



**Commission of Inquiry relating to the
Crime and Corruption Commission**

REPORT

The Commission of Inquiry relating to the Crime and Corruption Commission acknowledges Traditional Owners of Country throughout Australia and recognises their continuing connection to lands, waters and communities. We pay our respect to Aboriginal and Torres Strait Islander cultures, and to Elders both past and present.

Commission of Inquiry relating to the Crime and Corruption Commission
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Commission of Inquiry relating to the Crime and Corruption Commission

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9 August 2022

The Honourable Anastacia Palaszczuk MP
Premier and Minister for the Olympics
1 William Street
BRISBANE QLD 4000

The Honourable Shannon Fentiman MP
Attorney-General and Minister for Justice,
Minister for Women and
Minister for the Prevention of Domestic and Family Violence
1 William Street
BRISBANE QLD 4000

Dear Premier and Attorney-General

In accordance with *Commissions of Inquiry Order (No.1) 2022*, we have made full and careful inquiry with respect to the adequacy and appropriateness of:

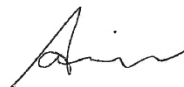
- the structure of the Crime and Corruption Commission (CCC) in relation to use of seconded police officers
- legislation, procedures, practices and processes relating to the charging and prosecution of criminal offences for serious crime and corruption in the context of CCC investigations
- section 49 of the *Crime and Corruption Act 2001*.

We present to you the Commission's report including our recommendations.

Yours sincerely



The Honourable Gerald Edward (Tony) Fitzgerald AC QC
Chairperson



The Honourable Alan Wilson QC
Commissioner

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GLOSSARY

Abbreviation	Description
1997 Amendment Act	<i>Criminal Justice Legislation Amendment Act 1997</i> (Qld)
2014 Amendment Act	<i>Crime and Misconduct and Other Legislation Amendment Act 2014</i> (Qld)
2018 Amendment Act	<i>Crime and Corruption and Other Legislation Amendment Act 2018</i> (Qld)
ACT Integrity Commission	Australian Capital Territory Integrity Commission
CC Act	<i>Crime and Corruption Act 2001</i> (Qld)
CC Act 1997	<i>Crime Commission Act 1997</i> (Qld)
CCC	Crime and Corruption Commission
CJ Act	<i>Criminal Justice Act 1989</i> (Qld) (repealed)
CJC	Criminal Justice Commission
CM Act	<i>Crime and Misconduct Act 2001</i> (Qld)
CMC	Crime and Misconduct Commission
CEO	Chief Executive Officer
CRC	Crime Reference Committee
<i>Criminal Code</i>	<i>Criminal Code Act 1899</i> (Qld)
Director's Guidelines	Guidelines issued by the Director of Public Prosecutions under section 11(1)(a)(i) of the <i>Director of Public Prosecutions Act 1984</i> (Qld) as at 30 June 2016
DPP	Director of Public Prosecutions
ELT	Executive Leadership Team
Fitzgerald Inquiry	Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct
1989 Fitzgerald Report	Report of the 'Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct', July 1989
Former councillors	Logan City councillors: Cherie Dalley, Trevina Schwarz, Russell Lutton, Phil Pidgeon, Stephen Swenson, Laurence Smith and Jennifer Breene
GM	General Manager
Justices Act	<i>Justices Act 1886</i> (Qld)
LG Act	<i>Local Government Act 2009</i> (Qld)
LGAQ	Local Government Association of Queensland

MOU	Memorandum of understanding
NSW ICAC	NSW Independent Commission Against Corruption
NT ICAC	Northern Territory's Independent Commissioner Against Corruption
ODPP	Office of the Director of Public Prosecutions
OPP	Office of Public Prosecutions
PCMC	Parliamentary Crime and Misconduct Committee
PCCC	Parliamentary Crime and Corruption Committee
PCCC Logan Council Inquiry	Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters
PCCC Logan Council Report	Parliamentary Crime and Corruption Committee Report No. 108, 57 th Parliament, <i>Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters</i> , December 2021
PCC Commissioner	Parliamentary Crime and Corruption Commissioner
PPRA	<i>Police Powers and Responsibilities Act 2000</i> (Qld)
PID Act	<i>Public Interest Disclosure Act 2010</i> (Qld)
PIM	Public Interest Monitor
QCC	Queensland Crime Commission
QIRC	Queensland Industrial Relations Commission
QPS	Queensland Police Service
SA ICAC	South Australian Independent Commission Against Corruption
SEO	Senior Executive Officer
SSO	State Solicitor's Office
UPA	Unit of public administration
Victoria IBAC	Victorian Independent Broad-based Anti-corruption Commission
WA CCC	Western Australian Corruption and Crime Commission

EXECUTIVE SUMMARY

While the form and function of the Crime and Corruption Commission (CCC) have changed over the past three decades, the organisation still has the central role in Queensland's integrity landscape envisaged in the 1989 Fitzgerald Report and remains fundamental to combating major crime and corruption in the state.

For that reason, the CCC must remain an independent, fair and impartial body trusted by the public to achieve its important statutory functions.

The Parliamentary Crime and Corruption Committee (PCCC) Logan Council Report called into question aspects of the CCC's operations and this Inquiry was set up to examine discrete aspects of the organisation and its processes, without relitigating or revisiting the events which were the subject of the PCCC Logan Council Inquiry. We were aided by numerous detailed submissions which, alongside our own enquiries, have formed the evidence base from which we have drawn conclusions and made recommendations.

This Inquiry's Terms of Reference require recommendations on three principal matters. Our recommendations on each discrete matter complement and should be read in conjunction with the other two.

The structure of the CCC in relation to its use of seconded police officers

The present use of police officers seconded from the Queensland Police Service (QPS) to work within the CCC aligns with the intent of the 1989 Fitzgerald Report but we concluded that, while it is appropriate for the secondment system to continue, several changes to the current arrangements are required within the corruption sphere.

These changes are designed to address two key risks identified by this Inquiry: the risk of institutional capture of the CCC by the QPS, and the risk of corruption investigations placing undue emphasis on a 'law enforcement' approach and not being adequately informed by the range of disciplines necessary to address the complex issues that can arise in those investigations — including alternative responses to the bringing of criminal prosecutions.

To avoid the risk of capture, the CCC should have greater flexibility to align its workforce (its staff members, and job positions) with its operational priorities (the types of investigations and the skills required). The current secondment arrangements do not provide the CCC with appropriate flexibility over the mix of job positions, skills and experience contained within the group of police officers seconded to it. The CCC should be able to adapt the membership of that group according to its operational needs and priorities. This will require the CCC to consider the skills it needs, at what time and for what purpose, and engage with the QPS to ensure the composition of the group reflects those needs.

The legislation, procedures, practices and processes of the CCC in relation to the charging and prosecution of criminal offences for serious crime and corruption in the context of CCC investigations

The risk of an excessively ‘law enforcement’ approach in corruption investigations is removed if the CCC reduces its reliance upon seconded police officers and places greater emphasis on a multidisciplinary approach to corruption investigations. Moving to a predominantly civilian leadership model and increasing the number of civilian corruption investigators will further that approach and address the risk.

Induction and training are also critical. It is not appropriate to rely only on the prior training of seconded police officers and former law enforcement officers as indicative of an ability to investigate corruption. Investment in the CCC’s own proficiency to assess, train and equip its investigators — both police and civilian — will enhance its ability to deliver its statutory corruption function.

The report also recommends the creation of a Corruption Strategy and Prevention Unit within the CCC’s Corruption Division. Among other things, the unit will provide a prevention and policy perspective across the ‘lifecycle’ of each corruption investigation, broaden the possible outcomes of an investigation and temper a law enforcement approach. Other improvements to the CCC’s internal and external control and accountability mechanisms will complement and enhance the work of that unit.

The improvements we have recommended will build on, and complement, the strategic and operational changes already implemented by the CCC since 2018. They include structural changes at various levels of the organisation, providing additional checks and balances around operational elements of corruption investigations at the investigation stage and, critically, the decision-making process to be followed before any charges are brought.

Section 49 of the *Crime and Corruption Act 2001*

A need for additional oversight of decision-making in corruption investigations led the Inquiry to recommend that, before any decision is made to bring charges arising from a corruption investigation, the advice of the Director of Public Prosecutions (DPP) must be sought.

This requirement should be imposed by amendment to the *Crime and Corruption Act 2001* (CC Act). DPP oversight will promote public confidence in the CCC and its decisions, and will help to ameliorate any unwarranted impact on those investigated by the CCC, and any loss of confidence in it on the part of elected bodies and units of public administration (UPA). It will also provide greater accountability.

Thirty-two recommendations

This Inquiry has made 32 recommendations about these matters, set out in Chapter 9 of the report.

During the Inquiry some other issues were raised which did not fall within the Terms of Reference but might merit consideration by government, and they appear in **Appendix I**.





CHAPTER 1

This Inquiry

CHAPTER 1: THIS INQUIRY

1.1 Overview

A principal recommendation of the 1989 Fitzgerald Report was the creation of a body, outside the QPS and independent of it, to oversee and undertake an array of activities focused upon crime and official misconduct — a permanent embodiment of elements of the work of the Fitzgerald Inquiry.¹ That Inquiry involved a long and deep examination of what a former Australian Chief Justice, Sir Harry Gibbs, described as: *‘the symptoms of a ... general illness of the body politic’*.² Its final report sought, as Sir Harry also remarked: *‘... not merely to reform the system of criminal justice and to combat corruption, but also to improve the standards of public administration, and to render the workings of Parliament more democratic’*.³

The present Inquiry has been undertaken in different circumstances. Many of the recommendations of the 1989 Fitzgerald Report, directed towards the very broad topics identified by Sir Harry, were pursued and enacted. In particular, a permanent anti-crime, anti-corruption body (presently, the CCC) has now been in operation for over three decades. Its form and focus have changed in that period, but it remains an integral part of what might be called Queensland’s ‘integrity’ landscape: an institution with a primary focus upon studying, detecting, and eradicating crime and corruption in the state.

We were not asked to consider questions involving the CCC’s existence, its purpose or its continuity. Rather, we were charged with examining and reporting upon quite specific aspects of its operations, identified in the 2021 PCCC’s Report 108: *Inquiry into the Crime and Corruption Commission’s Investigation of former councillors of Logan City Council; and related matters* (separately, PCCC Logan Council Inquiry and PCCC Logan Council Report). Our report is not then (as some have urged) ‘Fitzgerald 2.0’. Nor does it revisit or re-examine the events which led to the PCCC Logan Council Inquiry, its findings and recommendations.

At the same time, we are conscious of and have considered (where possible, and relevant) the implications of other concurrent investigations and inquiries that may have some bearing upon the CCC’s methods of operation — for example its extensive use of police officers seconded from the QPS, in circumstances where it may be involved in investigating police conduct. They include recent recommendations of the State Coroner,⁴ and the Queensland Government response;⁵ the report by Professor Peter Coaldrake AO titled *Let the sunshine in*;⁶ the first report of the Women’s Safety and Justice Taskforce (*Hear her voice*);⁷ and the current Commission of Inquiry, led by Her Honour Judge Deborah Richards, into the QPS responses to domestic and family violence.⁸

Our Terms of Reference direct attention to specific aspects of the CCC’s structure and operations. They also signal that, despite the passage of over 30 years since its first embodiment as the Criminal Justice Commission (CJC), the current-day CCC remains an important part of our institutions of governance; that its continuance, and improvement, are necessary and desirable; and that it should operate independently as an efficient, effective, objective, fair and impartial body trusted to combat serious crime and corruption. Our investigations and enquiries respond comprehensively to the Terms of Reference but, in light of those

overarching propositions about the importance of the institution, our recommendations are also framed to ensure public trust in the institution remains high.

1.2 Terms of Reference

By an Order in Council dated 31 January 2022 made under the *Commissions of Inquiry Act 1950* (Qld) we were appointed to make careful inquiry in a transparent and independent manner and to faithfully report and make recommendations with respect to the adequacy and appropriateness of:

- the structure of the CCC in relation to its use of seconded police officers
- the legislation, procedures, practices, and processes of the CCC relating to the charging and prosecution of criminal offences for serious crime and corruption in the context of CCC investigations
- section 49 of the CC Act.

A copy of the **Order in Council** is **Appendix A**.

