliminary investigation to determine whether it is a reportable matter prior to any reporting. Naturally this is only possible if the organisation has internal resources including appropriate expertise.⁷¹⁹

The SBRC submitted:

The training offered to and active engagement with local government has seemed to diminish over time. Council would welcome the reinvigoration of the preventive focus by the CCC through online and face-to-face training/engagement programs.⁷²⁰

At the public hearing for the Review on 26 March 2021, the SBRC acknowledged the various alerts and tips highlighted in updates to the CCC's *in Focus* series, but suggested that 'there are so many emails that that come in, some of that stuff just gets lost'.⁷²¹ The SBRC considered that information would be more digestible with a greater focus on the use of videos with real life examples similar to those produced by existed in the early 2000s, noting: 'staff could relate to it, people could understand it and you could lug it around with you'... We do not have that sort of material that is very relatable to the average staff member now'.⁷²²

The Department of Transport and Main Roads (DTMR), in emphasising the value of regular education and information sharing initiatives, suggested a reintroduction of direct meetings between the CCC and DTMR's Ethical Standards Unit:

Some years ago, the CCC hosted meetings of Directors (Ethical Standards) or their equivalents across the sector to share agency experience in dealing with suspected corrupt conduct. These meetings focused on providing the latest CCC information to public sector agencies and provided an opportunity to ask questions and share learnings with other integrity actors. The Community of Practice for Ethical Behaviour (COPEB) meetings hosted by the Public Service Commission are a high-level opportunity to share information across the sector. While TMR sees merit in continuing with COPEB, the reintroduction of direct meetings between the CCC and TMR's Ethical Standards Unit, would afford both agencies with opportunities to discuss specific matters.⁷²³

...

TMR appreciates the CCC's recently published corruption prevention tools including prevention pointers, short videos and other useful resources designed to combat suspected corrupt conduct.⁷²⁴

⁷¹⁸ Submission 013, p 1.

⁷¹⁹ Submission 013, p 1.

⁷²⁰ Submission 015, p 1.

⁷²¹ Public hearing transcript, Brisbane, 26 March 2021, p 31.

⁷²² Public hearing transcript, Brisbane, 26 March 2021, p 31.

⁷²³ Submission 019, p 2.

⁷²⁴ Submission 019, p 1.

Committee comment

The committee notes the importance of accessible and effective education and training materials.

While acknowledging the positive response to the CCC's publication series 'Prevention in focus', it appears stakeholders would benefit from more practical guidance and training material such as suggested by the SBRC.

Recommendation 29

The committee recommends the Crime and Corruption Commission develop and deliver additional training and educational material.

15 Application of the *Human Rights Act 2019* and submissions regarding Aboriginal and Torres Strait Islander peoples

The *Human Rights Act 2019* (HRA) protects fundamental human rights drawn from international human rights law.⁷²⁵ Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The HRA commenced in January 2020.

The CCC's *2019-20 Annual Report* stated that the CCC had 'introduced procedures and processes to ensure we respect and protect human rights in compliance with the *Human Rights Act 2019*'.⁷²⁶ The *2019-20 Annual Report* also outlined a number of actions and decisions which were implemented to prepare for the HRA's commencement. This included a review of existing policies and procedures and the development of the CCC's *Human rights policy and procedure*, which 'outlines the processes for dealing with complaints about corruption that may also be a human rights complaint, and dealing with human rights complaints against the CCC or a staff member'.⁷²⁷

The Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) submitted that the CCC should ensure the principles of the HRA are embedded in all activities of the CCC; that Aboriginal and Torres Strait Islander peoples are appropriately represented in the CCC's governance structure; and that 'cultural capability/appropriateness' should be embedded in the CCC's activities involving Aboriginal and Torres Strait Islander people. DATSIP also submitted that the CCC could potentially take a greater role in investigating system racism.⁷²⁸

Committee comment

The committee notes that the CCC possesses many powers which, although expressly granted by parliament, may potentially conflict with elements of the HRA. This is of serious concern to the committee owing to the potential for the HRA, and legal implications flowing from incompatibility with the HRA, to impede the vital work undertaken by the CCC in protecting the community from major crime and corruption.

Accordingly, the committee will continue to monitor any impacts the HRA may have on the CCC's functioning and powers.

The committee recommends the Queensland Government consider amendments to the CC Act if required, to ensure that the powers granted to the CCC will not be weakened by judicial decisions.

Recommendation 30

The committee recommends that the Crime and Corruption Commission engage with the Department of Justice and Attorney-General if issues regarding application of the *Human Rights Act 2019* arise, to ensure the Crime and Corruption Commission's powers are not inadvertently undermined.

⁷²⁵ The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the HRA that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in the Act or is only partly included; HRA, s 12.

⁷²⁶ CCC, *2019-20 Annual Report*, 24 September 2020, p 20.

⁷²⁷ CCC, *2019-20 Annual Report*, 24 September 2020, p 61.

⁷²⁸ Submission 014, p 1.