The recommendations that we were required by the Order in Council to make in respect of the matters specified concern possible changes to the structure of the CCC in relation to the use of seconded police officers and to the structure, organisation, procedures, practices, and processes of the CCC in relation to the charging and prosecution of criminal offences for serious crime and corruption, including possible changes to the CC Act (including section 49) and any other material legislation.

The task of determining our recommendations requires us to consider the following questions:

- What is the structure and organisation of the CCC in relation to the charging and prosecution of criminal offences for serious crime and corruption including in relation to the use of seconded police officers? What are the advantages and disadvantages of that structure and organisation? What other options are there? What are the advantages and disadvantages of each option?
- What are the procedures, practices, and processes of the CCC in relation to the charging and prosecution of criminal offences for serious crime and corruption? What are the advantages and disadvantages of those procedures, practices and processes? What other options are there? What are the advantages and disadvantages of each option?

By the Order in Council, the objective of any recommended changes is to promote the ability of the CCC to carry out its statutory functions with respect to the charging and prosecution of criminal offences for serious crime and corruption in a way that is independent, efficient, effective, objective, fair, impartial, and meets the public interest and the highest standards of integrity and impartiality and protects and promotes human rights under the *Human Rights Act 2019* (Qld) (the HR Act).

In deciding what, if any, changes to recommend, we are required by the Order in Council to consider and have regard to:

- the findings in the PCCC Logan Council Report and other previous relevant reports of the PCCC

- the views and recommendations expressed in the 1989 Fitzgerald Report in respect of the establishment of a CJC
- the structure of other Australian state and territory integrity bodies with a particular emphasis on the use of seconded police officers, including the tenure, qualifications and training of such personnel
- the use and role of police officers seconded to the CCC and their retention of powers pursuant to sections 174 and 255 of the CC Act
- the extraordinary nature of the CCC's powers and functions under the CC Act and differences between those powers and functions and police powers in the investigation, charging and prosecution of criminal offences, including provisions of the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA)
- the consequences arising from the laying of criminal charges as a result of a CCC investigation, including the provisions under section 175K of the *Local Government Act 2009* (Qld) (LG Act) for a person to be automatically suspended as a councillor when the person is charged with a 'disqualifying offence'
- the evolution of section 49 of the CC Act, including the nature and purpose of amendments made in the *Crime and Corruption and Other Legislation Amendment Act 2018* (Qld) (2018 Amendment Act)
- current and proposed policy, procedure, and practice relating to the obtaining of independent advice by the CCC on complex prosecutions
- the approach to review by, and the obtaining of advice from, respective directors of public prosecutions in other jurisdictions of charges arising out of investigations by serious crime and corruption integrity bodies
- the CCC's interaction with the Queensland DPP, including existing information sharing and other processes that facilitate interaction
- whether there should be a requirement that the CCC obtain a recommendation from the DPP, or a senior independent legal advisor, before seconded police officers use their discretion to charge serious criminal offences and implications for agencies associated with such a requirement.

1.3 The background to, and the structure of, this report

In 2018, the CCC brought charges against some Ipswich City councillors and the Ipswich City mayor. Subsequently, the LG Act was amended to insert section 175K which provided for the automatic suspension of a councillor charged with a 'disqualifying offence'.⁹

On 2 May 2019, the Logan City Council was dissolved following a motion moved by the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs in the Parliament. This dissolution was a consequence of the charging, by a seconded police officer at the CCC, of a majority of councillors (and the mayor) with fraud, their removal from office, and a resulting inability for the Logan City Council to

be quorate. The Logan City Council could not pass a resolution or a budget. On the same date, the minister appointed an interim administrator.¹⁰

On 14 April 2021, almost two years after the charges of fraud were laid and during committal proceedings against the seven councillors and the mayor, the charges were discontinued by the DPP. The Crown prosecutor advised the court: ‘... after a thorough review of the matter the Crown has determined that there is insufficient evidence to continue with the fraud charge where all eight are charged and so therefore will be offering no evidence on that charge and ask for ... them to be discharged.’ In response, the magistrate indicated: ‘I will be careful with my language ... but from what I saw and heard in those two weeks in November I think that’s a — a proper decision.’¹¹

The Local Government Association of Queensland (LGAQ) complained about the matter and the CCC’s conduct of it to the PCCC, which is tasked with monitoring and reviewing the CCC in the performance of its functions. On 28 May 2021, the PCCC resolved to conduct a public inquiry.

On 2 December 2021, the PCCC Logan Council Report was tabled in Parliament. The PCCC reiterated the need to ensure ‘Queensland’s preeminent crime and corruption body performs in a way that can rightly maintain public confidence in what is **a crucial institution in a modern, open and transparent system of government**’.¹² (emphasis added)

The PCCC Logan Council Report made 14 findings and six recommendations. Five recommendations were directed to the Queensland Government, and one to the CCC.

Recommendation 6 states:

The Committee recommends the Queensland Government instigate a review of the Commission’s structure in regard to its investigatory and charging functions, and the role of seconded police officers at the Commission, as a Commission of Inquiry or similar, to be headed by senior counsel of sufficient standing to consider this structural basis of the Commission that has its roots in the Fitzgerald Inquiry.

On 31 January 2022, the Queensland Government tabled its response to the PCCC Logan Council Report and, in doing so, supported each of the PCCC’s recommendations. On the same day, this Inquiry was established by the Order in Council which came into effect on 7 February 2022.

How the Inquiry conducted its work

The PCCC Logan Council Inquiry and report arose out of a corruption investigation by the CCC. It is upon CCC corruption investigations and activities that this Inquiry has principally focused.

We were assisted by counsel, Gim Del Villar QC,¹³ and Angus Scott, and a secretariat overseen by Executive Director, Brigita Cunnington and Director, Carolyn McAnally. A list of all Commission staff is **Appendix B**.

An early decision was taken that obtaining information by conducting hearings, public or private, was likely to be unnecessary and, potentially, distracting and wasteful. We were not called upon to consider or revisit any of the events and circumstances leading to the PCCC Logan Council Inquiry or report, or to investigate and report upon what went on within the CCC or elsewhere during those events. Rather, our Terms of Reference directed us to focus entirely upon the way the CCC operates, with reference to three quite

specific matters. All these matters could, in our estimation, be fully and appropriately addressed by inviting written submissions and making focused written enquiries.

The decision not to conduct hearings was revisited from time to time as the Inquiry progressed in case those submissions and enquiries revealed deficits or gaps which could only be adequately addressed by calling evidence at hearings. That did not occur. The CCC, DPP and QPS provided valuable and comprehensive submissions and responded quickly and appropriately to subsequent queries and questions. Comparative bodies throughout Australia were similarly responsive and helpful.

An analysis of the submissions received, and the exercise by which we have identified and clarified the facts and conclusions underpinning our recommendations, illustrates why that course has been appropriate and sufficient.

Submissions

On 25 February 2022, a call for public submissions was made through the Commission of Inquiry's website, media releases, advertising in newspapers and social media. A total of 87 submissions were received; a list of all submitters is **Appendix C**.

Fifty submissions came from members of the public; some, unsurprisingly, contained information about personal experiences with the CCC and accounts of CCC investigations, whether from the perspective of complainants, witnesses, or persons under investigation but did not address or advance the matters identified in our Terms of Reference. Our remit does not include assessing individual complaints or reagitating or relitigating past events involving the CCC, and we were unable to either respond to these submissions or address them in this report. That said, they were not summarily ignored; they underscore the importance of the CCC's work and operations from the public perspective and provide context.

Consultation

The Inquiry also undertook targeted consultation with a broad range of institutions, agencies and individuals. Requests were sent nationwide to integrity bodies, to each of the DPPs (or equivalents) and each of Australia's police forces. The responses received were comprehensive, instructive and crucial to informing our work.

The Inquiry also invited submissions from academics employed by Queensland universities; unions, including those representing Queensland police officers and public servants; peak associations, including the LGAQ; and key legal stakeholders including those tasked with legal representation and with expertise in civil liberties and human rights. Members of Parliament from each of the political parties represented in the Queensland Parliament, together with current and former councillors at Logan and Ipswich City Councils, were expressly invited to make submissions to this Inquiry.

Critical consultations occurred with the CCC itself, the DPP, the QPS Commissioner, the Parliamentary Crime and Corruption Commissioner (PCC Commissioner), and Queensland's Human Rights Commissioner.

The Inquiry was assisted by a high response rate, detailed responses, and continuous engagement from these stakeholders in addressing additional matters as they arose for consideration. In several instances the nature of the information sought required an institutional response which addressed detailed questions of structure, processes, policy, and practice, and no doubt took considerable time and effort to

prepare. The Inquiry is indebted to these agencies and their officers for their prompt and helpful cooperation.

Issues and questions

The principal issues arising with respect to the secondment of police officers to the CCC include their recruitment and qualifications and training requirements for their work as CCC investigators; the retention of their ordinary police powers during secondment; the power and appropriateness of seconded police officers bringing charges following CCC investigations; and their supervision and oversight.

In terms of decisions to commence or continue prosecutions in the context of CCC investigations, issues and questions that arose include the relevant considerations to be applied when commencing a prosecution; the nature, and appropriateness, of interactions between the CCC and the DPP, including access to and use of compelled evidence; and whether advice should be sought by the CCC before the laying of charges — and if so, from whom.

Many of these issues have associated practical, legal, and resourcing implications for the CCC and DPP.

Other avenues of enquiry

The Inquiry undertook extensive legislative reviews within the Queensland context and, also, cross-jurisdictionally in connection with other Australian integrity bodies and crime commissions.

A detailed analysis was undertaken of all relevant publications and annual reports of Australian integrity bodies, and all relevant reports of the oversight committees scrutinising their activities. Commission staff also conducted a comprehensive review of relevant academic articles and commentary regarding integrity bodies locally and overseas.

The structure of this report

This Inquiry has its genesis in the PCCC Logan Council Inquiry and its resulting Report No. 108, published in December 2021. **Chapter 2** provides a brief outline of events that led to the PCCC Logan Council Inquiry, overviews relevant submissions made to that Inquiry and details findings and recommendations made in the PCCC Logan Council Report.

Chapter 3 considers the history and evolution of the current-day CCC and its governing legislation from the establishment of the CJC in the wake of the Fitzgerald Inquiry to the present day. The chapter outlines the role and functions of the CCC including the roles of the Chairperson and Chief Executive Officer (CEO) and describes the external oversight mechanisms that apply to the CCC, including the PCCC. The modern-day CCC is then compared with other Australian integrity bodies.

Chapter 4 discusses the CCC's internal structures and governance mechanisms and also provides insight into the organisational improvement activities which have been underway since 2018. Chapter 4 discusses the CCC's primary internal governance committee, the Executive Leadership Team (ELT), and the introduction of a new Operating Model, Operational Framework and Operations Manual to drive consistent practices and procedures. The chapter provides an overview of the current CCC structure with particular focus on the Crime Division, Corruption Division and Operations Support Division which are the divisions to which police are seconded.

Chapter 5 provides background information about CCC investigation processes and what is meant by ‘investigating’, ‘charging’ and ‘prosecuting’. Chapter 5 commences with an overview of the CCC’s investigation practices and compares these with other Australian integrity bodies. The chapter then considers police powers and mechanisms for bringing charges before the courts, including the requirement for police to apply the Director’s Guidelines. The CCC’s internal processes relating to charging are then considered. The chapter discusses the prosecution of CCC matters before finally comparing the approach to charging and prosecution of corruption matters in Queensland with other Australian jurisdictions.

Chapter 6 discusses the use of seconded police officers at the CCC including the processes and arrangements for seconding police, oversight arrangements and induction and training for them. Chapter 6 addresses the following issues:

- The history of the use of seconded police at the CCC.
- The duties of seconded police.
- The retention of powers by seconded police, and whether that is appropriate.
- The dual oversight arrangements for seconded police — they are employed by QPS but under the direction of the CCC, and, they are subject to both QPS and CCC procedures.
- The way in which police are seconded to the CCC and whether those secondment processes are appropriate.
- The induction and training provided to seconded police.
- Whether the CCC should continue to use seconded police. This section considers interstate approaches to using seconded police and whether the secondment of police to the CCC is appropriate.
- Whether the CCC should continue to use seconded police in the Operations Support Division, Crime Division and Corruption Division.
- The advantages and disadvantages of using seconded police in the Corruption Division.

Chapter 7 discusses a range of internal mechanisms to ensure trust, and instil confidence, in the CCC and considers the following issues:

- How the CCC’s multidisciplinary approach to corruption investigations can be enhanced including: bringing different perspectives and a stronger prevention focus to corruption investigations; diversifying the leadership in the Corruptions Operations Unit; and building the CCC’s internal capability to investigate corruption matters by moving to greater civilianisation in the Corruption Division and bolstering training for corruption investigators.
- How the CCC’s internal controls and accountability mechanisms can be strengthened. This section discusses enhancing governance around, and oversight of, corruption investigations; improving the quality of, and compliance with, policies and procedures; and introducing post-prosecution reviews.

Chapter 8 discusses decisions to commence and continue prosecutions arising from corruption investigations and considers the following issues:

- Section 49 of the CC Act and the CCC charging practices. This section discusses the history of section 49, the impact of the 2018 amendments and the present use of section 49. The impact of the High Court decisions of *X7*,¹⁴ *Lee No. 1*¹⁵ and *Lee No. 2*¹⁶ is also discussed, including how these cases informed the 2018 amendments to section 49.
- Decisions to charge arising from a corruption investigation including a discussion of the approaches of other Australian integrity bodies and the role of police seconded to the CCC in charging.
- External mechanisms for ensuring the soundness of charging decisions arising out of corruption investigations including referring matters to the QPS to charge, obtaining advice from external counsel or seeking the advice of the DPP before charging. This section considers the advantages, disadvantages and implementation issues associated with seeking DPP advice before charging arising from a corruption investigation.

Endnotes

¹ Fitzgerald Report, pp 308–309.

² Sir Harry Gibbs as cited in Colleen Lewis, Janet Ransley and Ross Homel, *The Fitzgerald Legacy: Reforming Public Life in Australia and Beyond* (Australian Academic Press, 2010), p 1.

³ Sir Harry Gibbs as cited in Colleen Lewis, Janet Ransley and Ross Homel, *The Fitzgerald Legacy: Reforming Public Life in Australia and Beyond* (Australian Academic Press, 2010), p 1.

⁴ Queensland Courts, *Inquest into the death of Cindy Leigh Miller* (Web Page) <https://www.courts.qld.gov.au/__data/assets/pdf_file/0006/663468/cif-miller-c-20210122.pdf>.

⁵ Department of Justice and Attorney-General, *Queensland Government Response to Recommendations from the Inquest into the death of Cindy Leigh Miller* (Web Page) <https://www.justice.qld.gov.au/__data/assets/pdf_file/0020/700904/qgr-miller-cl-20220117.pdf>.

⁶ Coaldrake Review Report, ‘Let the Sunshine in: Review of culture and accountability in the Queensland public sector’ (28 June 2022).

⁷ Women’s Safety and Justice Taskforce Report One, ‘Hear her voice Report One — Addressing coercive control and domestic and family violence in Queensland’ (2 December 2021).

⁸ Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence, *The Commission of Inquiry* (Web Page) <Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence (qpsdfvinquiry.qld.gov.au)>.

⁹ Schedule 4 and s 153(6), LG Act define the term ‘disqualifying offence’. It is a reference to a set of offences that can be grouped into the following categories: treason offences, electoral offences, serious integrity offences and integrity offences. Schedule 1, LG Act lists the serious integrity offences and integrity offences, which include: fraud (simpliciter or aggravated), perjury, corruption of a witness, extortion, taking retaliatory action, interfering with political liberty, influencing voting, bribery, offence of prohibited donations, influencing voting by violence or intimidation, assisting illegal payments.

¹⁰ PCCC Logan Council Report, p 9.

¹¹ PCCC Logan Council Report, p 46. On 26 March 2018, the mayor was charged with additional offences allegedly committed while in office, and he was later committed for trial. At the time of reporting by the PCCC Logan Council Inquiry, that other matter was ongoing (PCCC Logan Council Report, p 19).

¹² PCCC Logan Council Report, p 140.

¹³ On 25 July 2022, Mr Gim Del Villar QC commenced as the Solicitor-General of Queensland - having completed his legal work on this Inquiry.

¹⁴ (2013) 248 CLR 92.

¹⁵ (2013) 251 CLR 196.

¹⁶ (2014) 253 CLR 455.



CHAPTER 2

The Crime and Corruption Commission
and the Logan City Council

CHAPTER 2: THE CRIME AND CORRUPTION COMMISSION AND THE LOGAN CITY COUNCIL

Our Terms of Reference required us to consider and have regard to the findings made in the PCCC Logan Council Report.

Several submissions to this Inquiry sought to revisit and reargue elements of the events that were the subject of the PCCC Logan Council Inquiry, but those matters were plainly outside our remit.

2.1 Background

On 2 June 2017, the Logan City Council appointed Sharon Kelsey as its CEO.¹⁷ Her employment contract included a probation period of six months, during which her employment could be terminated without cause or reason.¹⁸ The relationship between Ms Kelsey and a group of Logan City councillors, and the mayor, subsequently broke down.

On 12 October 2017, Ms Kelsey made a public interest disclosure (PID). It took the form of a letter from her solicitors to the CCC Chairperson, and the mayor and councillors of Logan City Council.¹⁹ On 1 December 2017, she commenced proceedings against the mayor and the Logan City Council in the Queensland Industrial Relations Commission (QIRC), alleging contraventions of section 285 of the *Industrial Relations Act 2016* (Qld) and section 48 of the *Public Interest Disclosure Act 2010* (Qld) (PID Act).²⁰

By that time, the CCC had commenced Operation Front, an investigation of allegations against the mayor relating to matters under consideration in another CCC investigation; allegations against the mayor made by Ms Kelsey; and alleged recrimination against Ms Kelsey by the mayor.

On 4 December 2017, the CCC executed a search warrant upon the Logan City Council.²¹

On 5 February 2018, the CCC Chairperson wrote to each of the Logan City councillors, referring to a meeting scheduled for 7 February 2018 to consider Ms Kelsey's employment and 'strongly recommend[ed]' that any resolution voted on by council be carefully considered in light of the protections afforded to those who disclosed matters to the CCC, the ability of the CCC to make applications to the Supreme Court for injunctions, and offences in the PID Act for reprisal acts taken against a discloser.²²

On 7 February 2018, the council voted to terminate Ms Kelsey's employment.²³ She then requested a meeting with the CCC Chairperson and CCC CEO which took place on 15 February 2018. Following the meeting, the CCC Director of Legal Services telephoned Ms Kelsey's legal representatives, who requested that the CCC utilise its powers to intervene in the QIRC matter and provide evidence in it or, alternatively, provide relevant information to the QIRC directly; and provide them (Ms Kelsey's legal representatives) with information that may assist Ms Kelsey and could be provided to the QIRC.²⁴

The director gave evidence to the PCCC Logan Council Inquiry that he believed he had a ‘mandate’ to assist Ms Kelsey.²⁵ The CCC Chairperson told that Inquiry that the CCC had subsequently ‘... done what we can to make sure Ms Kelsey is not otherwise disadvantaged’.²⁶ The CCC did do what it could to assist Ms Kelsey in her QIRC matter — notably, by its efforts to provide material it had obtained during its Operation Front investigation to Ms Kelsey for use in those proceedings. Those efforts, which occurred at various times between June and December 2018, are described at length in Part 6 of the PCCC Logan Council Report.²⁷

Other events in this period are noteworthy by reason of their relevance to the PCCC’s eventual findings and recommendations.

On 14 May 2018, the CCC invited seven Logan City councillors who had voted to terminate Ms Kelsey’s employment to participate in a voluntary record of interview. All councillors declined the invitation. This was, the evidence shows, the only occasion upon which the seven councillors were invited to participate voluntarily in any interview before they were charged.²⁸

Later in 2018, the CCC Chairperson wrote to the then Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs requesting that the Queensland Government consider funding Ms Kelsey’s representation by way of a special payment under the *Financial Accountability Act 2009* (Qld).²⁹ The minister denied the request.³⁰

On 30 January 2019, the CCC Chairperson approved the charging of the mayor with fraud. He told the PCCC Logan Council Inquiry that his ‘approval’ could more properly be regarded as a paraphrasing of a decision, by him, to refer the decision whether to lay those charges to a seconded police officer at the CCC. The charges were not laid until 26 April 2019.³¹ The memorandum drafted by the CCC investigating officer (a seconded police officer), upon which the decision to charge the mayor with fraud was based, did not contain any reference to, or systematic treatment of, the elements of that offence.³² It was not accompanied by any legal advice (or any other documents) addressing or considering how the evidence might prove that offence — in particular, the element of dishonesty that is integral to it.³³

A similar sequence occurred in April 2019 when the CCC Chairperson, after another internal CCC memorandum, approved the referral of the question whether to charge seven Logan City councillors and the mayor with fraud, to the seconded police officer; the memorandum did not contain any structured consideration of the element of dishonesty, or any consideration of the evidence that might be admissible against each of the councillors, individually, to prove dishonesty. It was not accompanied by any written legal advice or analysis.³⁴

On 26 April 2019, the seconded police officer arrested and charged the mayor and the seven councillors with fraud.³⁵ The officer was described in the PCCC Logan Council Report as the ‘case officer for the investigation into the councillors’ — a reference taken to mean he was a pivotal investigative officer regarding the CCC’s Operation Front.³⁶ That officer laid the charges after the CCC Chairperson had approved a recommendation that charges be considered. Once the charges were laid, the matter was taken over by the DPP as the prosecuting agency.³⁷

As a consequence of the councillors being charged with a ‘disqualifying offence’³⁸ and by reason of the number of councillors affected, the Logan City Council effectively became defunct. On 2 May 2019, it was dissolved following a motion moved by the Minister for Local Government, Minister for Racing and

Minister for Multicultural Affairs in the Parliament³⁹ and an interim administrator was appointed for the council.⁴⁰

On 28 June 2019, after the councillors were charged, a partial brief of evidence was provided to the Office of the Director of Public Prosecutions (ODPP) by the CCC; an update was delivered on 5 August 2019; and a full brief was eventually provided on 11 September 2019.⁴¹

The committal hearing commenced on 30 November 2020 and continued over nine hearing days. On the ninth day it was adjourned to the following year.⁴²

On 6 April 2021, the DPP prepared a comprehensive memorandum foreshadowing a decision to discontinue the charges on the grounds that there were insufficient prospects of success to justify continuing further with any of them.⁴³

On 14 April 2021, the Crown prosecutor informed the presiding magistrate that the Crown would be offering no evidence on the charges and asked that all seven former councillors and the mayor be discharged.⁴⁴

Ms Kelsey's claims in the QIRC were dismissed on 1 April 2021. On 6 May 2022, her application to appeal that decision was also dismissed.⁴⁵

On 5 May 2021, the LGAQ wrote to the PCCC to complain about the conduct of the CCC in the matter.⁴⁶ The LGAQ alleged inappropriate intervention by the CCC in matters relating to the dismissal of Ms Kelsey, including its involvement in her QIRC proceedings, and the inappropriate use of its power to charge the councillors with a criminal offence.

In response to the complaint, the PCCC resolved to inquire into the issues raised by the LGAQ, and other relevant matters.⁴⁷

2.2 The PCCC Logan Council Inquiry

The PCCC conducted hearings over nine days and heard evidence. The CCC appeared and was represented by senior and junior counsel.

Submissions from counsel assisting the PCCC

The PCCC engaged counsel to assist its inquiry. Senior counsel made various submissions to the PCCC at the conclusion of the Inquiry which were highly critical of the CCC and its involvement in Ms Kelsey's matter, and argued that a finding was open that the CCC had considered its interests, and those of Ms Kelsey, to be shared and that it had determined to assist Ms Kelsey as much as it legitimately could.⁴⁸

Related findings urged upon the PCCC were that this shared interest included Ms Kelsey being reinstated as CEO, and that the CCC acted upon this shared interest by involving itself in Ms Kelsey's QIRC proceeding and seeking to make documents it had obtained under compulsion available to her in that proceeding.⁴⁹ It was urged that a finding be made that the decision to charge the Logan City councillors each with a criminal offence was made knowing that the bringing of the charges would cause those councillors to be suspended, the council to be dismissed, and an administrator appointed⁵⁰ — and, that the basis of this

consideration to charge (a shared interest between the CCC and Ms Kelsey) was an improper and serious breach of the CCC's duty to act independently, impartially and fairly.⁵¹

The material prepared for the charges, it was submitted, was inadequate with none of the documents containing a structured analysis of the elements of the offence to be charged, an outline of the guidelines of the DPP, or a recognition of the impact that the charging would have on the Logan City Council.⁵² It was further submitted that the discretion to charge the mayor and the seven councillors with fraud miscarried because all the material elements and evidence were not considered, and the decision-making was not impartial.⁵³ Moreover, the arresting officer (a CCC seconded police officer) failed to properly, independently, impartially and fairly exercise their discretion to charge the councillors with fraud, in alleged breach of section 57 of the CC Act.⁵⁴ This failure was also reflected, it was submitted, in the behaviour of other seconded police officers at the CCC during the investigation into the Logan City Council.⁵⁵

The CCC Chairperson, it was said, did not ensure the CCC acted at all times independently, impartially and fairly — again, in alleged breach of section 57 of the CC Act; and that failing was serious, and reflected poorly upon his standing as the CCC Chairperson.⁵⁶ The Chairperson's failing was said to reflect the culture of the CCC at the time. The culmination of all relevant conduct by CCC officers, from the Chairperson down to the investigating officer, was alleged to be inconsistent with the organisation's obligations under the CC Act.