Appendix A – Submitters to Review

Sub #	Submitter
001	Ken Mackenzie
002	Mark Clark
003	Number not allocated
004	Gary Bourke
005	CONFIDENTIAL
006	CONFIDENTIAL
007	Queensland Ambulance Service
008	Anonymous
009	Number not allocated
010	CONFIDENTIAL
011	Number not allocated
012	Paul Gleeson
013	Queensland University of Technology
014	Department of Aboriginal and Torres Strait Islander Partnerships
015	South Burnett Regional Council
016	CONFIDENTIAL
017	Research and Policy House
018	Queensland Health
019	Department of Transport and Main Roads
020	Queensland Rail
021	Number not allocated
022	Number not allocated
023	Dan Morgan
024	Queensland Ombudsman
025	Queensland Police Union of Employees
026	Queensland Corrective Services
027	Crime and Corruption Commission
027A	Crime and Corruption Commission - supplementary
028	Office of the Independent Assessor
029	Parliamentary Crime and Corruption Commissioner
030	CONFIDENTIAL
031	Barry Thomas
032	Paul Favell
032A	Paul Favell - supplementary
033	Queensland Law Society

- 034 Dr Colleen Lewis
- 035 Number not allocated
- 036 Clerk of the Parliament

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

Sub #	Submitter
001	Department of State Development, Manufacturing, Infrastructure and Planning
002	Department of Local Government, Racing and Multicultural Affairs
003	North West Hospital and Health Service
004	Central Queensland University
005	Professor Tim Prenzler
006	Public Service Commission
007	Queensland Family and Child Commission
008	Crime and Corruption Commission
009	Michael Hart MP, Member for Burleigh
010	Children's Health Queensland Hospital and Health Service
011	Queensland Corrective Services
012	Queensland Law Society
013	Queensland Health
014	Robert Heron

Appendix C – Witnesses at public hearings

Public hearing held on 26 March 2021

Parliamentary Crime and Corruption Commissioner

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

Office of the Independent Assessor

- Mrs Kathleen Florian, Independent Assessor

Queensland Police Service

- Deputy Commissioner Doug Smith, Strategy and Corporate Services
- Acting Assistant Commissioner Virginia Nelson, Ethical Standards Command
- Assistant Commissioner Katherine Innes, Crime and Intelligence Command
- Assistant Commissioner Cheryl Scanlon, Youth Justice Taskforce

Queensland Police Commissioned Officers' Union

- Superintendent Stephen Munro, Executive Member

Crime and Corruption Commission

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

South Burnett Regional Council

- Mr Mark Pitt, Chief Executive Officer

Mr Paul Favell

Queensland Police Union of Employees

- Mr Ian Leavers APM, President

Queensland Law Society

- Ms Elizabeth Shearer, President
- Mr Ken Mackenzie, Deputy Chair, Criminal Law Committee
- Mr Calvin Gnech, Chair, Occupational Discipline Law Committee

Public hearing held on 14 May 2021

Mr Neil Laurie, The Clerk of the Parliament

Statement of Reservation

Submissions regarding 'funding independence'

The Crime and Corruption Commission (CCC) is required, each year, to make a submission for funding to the Department of Justice and Attorney-General in the usual budgetary process. Such a process arguably creates the potential for the Executive Government to exert influence over the CCC as it ultimately controls the funding for the CCC. Various submissions were made to the committee in support of the concept of developing a funding model for the CCC that ensures its 'funding independence' from the executive arm of government. This model is being explored in other Australian jurisdictions and has been implemented in Victoria. At the public hearing, the Chairperson of the CCC submitted:

The funding model recommendation seeks to ensure that the CCC has genuine structural independence from government and is not subject to funding decisions by an entity over which the CCC is meant to exercise oversight. This is consistent with changes to the funding model of interstate integrity agencies that have either been progressed or adopted. In New South Wales you may already know that the Auditor-General has produced a report acknowledging the need to have parliament provide independent funding for the ICAC. That was also adopted by the parliamentary committee in New South Wales, which made the same recommendation. Both of those recommendations are supported by advice obtained by the ICAC from eminent Queen's Counsel Bret Walker, who pointed out that there was a fundamental conflict in having funding internally through a department of either the Premier or Attorney-General. In Victoria IBAC is in the process, through the Auditor-General, of compiling a report dealing with essentially the same issue.⁷²⁹

While acknowledging that this is a complex issue, it is very disappointing that the committee's report does not even recommend consideration of this idea that, arguably, would strengthen public confidence in the independence and impartiality of the CCC while also maintaining democratic oversight through, for example, the Parliamentary Crime and Corruption Committee. As it stands, the Government – ultimately – controls both the 'purse strings' and oversight of the CCC through the Executive and membership of this committee, respectively. Failure to address this issue of funding independence seems reflective of the Government's intention to retain that ultimate control into the future, notwithstanding any well-made arguments to the contrary.

Jon Krause
Member for Scenic Rim
Chair

Michael Crandon
Member for Coomera

Mark Robinson
Member for Oodgeroo

⁷²⁹ Public hearing transcript, Brisbane, 26 March 2021, p 20.