Counsel assisting the PCCC Logan Council Inquiry submitted that the Logan City Council matter showed a degree of 'group think' or 'pack culture' amongst police officers seconded to the CCC. It was suggested that the refreshment of officers for these kinds of operations (for example, by more regular rotations into and out of the CCC) might alleviate that risk, and that consideration should be given to placing a time limit on the duration (and repetition) of police secondments to the CCC.⁵⁷

Submissions from the CCC to the PCCC

The CCC acknowledged a deficiency in its processes which led to the establishment of the PCCC Logan Council Inquiry. It advised the PCCC Logan Council Inquiry that it intended, in the future, to obtain independent external advice on complex prosecutions before charges were laid, either from the DPP or another appropriately qualified and independent advisor.⁵⁸

While maintaining that the present remit of its functions and powers remained appropriate, the CCC also acknowledged to the PCCC that a reform of its 'culture' was necessary. In particular, it advised its intention to continue a program of reform which had commenced in 2017 during which it would be undertaking an external review of its practices in relation to the assessment of corrupt conduct complaints. This, the PCCC was told, would occur in tandem with the development of a comprehensive suite of internal strategies including, for the first time in the CCC's history, a single Operations Manual intended to provide a consistent framework for policies and procedures relating to complaints handling and investigations.⁵⁹

The CCC submitted that its ability to refer matters to the DPP or to a similar independent external body had been curtailed by amendments in 2018 to section 49 of the CC Act; but also (notwithstanding its submission that it intended, in the future, to obtain independent external advice on complex prosecutions) contended that there was no compelling reason to change the status quo.⁶⁰

At the time fraud charges were laid in the Logan City Council matter, there was a 'Prosecution Protocol' in place between the CCC and the DPP. That protocol dated from 10 February 2016, before the CCC's ability to refer matters to the DPP under section 49 of the CC Act was removed.

According to the CCC, if the CCC decided that prosecution proceedings should be considered, the CCC had two options for commencing a prosecution: referring the matter to the DPP, or referring the matter to an appropriate prosecuting authority, including an appropriate police officer seconded to the CCC for consideration of the appropriate charges.⁶¹

Seconded police officers, the CCC reminded the PCCC, maintain all the powers of a police officer; and the test to be applied by the seconded officer in considering charges is, it was submitted, identical to the test the DPP applies in determining whether to commence a criminal prosecution: namely, (a) is there sufficient evidence and (b) does the public interest require prosecution.⁶²

The CCC also submitted that any change to the CCC's ability to have police officers seconded to it would be a significant policy shift and could undermine public confidence in the ability of the CCC to combat and reduce major crime and corruption;⁶³ and that any reduction in the mandated minimum length of secondment would lead to inefficiencies, and risk compromising operational effectiveness.⁶⁴

In response to the submission from counsel assisting regarding mandatory time limits on police secondments, the CCC advised the PCCC that the current arrangements with the QPS had resulted in the shortest average secondment tenure in the history of the organisation — 2.56 years (at that time). The CCC argued that its policy struck an appropriate balance between the advantages of rotation, and the need to ensure personnel changes did not compromise operational effectiveness and efficiency for lengthy and complex investigations.⁶⁵

Evidence from seconded police: charging in the context of the Logan City Council matter

During its Logan Council Inquiry, the PCCC received evidence from several seconded police officers and other CCC staff about their practical experience in bringing charges in the context of a CCC investigation.

The seconded police officer who charged the Logan City councillors and the mayor (the charging officer) informed the PCCC Logan Council Inquiry that the CCC Chairperson plays a 'significant role' in an investigation.⁶⁶ On 30 January 2019, that officer attended a meeting with the CCC Chairperson, the Senior Executive Officer (SEO) (Corruption), and other QPS and CCC staff.⁶⁷ In preparation for the meeting he produced a memorandum for the CCC Chairperson that contained the 'thoughts', 'arguments', and evidence which was the product of Operation Front.⁶⁸ He said he would not typically put so much work into the decision to charge (in his ordinary policing role) but working at the CCC was 'different'.⁶⁹

The charging officer did not receive advice or guidance from a lawyer when producing this document, although there was said to be some indirect legal input in the form of briefings.⁷⁰ Despite that, as the SEO (Corruption) informed the PCCC, the memorandum did not address the elements or limbs of a fraud offence. Nor was an analysis or articulation of the central facets of the offence provided, or attempted, at the meeting on 30 January 2019.⁷¹

Despite those absences, after the 30 January 2019 meeting with the Chairperson and other CCC personnel, the charging officer noted in his official diary: 'All content to charge. Authority by chair provided'. The

charging officer explained that these words meant the Chairperson was content to *refer* the matter to him, as a police officer, for the preferment of charges.⁷² He denied that the CCC Chairperson, or any other person in authority, directed him to charge.⁷³

The charging officer prepared subsequent memoranda in March and April 2019. These were further iterations of his initial memorandum. The SEO (Corruption) also prepared a memorandum regarding this matter on 23 April 2019. It requested the CCC Chairperson's approval for 'the matter being referred to a police officer seconded to the CCC so that officer can consider whether or not to charge the relevant councillors.'⁷⁴

On 24 April 2019, the CCC Chairperson annotated the *Chairperson's Coversheet* agreeing with the recommendation. The charges were commenced on 26 April 2019 by way of arrest.

Submissions made to the PCCC about seconded police at the CCC

Serious concerns were raised by submitters, and counsel assisting the PCCC Logan Council Inquiry, about the role and conduct of seconded police officers at the CCC. The Queensland Law Society noted the role of seconded police officers was unclear and might require better regulation to ensure the CCC's independence was not compromised.⁷⁵

The former Logan City Council councillors submitted that the evidence from their committal hearing strongly suggested a decision to charge made by seconded police officers was, in effect, directed by the executive of the CCC or the Chairperson. They contended a police officer will make recommendations about charges that might be open but not make the 'final call' and, where the police officer is not the most senior police officer seconded to the CCC, he or she is also to follow rank, per section 255(4) of the CC Act. This has implications, they submitted, for accountability for decisions to prosecute. It has long been accepted at common law that it must be the arresting officer who forms the requisite satisfaction to ensure accountability in light of the compromise between the values of individual liberty and public order. The effect of the internal, rather complicated process of charging within the CCC will often be that the person who makes the final decision is not a witness at trial.⁷⁶

2.3 The PCCC Logan Council Report

Findings of the PCCC

The PCCC made 14 findings in its report. Those relevant to this Inquiry can be grouped into four categories:

- Findings about the CCC's intervention in matters involving the former Logan CEO.
- Findings about the CCC's use of charging powers in relation to councillors.
- A finding about the conduct of the CCC Chairperson.
- A finding about the conduct of CCC officers.

Reference to the findings of the PCCC regarding public interest disclosure legislation and the remit of the CCC in that regard are not included in the discussion which follows as they are not matters which fall within the Terms of Reference of this Inquiry.

Findings about the CCC's intervention in Ms Kelsey's matters

The PCCC agreed the CCC had considered its interests and those of Ms Kelsey to be shared, and that it should assist Ms Kelsey as much as it legitimately could.⁷⁷

The PCCC found the CCC acted upon that perception of a shared interest by involving itself in Ms Kelsey's QIRC proceeding and seeking to make documents it obtained under compulsion available to her in that proceeding.⁷⁸ It found that confidential documents (including some that were probably subject to legal professional privilege) were delivered to the Logan City Council on 3 October 2018 without a proper and necessary dissemination authority⁷⁹ for the purpose of making them available for Ms Kelsey's use in her QIRC proceeding,⁸⁰ and on 19 November 2018 to the QIRC for the same purpose.⁸¹ The PCCC also found that the assistance the CCC sought to provide to Ms Kelsey in her QIRC proceeding included a letter from the CCC Chairperson to the Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs dated 7 August 2018, requesting the Queensland Government fund Ms Kelsey's representation in her QIRC proceeding.⁸²

The PCCC found that the totality of the steps taken by the CCC to assist Ms Kelsey in her QIRC proceeding breached its duty to act, at all times, independently and impartially pursuant to section 57 of the CC Act.⁸³

Findings about the CCC's use of charging powers in relation to councillors

The PCCC also found the decision to charge the mayor and seven Logan City councillors with fraud was affected by a desire to assist Ms Kelsey.⁸⁴

Although the CCC had conducted research into the consequences of charging for the Logan City councillors,⁸⁵ those consequences were almost entirely omitted from the documents in which they ought to have appeared. The material prepared to commence criminal proceedings was inadequate.⁸⁶

The discretion to lay the charges miscarried because all material considerations and evidence were not considered and weighed.⁸⁷ This included a failure to consider that the suspension of the councillors, and dissolution of the Logan City Council, would be an inevitable consequence of the charging.⁸⁸

Finding regarding the conduct of the CCC Chairperson

The PCCC also found the CCC Chairperson did not ensure the CCC acted, at all times relevant to the matters the subject of the PCCC Logan Council Inquiry, independently and impartially.⁸⁹

Finding regarding the conduct of CCC officers

The PCCC found that officers of the CCC should have reported to the CCC CEO the absence of a dissemination authority for the delivery of documents to the Logan City Council on 3 October 2018, and the CCC CEO should have notified the PCCC pursuant to section 329 of the CC Act.

The PCCC was critical of the conduct of seconded police officers at the CCC, in terms implying a broad cultural deficiency: 'The committee considers the conduct of...[the charging officer]... (that was rightly criticised by Counsel Assisting) to be an example of and symptomatic of the culture of the Crime and Corruption Commission'.⁹⁰

A number of other findings have a connection with the work, responsibilities, duties, and performance of seconded police officers at the CCC.⁹¹

Recommendations of the PCCC

The PCCC made six recommendations for improvements to be made internally within the CCC concerning its governance, and for legislative reform. These recommendations included that the CCC engage in reform of culture,⁹² and that the Department of Justice and Attorney-General consider the tenure of senior officers at the CCC.⁹³

Two recommendations are particularly significant for this Inquiry.

First, the PCCC recommended a review of section 49 of the CC Act.⁹⁴ The question whether the CCC should obtain the recommendation of the DPP or a senior independent legal advisor before charging serious criminal offences forms part of this Inquiry's Terms of Reference.

Second, recommendation 6 of the PCCC is also central to this Inquiry:⁹⁵

The Committee recommends the Queensland Government instigate a review of the Commission's structure in regard to its investigatory and charging functions, and the role of seconded police officers at the Commission, as a Commission of Inquiry or similar, to be headed by senior counsel of sufficient standing to consider this structural basis of the Commission that has its roots in the Fitzgerald Inquiry.

In its report, the PCCC said that it: '... acknowledges the continued concern about the appropriateness of the CCC having, by reason of the secondment of commissioned police officers who retain their capacity to charge, both investigative and prosecutorial functions. This structure of the CCC is as it was envisaged by the Fitzgerald Inquiry, the recommendations of which were enacted 'lock, stock and barrel' by then Premier, Hon. Mike Ahern, in 1989. Any change to the CCC's ability to lay charges through its seconded police officers would be a significant policy shift and impact on the processes of the CCC. All benefits and possible issues would need to be thoroughly explored.'⁹⁶

The CCC as both investigator and charging agency

The report of the PCCC canvassed whether the CCC should have a role in charging persons arising from its investigations; the process by which the CCC decided whether to refer matters to the DPP; the CCC's interactions with the DPP more generally; and the appropriateness and sufficiency of section 49 of the CC Act.⁹⁷

The PCCC received submissions which advocated a range of different positions on these issues. The CCC supported keeping section 49 in its current form and contended that legislative reform of the charging and referral process was not needed, and any changes to ensure that external advice was to be considered before charging could, and should, be dealt with administratively.⁹⁸

Other stakeholders urged amendment to section 49 to compel the CCC to seek the DPP's advice before any charges could be laid, at least in relation to 'disqualifying offences' within the meaning of the LG Act.⁹⁹ Others advocated for changes to the guidelines that governed interaction with the ODPP.

The DPP highlighted potential problems, particularly with resourcing, if the CC Act were amended to require the CCC to refer matters to the DPP (and, only the DPP) prior to charging.¹⁰⁰

Many of the submissions calling for change referred to the importance of ensuring that prosecutorial decisions were independent of the investigative process.

Endnotes

¹⁷ PCCC Logan Council Report, p 17.

¹⁸ PCCC Logan Council Report, p 17.

¹⁹ PCCC Logan Council Report, p 17.

²⁰ PCCC Logan Council Report, p 18. Proceedings were commenced by Ms Kelsey on 1 December 2017.

²¹ PCCC Logan Council Report, p 18. The search warrant was executed on 4 December 2017.

²² PCCC Logan Council Report, pp 18–19.

²³ PCCC Logan Council Report, p 18.

²⁴ PCCC Logan Council Report, p 19.

²⁵ PCCC Logan Council Report, p 20.

²⁶ PCCC Logan Council Report, p 50.

²⁷ PCCC Logan Council Report, pp 47–96.

²⁸ PCCC Logan Council Report, p 19.

²⁹ PCCC Logan Council Report, p 23.

³⁰ PCCC Logan Council Report, p 24.

³¹ PCCC Logan Council Report, p 34.

³² PCCC Logan Council Report, p 33.

³³ PCCC Logan Council Report, p 34.

³⁴ PCCC Logan Council Report, p 35.

³⁵ PCCC Logan Council Report, p 43.

³⁶ PCCC Logan Council Report pp 5, 32, 98.

³⁷ PCCC Logan Council Report, p 98.

³⁸ *Local Government Electoral (Implementing Stage 1 of Belcarra) and other Legislation Amendment Act 2019* (Qld), which inserted Schedule 1 to the LG Act that identified certain offences as ‘serious integrity offences’ and hence ‘disqualifying offences’ for s 153 of the LG Act; and inserted s 182A, providing councillors charged with disqualifying offences are automatically suspended (s 182A was renumbered under the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019* to become s 175K of the LG Act).

³⁹ PCCC Logan Council Report, p 9.

⁴⁰ PCCC Logan Council Report, p 119.

⁴¹ PCCC Logan Council Report, p 45.

⁴² PCCC Logan Council Report, p 46.

⁴³ PCCC Logan Council Report, p 46.

⁴⁴ PCCC Logan Council Report, p 46. At the time of the PCCC Logan Council Report’s publishing, the separate charges against the mayor were ongoing (PCCC Logan Council Report, p 19).

⁴⁵ *Kelsey v Logan City Council & Ors (No. 2)* [2022] ICQ 013.

⁴⁶ PCCC Logan Council Report, p 14.

⁴⁷ PCCC Logan Council Report, p 9.

⁴⁸ Counsel Assisting Submission to PCCC Logan Council Inquiry, 29 September 2021, pp 5–6 (Available Finding 1).

⁴⁹ Counsel Assisting Submission to PCCC Logan Council Inquiry, 29 September 2021, pp 6–7 (Available Finding 2).

⁵⁰ Counsel Assisting Submission to PCCC Logan Council Inquiry, 29 September 2021, pp 10–11 (Available Finding 6).

⁵¹ Counsel Assisting Submission to PCCC Logan Council Inquiry, 29 September 2021, p 11, para 41 (Available Finding 7).

⁵² Counsel Assisting Submission to PCCC Logan Council Inquiry, 29 September 2021, pp 15–16 (Available Findings 8–9).

⁵³ Counsel Assisting Submission to PCCC Logan Council Inquiry, 29 September 2021, pp 19–23 (Available Finding 11).

⁵⁴ Counsel Assisting Submission to PCCC Logan Council Inquiry, 29 September 2021, pp 23–24 (Available Finding 12).

⁵⁵ Counsel Assisting Submission to PCCC Logan Council Inquiry, 29 September 2021, pp 23–24, para 83–85.

⁵⁶ Counsel Assisting Submission to PCCC Logan Council Inquiry, 29 September 2021, pp 24–25 (Available Finding 13).

⁵⁷ PCCC Logan Council Report, p 143; PCCC Logan Council Report, *Volume of Additional Material*, p 29 (Proposed Measure 3).

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- ⁵⁸ CCC Submission to PCCC Logan Council Inquiry, 15 October 2021, p 54, para 267.
- ⁵⁹ CCC Response to PCCC Logan Council Inquiry, 20 January 2022, p 6.
- ⁶⁰ CCC Submission to PCCC Logan Council Inquiry, 26 July 2021, p 41, para 215.
- ⁶¹ CCC Submission to PCCC Logan Council Inquiry, 26 July 2021, p 43, para 217.
- ⁶² CCC Submission to PCCC Logan Council Inquiry, 26 July 2021, p 42, paras 216, 218.
- ⁶³ CCC Response to PCCC Logan Council Inquiry, 20 January 2022, p 8.
- ⁶⁴ CCC Submission to PCCC Logan Council Inquiry, 15 October 2021, p 57, para 280.
- ⁶⁵ PCCC Logan Council Report, p 143.
- ⁶⁶ PCCC Logan Council Inquiry Transcript of Proceedings, 20 August 2021, p 61.
- ⁶⁷ PCCC Logan Council Inquiry Transcript of Proceedings, 20 August 2021, p 60.
- ⁶⁸ PCCC Logan Council Inquiry Transcript of Proceedings, 20 August 2021, p 63.
- ⁶⁹ PCCC Logan Council Inquiry Transcript of Proceedings, 20 August 2021, p 64.
- ⁷⁰ PCCC Logan Council Inquiry Transcript of Proceedings, 20 August 2021, p 74.
- ⁷¹ PCCC Logan Council Inquiry Transcript of Proceedings, 18 August 2021, p 36.
- ⁷² PCCC Logan Council Inquiry Transcript of Proceedings, 20 August 2021, p 61.
- ⁷³ PCCC Logan Council Inquiry Transcript of Proceedings, 20 August 2021, p 61.
- ⁷⁴ PCCC Logan Council Inquiry Transcript of Proceedings, 18 August 2021, p 2.
- ⁷⁵ PCCC Logan Council Report, p 142.
- ⁷⁶ PCCC Logan Council Report, pp 142–143.
- ⁷⁷ PCCC Logan Council Report, p 10 (Finding 3).
- ⁷⁸ PCCC Logan Council Report, p 11 (Finding 4).
- ⁷⁹ A ‘request and authority to disclose information (other than CCC hearing information) to an appropriate entity’.
- ⁸⁰ PCCC Logan Council Report, p 11 (Finding 6).
- ⁸¹ PCCC Logan Council Report, p 11 (Finding 7).
- ⁸² PCCC Logan Council Report, p 23.
- ⁸³ PCCC Logan Council Report, p 11 (Finding 5).
- ⁸⁴ PCCC Logan Council Report, p 11 (Finding 10).
- ⁸⁵ PCCC Logan Council Report, p 12 (Finding 12).
- ⁸⁶ PCCC Logan Council Report, p 12 (Finding 9).
- ⁸⁷ PCCC Logan Council Report, p 11 (Finding 11).
- ⁸⁸ PCCC Logan Council Report, p 120.
- ⁸⁹ PCCC Logan Council Report, p 12 (Finding 14).
- ⁹⁰ PCCC Logan Council Report, p 11 (Finding 8).
- ⁹¹ PCCC Logan Council Report, pp 11–12 (Findings 6–13).
- ⁹² PCCC Logan Council Report, p 142 (Recommendation 4).
- ⁹³ PCCC Logan Council Report, p 142 (Recommendation 5).
- ⁹⁴ PCCC Logan Council Report, p 127 (Recommendation 3).
- ⁹⁵ PCCC Logan Council Report, pp 161–162 (Recommendation 6).
- ⁹⁶ PCCC Logan Council Report, p 162.
- ⁹⁷ PCCC Logan Council Report, pp 144–162.
- ⁹⁸ PCCC Logan Council Report, pp 156, 161.
- ⁹⁹ PCCC Logan Council Report, p 157.
- ¹⁰⁰ PCCC Logan Council Report, p 159.
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CHAPTER 3

The Crime and Corruption Commission

CHAPTER 3: THE CRIME AND CORRUPTION COMMISSION

3.1 History of the CCC and its governing legislation

*'It began by pulling a few threads at the frayed edges of society. To general alarm, sections of the fabric began to unravel.'*¹⁰¹

From its original, comparatively narrow terms of reference in 1987 the remit of the Fitzgerald Inquiry would twice be expanded as it became clear that police corruption was widespread, and part of a larger problem in Queensland. The Inquiry's work would culminate in the 1989 Fitzgerald Report which proposed a measured but also radical response involving the introduction of new structures and systems, and the revision of old ones, as the foundation for systemic reform.¹⁰² These new institutions and systems were all directed towards cementing a successful parliamentary democracy.¹⁰³

A cornerstone of the response in relation to criminal justice administration was the establishment of a Criminal Justice Commission — a new and unprecedented institution for Queensland, to be permanently charged with reviewing, coordinating, and initiating reform to the administration of criminal justice and official misconduct.

It was considered crucial that the administration of criminal justice be independent of executive controls. As a vital apolitical public function, criminal justice must be open to public review and accountable to Parliament.¹⁰⁴ The CJC would report, then, to a newly formed standing parliamentary committee, not charged with any other responsibility whose membership would reflect the balance of power in the Legislative Assembly. The Parliamentary Criminal Justice Committee (PCJC) would oversee the CJC's operations.¹⁰⁵

Shortly after delivery of the 1989 Fitzgerald Report, the *Criminal Justice Act 1989* (Qld) (CJ Act) was introduced to Parliament. It faithfully implemented the recommendations for a CJC. It was said at the time:

*'The Criminal Justice Commission will fulfil an essential role in our society to ensure that misconduct in public office is eradicated and organised crime is effectively combatted. The commission has sufficient powers to complete its objectives and functions, but at all times is subject to judicial review, as specified in the Fitzgerald report.'*¹⁰⁶

The CJ Act marked a milestone in Queensland's history and would help shape its crime and integrity landscape for decades to come. The CCC is the modern-day iteration of the 1989 CJC.

Since the delivery of the 1989 Fitzgerald Report, Queensland's crime and anti-corruption body has undergone extensive reform and transformation. Its name, structure, governance, functions and powers have been changed and its resources prioritised in favour of, variously, a crime or corruption focus. Its existence as a single body has not been constant. In the late 1990s, the CJC's crime and corruption functions were divided between separate stand-alone commissions or tribunals.

At times, the priority for the body has been its crime function, which has steadily expanded and grown across the last three decades and now encompasses organised crime, paedophilia, terrorism, criminal organisations, and threats to public safety; and has cross-border application. At other times, the body has had a closer focus on its anti-corruption function, with strong emphasis on corruption prevention and enhancing the integrity of the public sector. Over time, a greater focus has been placed, too, upon the devolution of responsibility for preventing and dealing with misconduct within UPAs to the units themselves. There have been changes to the oversight mechanisms employed to control, monitor and review the performance and activities of the body, and its use of the extraordinary powers invested in it. There has also been a trend over time towards greater reliance upon closed, coercive hearings.

As envisaged in the 1989 Fitzgerald Report, the modern-day CCC remains an apolitical entity. Its independence is still expressly enshrined in its most recent legislative instrument, the 2001 CC Act: ‘... the commission must, at all times, act independently, impartially and fairly having regard to the purposes of this Act and the importance of protecting the public interest’.¹⁰⁷

An examination of the many legislative changes to the body over the past 30 years suggests the organisation, and its operations, have been affected from time to time by a fluctuating policy and legislative environment (having, unsurprisingly, some historical coincidence with political changes).

Appendix D chronicles the legislative changes to the CJC since its establishment in 1989, through to the contemporary CCC.

The 1989 Fitzgerald Report and the Criminal Justice Commission

In its original form, the CJC closely aligned with the recommendations of the Fitzgerald Inquiry.¹⁰⁸

It comprised the Chairperson (who had served, or was qualified for appointment, as a Supreme, Federal or High Court judge) and four other commissioners — one a practicing lawyer with a demonstrated interest and ability in civil liberties, and three others with demonstrated interest and ability in community affairs (of which at least one needed proven senior managerial experience in a large organisation).¹⁰⁹

The CJC was divided into defined organisational units: the Official Misconduct Division, which was the investigative unit of the CJC and had, under its remit, a Complaints Section (and, from time to time, misconduct tribunals); the Research and Coordination Division; the Intelligence Division; and the Witness Protection Division.¹¹⁰

At the beginning, its hearings were to be open to the public.¹¹¹ The CJC was not bound by the rules or practice of any court (or tribunal) as to evidence or procedure; it could inform itself on any matter, and conduct its proceedings, as it thought proper. Compelled evidence (sometimes referred to as ‘coerced material’) that was self-incriminating was not admissible against a person in a civil or criminal case involving them; however, evidence flowing from the inadmissible evidence was able to be used.¹¹²

The unfinished investigative work of the Fitzgerald Inquiry was intended to be pursued through the Official Misconduct Division.¹¹³ In framing its recommendation for the division, the 1989 Fitzgerald Report said that, to be effective, the division required a wide variety of skilled staff and consultants, including specially-screened police of proven competence and experience, lawyers, accountants, finance consultants, linguists, computer programmers, engineers and operators, electronics engineers, telecommunications

specialists, computer operators, public administrators, statisticians, analysts, surveillance specialists and scientists.¹¹⁴

The use of police officers by the CJC was anticipated. Under the CJ Act, these officers remained members of the police service throughout their secondment and retained all their police powers and authorities.¹¹⁵ The current large contingent of police officers seconded to the CCC, and the retention of their usual police powers, accords with the practices and procedures originally envisaged for the organisation.

Similarly, an ongoing relationship with the DPP was expected. The Official Misconduct Division would report on its investigations and, with the authority of the Chairperson, those reports were to go to the DPP (or other prosecuting authority) for consideration of a prosecution. In doing so, all relevant information known to the division, whether supportive of a charge or a defence to it, would be included.¹¹⁶

A third continuing element is that, as recommended in the 1989 Fitzgerald Report, the PCJC was established to oversee the activities of the CJC and report to Parliament.¹¹⁷

Changes 1996–1998: Splitting the Criminal Justice Commission

By an Order in Council dated 7 October 1996 made under the *Commissions of Inquiry Act 1950* (Qld), an Inquiry into the future role, structure, powers and operations of the CJC, known as the ‘Connolly-Ryan Inquiry’, was established. One of its Terms of Reference was to examine specific allegations made in Parliament against a senior officer of the CJC. It ended when, some months into its work, it was restrained from proceeding by Supreme Court injunction.¹¹⁸ It was not renewed and never published a final report.

Nevertheless, in October 1997 major changes were made to the CJC through the passage of three Acts: *Misconduct Tribunals Act 1997* (Qld) (the Misconduct Tribunals Act); *Crime Commission Act 1997* (Qld) (CC Act 1997); and *Criminal Justice Legislation Amendment Act 1997* (Qld) (1997 Amendment Act).

The Misconduct Tribunals Act removed from the CJC its function to determine allegations of official misconduct against police by removing misconduct tribunals from its remit. Misconduct tribunals became independent entities. The change implemented a recommendation of the PCJC in past reports¹¹⁹ and was effected with bipartisan support.¹²⁰

More controversially, the CC Act 1997 removed the CJC’s crime and intelligence functions and established a new Queensland Crime Commission (QCC) to investigate organised and major crime, and paedophilia. The QCC was a new law enforcement body with greater powers than would normally be available to law enforcement.¹²¹ On the introduction of the Act it was said that:

‘The establishment of a permanent Crime Commission with the role of investigating organised crime and paedophilia delivers the intent of this Parliament and delivers a commitment by this Government to the people of Queensland to have an effective assault against the criminal low-lives striking at our communities. It has long been recognised that traditional law enforcement methods and powers are simply not effective enough to deal with certain types of offences and offenders and the increasingly sophisticated nature of organised crime. Hence the need for a specific body with special powers to combat organised crime ...’¹²²

The QCC was led by the Crime Commissioner, who was both the Chairperson and the CEO (a position requiring eligibility for appointment as a judge).¹²³ Its governance arrangements reflected a significant

departure from that at the CJC. Its Management Committee was central to its operations, overseeing its operations and controlling its referrals.¹²⁴ That committee comprised the Crime Commissioner (as Chairperson), the Police Commissioner, the CJC Chairperson, the National Crime Authority Chairperson, the Chairperson and Deputy Chairperson of the PCJC, the Queensland Children's Commissioner and two community representatives, one of whom must be female and one of whom must have a demonstrated interest in civil liberties.¹²⁵

Under the 1997 legislation, the role of the PCJC vis-à-vis the QCC was markedly different to its role in connection with the CJC. The PCJC did not have an oversight function (analogous to its role regarding the CJC), instead, the leadership of the PCJC was closely entwined with the QCC through the position, on the QCC Management Committee, of its members.

The QCC also heralded a shift toward closed, private investigative hearings as the norm; and while a witness was entitled to be legally represented, any other persons could only be present by direction of the person conducting the hearing.¹²⁶

The use of serving police officers by the QCC was also different. The Management Committee could arrange with the Police Commissioner for a taskforce to be established to assist the QCC with an investigation, but the conduct of the taskforce remained under the control of the Police Commissioner.¹²⁷

External oversight of the QCC was charged to two newly established offices: the Parliamentary Commissioner (a position outlined below) and the Public Interest Monitor (PIM), who was to provide critical and independent consideration of the use of invasive warrants by the QCC.¹²⁸

The third Act in the 1997 trilogy was the 1997 Amendment Act¹²⁹ which focused on strengthening the CJC's accountability to the PCJC. It:

- added objects to the CJ Act about the role of the PCJC in overseeing the operations of the CJC and dealing with complaints about it
- enabled the PCJC to issue guidelines on the operation of the CJC and direct the CJC to undertake a particular investigation (but not to stop a current investigation)
- gave the PCJC responsibility for dealing with complaints about the conduct or activities of the CJC.

The 1997 Amendment Act established the Parliamentary Commissioner, who operated subject to the instruction and direction of the PCJC.¹³⁰ The office had the powers of a commission of inquiry in terms of its role regarding the CJC, and wide functions. The Commissioner's role was more constrained regarding the QCC: it did not have commission of inquiry powers attached to its role overseeing that body.

The CJC was not entitled to privilege in relation to an investigation by the Parliamentary Commissioner; and the capacity for the CJC to challenge the actions of the Parliamentary Commissioner was confined to acts done negligently and in bad faith — and, only by leave of the Supreme Court.

Changes 2001: Re-amalgamation as the Crime and Misconduct Commission

In late 2001, the *Crime and Misconduct Act 2001* (Qld) (CM Act) came into effect. It repealed the CJ Act and the CC Act 1997 and replaced them with new legislation effectively merging the CJC and QCC into a single, refocused commission — the Crime and Misconduct Commission (CMC). The CMC had (and the CCC now has) two main purposes: combating and reducing the incidence of major crime; and continuously improving the integrity of, and reducing the incidence of corruption in, the public sector.¹³¹

The purpose and effect of the CMC were summarised by the Premier of the day in Parliament:

‘Twelve years ago, the Criminal Justice Act 1989 was introduced to implement reforms recommended by Commissioner Tony Fitzgerald, QC. Today I introduce the Crime and Misconduct Bill: to recognise and build on the progress made since those tumultuous times; and to deliver an updated framework to take public integrity and law enforcement to a higher level in the new millennium. In other words, this bill starts a new era for the Fitzgerald reform agenda.

... It again unites the fight against major and organised crime — and misconduct — under one roof ... This merged body will benefit from combining the separate research and intelligence resources of the CJC and the Crime Commission and sharing expensive and limited surveillance resources. This cohesive approach should also produce efficiencies by reducing unnecessary duplication and enhance cooperation in the law enforcement community by eliminating replication.’¹³²

There were other major changes, many reversing the effects of the 1997 legislation. The appointment of a new Chairperson required the bipartisan support of the Parliamentary Crime and Misconduct Committee (PCMC) (previously the PCJC). The Chairperson was also the organisation’s CEO, responsible for the administration and the proper performance of the CMC’s functions.

Like the Management Committee of the now dissolved QCC, a Crime Reference Committee (CRC) was established, but amended to remove a management and oversight role from its remit — those matters returned to the CMC’s control. The new CRC had responsibility for referring major crime to the CMC for its investigation and a coordinating role in joint investigations. There was also a major change in the composition of the CRC (as compared to the QCC’s Management Committee) — members of Parliament were removed. The PCMC again became the key external oversight mechanism for the CMC’s crime and misconduct functions.¹³³

Under the CM Act, the QCC’s crime function was largely restored to the CMC but the CMC’s misconduct function was changed significantly, with an increased focus upon the prevention of corruption and an enhanced role in raising standards of integrity and conduct in public administration.¹³⁴

A new legislative principle, adjunctive to this different role around raising standards, was that of *devolution*. It required that action to prevent and deal with misconduct in a UPA should generally happen within that unit, subject to the unit’s cooperation, capacity and public interest principles.¹³⁵ The CMC was required in effect, to perform its misconduct function by referring complaints about misconduct within a UPA to a relevant public official to deal with; or by dealing with a complaint about official misconduct itself, or in cooperation with a UPA; or by completing an investigation in cooperation with a UPA.¹³⁶

The use of seconded police officers by the CMC was modelled on the CJC approach.¹³⁷ The officers remained members of the police service throughout their secondment and retained all their police powers and responsibilities. They were subject to the direction and control of the Chairperson, and their deployment was the joint responsibility of the Chairperson and the senior commanding police officer seconded to the CMC.

By section 49 of the CM Act, the CJC's relationship with the DPP was mirrored for the new CMC.¹³⁸

The role of the PIM continued. The role of the Parliamentary Commissioner also continued but was refocused to make it clear that the Commissioner was an agent of the PCMC and, importantly, their commission of inquiry powers were codified and tailored to suit the oversight role.¹³⁹

In the decade from 2001 to 2012, further legislative amendments affected the CMC. These included expanding its powers to cover terrorism-related major crime, the confiscation of criminal proceeds and ensuring that its powers had cross-border application.

Changes 2012–2015: The CMC becomes the Crime and Corruption Commission

A new government was elected in 2012 and heralded more significant and fundamental changes to the CMC.

First, legislation was passed establishing 'unexplained wealth orders' (which could result in the creation of a debt payable by a person to the state) and a 'serious drug offender declaration scheme' (which could result in an order forfeiting all of a person's property to the state), with both regimes administered by the CMC.¹⁴⁰

Then, following a violent public incident at Broadbeach involving criminal motorcycle gangs, a zero-tolerance crackdown on criminal organisations was announced. Three Bills were introduced, declared urgent and passed into law within three days. They incorporated extraordinary and wide-ranging amendments to various Acts to deliver a package of anti-criminal-organisation reforms (colloquially known as the 'VLAD' laws).¹⁴¹

The CM Act was amended to expand the crime function of the CMC by granting additional powers to allow coercive, intelligence gathering hearings about 'criminal organisations' or 'participants in a criminal organisation', and extra powers to investigate or hold coercive hearings to respond to an immediate threat to public safety through the establishment of a new 'immediate response function' (which only required the authorisation from the Chairperson, and not the CRC, for its use).¹⁴²

The VLAD laws significantly expanded the potential utility of the CMC's coercive hearings by diminishing the circumstances in which fear of retribution might shield a witness from the obligation to answer questions. The VLAD laws introduced a mandatory, escalating sentencing regime for contempt involving a refusal to answer questions or otherwise cooperate with a CMC investigation.

The *Crime and Misconduct and Other Legislation Amendment Act 2014* (Qld) (2014 Amendment Act) was also introduced. It made further substantial changes to the CMC, including renaming the organisation the Crime and Corruption Commission and rebadging the 'misconduct function' as the 'corruption function' and 'official misconduct' as 'corrupt conduct'.

Those changes followed the delivery of a review of the CM Act and related matters by an Independent Advisory Panel constituted by the Honourable Ian Callinan AC QC and Professor Nicholas Aroney. Their report concluded that the CCC's focus and responsibilities in respect of official misconduct under the CM Act was too broad and should be limited to the investigation of serious cases of corrupt conduct. It recommended narrowing the definition of *official misconduct* (now called 'corrupt conduct') and removing the CCC's functions directed to preventing misconduct.

It also recommended strategies to reduce the number of matters referred to, and investigated by, the CCC including: raising the threshold for when public officials were required to notify the CCC of corrupt conduct; expanding the grounds upon which the CCC could dismiss or take no action on a complaint; and removing the opportunity for anonymous complaints to be made and, instead, requiring all complaints to be made by statutory declaration (other than in exceptional circumstances).

The 2014 Amendment Act largely implemented these recommendations. It removed the corruption prevention function of the CCC, meaning the organisation was no longer responsible for preventing corruption or for ensuring the integrity of UPAs. Its crime prevention function was preserved, but the overall effect was to reduce the CCC's misconduct/corruption functions to the investigation of serious cases only.

The 2014 Amendment Act also made significant changes to the upper governance structure at the CCC, including a new type of commissioner — the CEO, as a standalone role distinct from the role of Chairperson. The CEO was charged with responsibility for administering the CCC. The requirement for bipartisan approval for the appointment of commissioners, including the Chairperson, was removed (later in 2014, following more consultation, amendments were made to reintroduce the requirement — but not for the CEO).

The Chairperson was also empowered to appoint sessional commissioners (a new concept for the CCC) to help the Chairperson perform the CCC's functions or exercise its powers by conducting hearings, examining witnesses or conducting specific investigations.

Changes 2015–2018

A new government was elected in early 2015. One of its announced policies was to unwind the VLAD laws (and replace them) and the 2014 amendments to the CM (now, CC) Act.

Amendments introduced in 2016 involved the following important changes:¹⁴³

- removing the CEO's role as a 'commissioner', and requiring bipartisan support within the Parliamentary Committee for an appointment to the CEO role
- reinstating the 'corruption prevention function' to enable the CCC to build the capacity of UPAs to prevent corruption. The legislated principles were also amended to include provisions and principles that:
 - to the greatest extent practicable, the CCC and UPAs should work together to prevent corruption (under the *cooperation* principle)
 - the CCC has a lead role in building the capacity of UPAs to prevent and deal with cases of corruption effectively and appropriately (under the *new capacity building* principle)

- the CCC has an overriding responsibility to promote public confidence in the integrity of UPAs (under the *public interest* principle)
- allowing complaints, again, to be made anonymously to the CCC
- providing greater rigour around the use of the CCC's 'immediate response function' (newly inserted under the VLAD laws).

Further changes were made in 2018 via the *Crime and Corruption and Other Legislation Amendment Act 2018* (Qld) (2018 Amendment Act). The legislation implemented recommendations from reports of the PCCC.¹⁴⁴ Section 197 of the CC Act was amended to allow the derivative use of evidence obtained during a coercive hearing, irrespective of a claim of privilege against self-incrimination made at the time; and section 49 was amended to remove the DPP from the definition of a 'prosecuting authority' under that section.

The 2018 Amendment Act also re-expanded the definition of *corrupt conduct*. It now extends to the conduct of persons outside the public sector which impairs, or could impair, public confidence in public administration — changes intended to catch activities like collusive tendering or fraud in relation to applications for licenses issued by government. The amendment was introduced against the background of an increasing degree of outsourcing of activities usually administered within the public service, and public-private partnerships entered in connection with the delivery of government services — changes in the nature and manner of delivery of government business which offered new opportunities for corrupt conduct.

3.2 The present-day CCC and the *Crime and Corruption Act 2001*

Like its predecessors, under the CC Act the CCC has two main purposes: combating and reducing the incidence of major crime and continuously improving the integrity of, and reducing the incidence of corruption in, the public sector.¹⁴⁵

The Chairperson and commissioners

The CCC comprises the Chairperson, a part-time commissioner who is the Deputy Chairperson, and three other part-time commissioners who are ordinary commissioners.¹⁴⁶

The threshold for appointment as Chairperson or Deputy Chairperson is high. It requires service as, or qualification for, appointment as a judge of the Supreme Court, or the High Court or Federal Court of Australia.¹⁴⁷ Ordinary commissioners require qualifications, experience, or standing appropriate to assist the CCC to perform its functions.¹⁴⁸ The nature of the CCC's work, its complex legal framework, and the powers it exercises, gives rise to the need for CCC commissioners to be experienced legal practitioners.¹⁴⁹

The CCC is responsible for providing strategic leadership and direction for the performance of the CCC's functions and the exercise of its extensive and unique powers.¹⁵⁰ This extends to preparing strategic and business plans, establishing internal management committees, and ensuring its obligations under the *Financial Accountability Act 2009* (Qld) are met.¹⁵¹

The Chairperson is responsible for the performance of the CCC's powers and functions¹⁵² and, when present, presides at all CCC meetings. If absent, the Deputy Chairperson presides.¹⁵³ Under the CC Act, the Chairperson may delegate their powers to an appropriately qualified commission officer; in practical terms, generally, that officer is the Deputy Chairperson.¹⁵⁴

The CEO

The CCC CEO is responsible for the CCC's administration, financial accountability functions and public record powers.¹⁵⁵ They are subject to the direction of the Chairperson for the exercise of all functions and powers delegated to the CEO by the Chairperson but, in respect of all other functions and powers, report to and are subject to the direction of the CCC.¹⁵⁶

The establishment of the standalone CEO role in 2014 replaced the previous model in which the Chairperson effectively held the dual role of Chairperson and CEO.¹⁵⁷ The separate CEO role enables, the CCC submitted, a 'stronger focus on effective and efficient operations, and investment in the right things at the right time to enhance service delivery and organisational performance'.¹⁵⁸

Staff

The CCC may employ the staff necessary to enable the performance of its functions¹⁵⁹ and the CCC CEO may arrange for the secondment of staff from any department or UPA.¹⁶⁰

The secondment of police officers is the joint responsibility of the CCC CEO and the most senior police officer seconded to the CCC.¹⁶¹ In practice, as we were advised by the QPS, 'the concept of *jointly* reflects that whilst officers are seconded to the CCC and are subject to the direction and control of the CCC CEO, they remain employees of the QPS ... The QPS remains responsible industrially for their administration, human resource management and welfare ... The CCC established a Police Resource Committee to oversee secondment arrangements within the CCC.'¹⁶²

Functions

The CCC has several statutory functions: crime, corruption, prevention (that is to help prevent major crime and corruption), research, intelligence, immediate response to threats to public safety, witness protection and civil confiscation.

The 'crime function'¹⁶³ of the CCC is to investigate major crime referred to it by the CRC¹⁶⁴ and to investigate incidents involving actual or anticipated threats to public safety, and the activities of criminal organisations and their participants.¹⁶⁵ The CCC also has responsibility for restraining the disposal of, and recovering, proceeds of crime.¹⁶⁶

It does not, however, have a 'standing' crime jurisdiction for its investigation activities; it only has jurisdiction by way of referrals or authorisations made or approved by the CRC.¹⁶⁷ The CRC is established under Chapter 6, Part 2 of the CC Act to oversee the general conduct and the performance of the CCC's functions in relation to major crime or a specific intelligence operation.¹⁶⁸ CRC referrals may be general or specific.¹⁶⁹

The 'corruption function'¹⁷⁰ is directed to raising standards of integrity and conduct in UPAs;¹⁷¹ ensuring complaints about corruption are dealt with in an appropriate way; investigating or otherwise dealing with

corrupt conduct and conduct connected with corrupt conduct; and investigating whether corrupt conduct has happened, is occurring, or may happen.¹⁷²

‘Corrupt conduct’ is defined to include a range of acts and behaviours impacting the integrity of public administration which, if proved, would constitute either a criminal offence, or a disciplinary breach providing reasonable grounds for terminating the services of the person who has engaged in the conduct.¹⁷³

In the performance of its corruption function, the CCC is obliged to apply certain prescribed principles.¹⁷⁴

- The CCC has an overriding responsibility to promote public confidence in the integrity of UPAs and, if corruption does occur within a UPA, in the way it is dealt with (the *public interest* principle).
- To the greatest extent practicable, the CCC and UPAs should work cooperatively to prevent and deal with corruption (the *cooperation* 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 *capacity building* principle).
- Subject to the cooperation and public interest principles and the capacity of the UPA, action to prevent and deal with corruption in a UPA should generally happen within the unit (the *devolution* principle).

The CCC may discharge its corruption function in several ways. It may, for instance, investigate; or monitor how police misconduct or corrupt conduct is investigated and handled by the QPS or a UPA; or it may refer a matter to the UPA itself to be dealt with.¹⁷⁵

Because of the CCC’s legislated focus on serious and systemic corrupt conduct,¹⁷⁶ and because the number of complaints it receives far exceeds its investigative capacity, most complaints are devolved to the relevant UPAs — including to the QPS.¹⁷⁷ This process of devolution was examined in the recent *Review into the culture and accountability in the Queensland public sector* led by Professor Peter Coaldrake (the Coaldrake Review). The Coaldrake Review affirmed the general principle of devolution, noting that the ‘CCC should be left to focus on the more serious matters and agencies should be encouraged to manage the less serious ones’.¹⁷⁸

In the discharge of its functions, the CCC has extensive, indeed extraordinary, powers. It can conduct hearings, and generally does so in private.¹⁷⁹ It can effectively compel citizens to answer questions and to produce documents, things, or written statements of information, even in circumstances where the person claims privilege against self-incrimination¹⁸⁰ — where, ordinarily, such a claim would protect the person from directly or indirectly incriminating themselves. Chapter 8 and **Appendix H** of this report addresses access to, and use of, compelled evidence by charging and prosecuting entities.

External oversight of the CCC

The Parliamentary Crime and Corruption Committee

As recommended by the Fitzgerald Inquiry and provided for in the original CJ Act, the current-day CCC is overseen by the PCCC.¹⁸¹

Chapter 6 Part 3 of the CC Act establishes the PCCC and sets out its functions, powers, and membership. It is a bipartisan committee tasked with monitoring and reviewing the performance of the CCC's functions, issuing guidelines and giving directions to the CCC, and reporting to Parliament. It has seven members — four nominated by the Leader of the House, and three by the Leader of the Opposition. While not legislatively prescribed, the Chairperson of the PCCC has traditionally been appointed from among opposition members.

The PCCC may receive and act upon complaints or its own concerns, and act or respond in a variety of ways: by asking the CCC to report; by requesting the PCC Commissioner to investigate and report; by asking the QPS to investigate; and, by referring a matter to the DPP.¹⁸²

A primary responsibility of the PCCC in its role overseeing the CCC is undertaking five-yearly reviews and reporting on the CCC's functions, powers, and operations.¹⁸³ Those reports are wide-ranging and comprehensive. The PCCC Report No. 106, *Review of the Crime and Corruption Commission's activities* (June 2021) is the most recent.

The Parliamentary Crime and Corruption Commissioner

The PCC Commissioner is an officer of Parliament appointed by the Speaker of the Legislative Assembly with the bipartisan support of the PCCC.¹⁸⁴ The PCC Commissioner assists the PCCC to monitor and review the CCC's performance of its functions.

Chapter 6 Part 4 of the CC Act establishes the role, and includes provisions about the PCC Commissioner's appointment and their functions, powers, and support.

In a submission to this Inquiry, the PCC Commissioner advised that the functions of the office include auditing the CCC's records and operational files to decide whether the CCC has exercised power in an appropriate way; determining whether matters under investigation are appropriate for investigation by the CCC; and determining that registers are up to date, that proper authorisations have been obtained, and that the CCC has complied with policy and procedural guidelines.¹⁸⁵

The PCC Commissioner and their office also investigate complaints made against the conduct or activities of the CCC or its officers, either at the request of the PCCC or on their own initiative.¹⁸⁶ The office must inspect the CCC's surveillance device warrants records to determine the CCC's compliance with the provisions of the PPRA, and report six-monthly to the PCCC; conduct an inspection of the CCC's controlled operations records to determine compliance with the PPRA provisions; and prepare a report on the work and the activities of the CCC under the controlled operations provisions, provided annually to the PCCC.¹⁸⁷ Additionally, the PCC Commissioner audits the CCC's assumed identities records, and inspects and reports on the CCC's telecommunications interception records.¹⁸⁸

Apart from these audits and inspections, the PCC Commissioner acts, in the main, in response to specific complaints and referrals from the PCCC.¹⁸⁹

The Public Interest Monitor

Chapter 6 Part 5 of the CC Act establishes the office of the PIM whose role is to monitor applications for, and the use of, surveillance warrants and covert search warrants obtained by the CCC. An annual report is prepared for the minister with portfolio responsibility for the CC Act, which is tabled in Parliament.

The PIM is tasked with monitoring compliance by the CCC in relation to applications for surveillance and covert search warrants by appearing at the hearing of applications for surveillance or covert search warrants to test the validity of applications; gathering statistical information about the use and effectiveness of surveillance or covert search warrants; and providing reports to the PCCC and CCC on non-compliance issues.

Other external oversight mechanisms

The CCC is subject to other external oversight mechanisms applying to its activities and operations:

- The Supreme Court of Queensland, in the context of applications for review of CCC investigations believed to have proceeded unfairly. The Supreme Court is also responsible for determining claims of privilege and ‘reasonable excuse’ raised by individuals the subject of the CCC’s coercive powers.¹⁹⁰ Some of the CCC’s powers are exercisable only with the approval of a Supreme Court judge, such as applications for surveillance and covert search warrants, monitoring and suspension orders for financial institutions, and notices for immediate attendance by witnesses at a hearing.¹⁹¹
- The Public Interest Advocate, whose role is to consider applications for journalist information warrants (warrants to obtain telecommunications information in relation to journalists and media organisations).¹⁹²
- The Control Operations Committee established under the PPRA, which considers and makes recommendations about applications for controlled operations to be undertaken by the QPS and CCC.¹⁹³

3.3 The CCC compared to other Australian integrity bodies

All Australian jurisdictions, except for the Commonwealth, have an integrity body. The new Australian Government has announced that it proposes to establish such a body.

Five jurisdictions established their integrity bodies in the last decade. New South Wales and Queensland created theirs in the late 1980s. The NSW Independent Commission Against Corruption (NSW ICAC) commenced in 1988 after several instances where ministers were jailed and judicial officers and high-ranking police officers investigated, charged and convicted.¹⁹⁴

An interjurisdictional comparison and analysis of the various integrity bodies across Australia was undertaken by this Inquiry involving the following bodies:

- NSW ICAC
- The Victorian Independent Broad-based Anti-corruption Commission (Victoria IBAC)
- The Western Australian Corruption and Crime Commission (WA CCC)
- The South Australian Independent Commission Against Corruption (SA ICAC)
- The Tasmanian Integrity Commission
- The Northern Territory Independent Commissioner Against Corruption (NT ICAC)

- The Australian Capital Territory (ACT) Integrity Commission.

Appendix E presents a comparative analysis of each of the Australian integrity bodies with a focus on the matters in our Terms of Reference.

The Queensland CCC's role and responsibilities, and its methods of operation, are unique in several particulars.

Save for the WA CCC, Queensland's CCC is the only integrity body invested with both crime and corruption responsibilities and functions. It is also alone in both using a significant number of seconded police officers and allowing for the retention of their full police powers. Until September 2021, it was the only integrity body legislatively restricted from exercising discretion to refer corruption investigations to its state DPP for advice. (South Australia (SA) has now joined Queensland).

Each jurisdiction has external oversight mechanisms in the form of a Parliamentary Committee like Queensland's PCCC, but with some material differences.

In SA, the Parliamentary Committee has additional functions — in particular, to consider whether the SA ICAC, by undertaking functions provided for under its establishing legislation, has adversely affected persons not involved in corruption.¹⁹⁵ These provisions are unique to SA in requiring consideration of the impacts of investigations on affected parties.

In the Northern Territory, the Parliamentary Committee may also, uniquely, examine trends across similar bodies in other jurisdictions to ensure the NT ICAC is meeting proper standards.¹⁹⁶ The function is apparently intended to provide a 'proactive' approach to maintaining consistency and keeping pace with nation-wide developments and trends.

Additionally, all jurisdictions (except Tasmania) use an independent office called an 'inspector' or 'reviewer' to oversee their integrity body. The office is separate from their Parliamentary Committee.

NSW, Victoria, WA, the NT, and the ACT have independent inspectors with comparable functions including monitoring legislative compliance, dealing with misconduct allegations, assessing the appropriateness and effectiveness of the integrity body, and making recommendations.

In SA, the independent reviewer has, again uniquely, an additional responsibility to consider whether the integrity body has exercised its powers appropriately, whether undue prejudice has been caused to a person's reputation by its activities, and whether its operations made an appreciable difference to preventing corruption.¹⁹⁷

Queensland's equivalent office — its PCC Commissioner — has similar functions to these independent inspectors or reviewers, but typically conducts its functions at the request of the PCCC. The PCC Commissioner may commence investigations on their own initiative where a matter relates to the potential corrupt conduct of a CCC officer, and they are satisfied on reasonable grounds that the CCC has not or may not adequately deal with the matter and it is in the public interest for an investigation to be commenced.¹⁹⁸

In Tasmania there is not an equivalent to the PCC Commissioner overseeing the integrity body, but there is the Parliamentary Standards Commissioner, which provides independent advice to the Integrity Commission and Parliament about matters relating to the conduct of members of Parliament.¹⁹⁹

Endnotes

- ¹⁰¹ Fitzgerald Report, p 4.
- ¹⁰² Fitzgerald Report, pp 5, 357.
- ¹⁰³ Fitzgerald Report, p 357.
- ¹⁰⁴ Fitzgerald Report, p 364.
- ¹⁰⁵ Fitzgerald Report, p 309.
- ¹⁰⁶ The Hon. T. R. Cooper, Premier and Treasurer and Minister for State Development, Hansard, 18 October 1989, p 1630.
- ¹⁰⁷ CC Act, s 57.
- ¹⁰⁸ CJ Act, s 2.14.
- ¹⁰⁹ CJ Act, ss 2.1–2.6.
- ¹¹⁰ CJ Act, Part 2.
- ¹¹¹ CJ Act, s 2.17.
- ¹¹² CJ Act, ss 3.21, 3.24.
- ¹¹³ Fitzgerald Report, p 311.
- ¹¹⁴ Fitzgerald Report, p 313.
- ¹¹⁵ CJ Act, ss 2.54, 2.56.
- ¹¹⁶ CJ Act, s 2.24.
- ¹¹⁷ CJ Act, ss 1.3, 2.14, 2.18, 4.8.
- ¹¹⁸ *Carruthers v Connolly* [1998] 1 Qd R 339.
- ¹¹⁹ Hansard, 7 October 1997, p 3602.
- ¹²⁰ Hansard, 28 October 1997, p 3872.
- ¹²¹ CC Act 1997 (*Explanatory Notes*), p 1.
- ¹²² The Hon. T. R. Cooper, Minister for Police and Corrective Services and Minister for Racing, Hansard, 30 October 1997, p 4109.
- ¹²³ CC Act 1997, ss 12–14, 17.
- ¹²⁴ CC Act 1997, s 46.
- ¹²⁵ CC Act 1997, Part 3. This composition was intended to strike a balance between law enforcement on the one hand and bipartisan parliamentary, community and civil liberties representation on the other (Hansard, 30 October 1997, p 4110).
- ¹²⁶ CC Act 1997, s 102.
- ¹²⁷ CC Act 1997, ss 30, 32, 36.
- ¹²⁸ 1997 Amendment Act, s 41 (Inserted new Part 4A into the CJ Act); CC Act 1997, Part 5.
- ¹²⁹ 1997 Amendment Act, s 41.
- ¹³⁰ 1997 Amendment Act (*Explanatory Notes*), p 2.
- ¹³¹ CC Act, s 4. The CC Act also has the purpose to facilitate the CCC's involvement in a confiscation related investigation.
- ¹³² Hansard, 16 Oct 2001, p 2817.
- ¹³³ CM Act, ss 277–278.
- ¹³⁴ CM Act, Chapter 2, Part 3.
- ¹³⁵ CM Act, s 34(c).
- ¹³⁶ CM Act, s 35(g).
- ¹³⁷ CM Act, s 255; modelled on CJ Act, s 65.
- ¹³⁸ CM Act, s 49.
- ¹³⁹ CM Act, Chapter 6, Parts 3, 4, 5.
- ¹⁴⁰ *Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Act 2013* (Qld).

¹⁴¹ *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013* (Qld); *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* (Qld); and *Vicious Lawless Association Disestablishment Act 2013* (Qld).

¹⁴² *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013* (Qld) (which included the insertion of new Chapter 2 Part 4 Division 2A and Division 2B into the CM Act).

¹⁴³ *Crime and Corruption Amendment Act 2016* (Qld); *Serious and Organised Crime Legislation Amendment Act 2016* (Qld).

¹⁴⁴ Queensland Government Response to the PCCC Report 97: *Review of the Crime and Corruption Commission*, 16 December 2016, p 3; Queensland Government Response to the PCCC Report 99: *Report on a complaint by Mr Darren Hall*, 27 February 2017.

¹⁴⁵ CC Act, s 4. The CC Act also has the purpose to facilitate the CCC's involvement in a confiscation related investigation.

¹⁴⁶ CC Act, s 223.

¹⁴⁷ CC Act, s 224; CCC Submission, 1 April 2022, p 17, para 36.

¹⁴⁸ CCC Submission, 1 April 2022, p 17, para 36, referring to s 225 of the CC Act.

¹⁴⁹ CCC Submission, 1 April 2022, p 18, para 41.

¹⁵⁰ CC Act, s 251; as reflected in the CCC Submission, 1 April 2022, p 17, para 35.

¹⁵¹ CC Act, s 251(2).

¹⁵² CC Act, ss 252, 269.

¹⁵³ CC Act, s 265.

¹⁵⁴ CC Act, s 270; *Instrument of Delegation*, 17 December 2018 made under CC Act, ss 269, 270; CCC Submission, 1 April 2022, p 82, paras 415, 417.

¹⁵⁵ CC Act, ss 253, 269; CCC Submission, 3 May 2022, p 2, para 5.

¹⁵⁶ CCC Submission, 3 May 2022, p 2, para 6.

¹⁵⁷ CCC Submission, 1 April 2022, p 18, para 43.

¹⁵⁸ CCC Submission, 1 April 2022, p 18, para 45.

¹⁵⁹ CC Act, s 254(1). Staff are employed under the CC Act and not under the *Public Service Act 2008* (Qld).

¹⁶⁰ CC Act, s 255(1).

¹⁶¹ CC Act, s 255(4).

¹⁶² QPS Submission, 4 May 2022, p 5.

¹⁶³ CC Act, Chapter 2, Part 2.

¹⁶⁴ CC Act, Chapter 6, Part 2. Membership of the CRC: CCC Chairperson; CCC SEO (Crime); Commissioner of Police, QPS; Principal Commissioner of the Queensland Family and Child Commission; two community representatives appointed by the Governor-in-Council (one of whom must have a demonstrated interest in civil liberties and one, at least, must be female); and CCC SEO (Corruption) when the authorisation relates to suspected corruption, and the CEO, Australian Crime Commission in prescribed circumstances. Further, see CCC Submission, 1 April 2022, p 32, para 127 — The CRC has the functions of referring major crime to the CCC for investigation; authorising the CCC to undertake specific intelligence operations; reviewing general referrals; and coordinating joint major crime investigations involving the CCC and other entities.

¹⁶⁵ CC Act, s 25.

¹⁶⁶ CCC Submission, 1 April 2022, p 22, para 71.

¹⁶⁷ CCC Submission, 1 April 2022, p 23, para 75.

¹⁶⁸ CCC Submission, 1 April 2022, p 23, para 76.

¹⁶⁹ CCC Submission, 1 April 2022, p 23, para 77.

¹⁷⁰ CC Act, Chapter 2, Part 3.

¹⁷¹ UPA is defined under the CC Act (s 20) to include: the Legislative Assembly, and the parliamentary service; the Executive Council; a department; the police service; a local government; a corporate entity established by an Act or that is of a description of a corporate entity provided for by an Act which, in either case, collects revenues or raises funds under the authority of an Act; a noncorporate entity, established or maintained under an Act, that is funded to any extent with State moneys or is financially assisted by the State; a State court, of whatever jurisdiction, and its registry and other administrative offices; and another entity prescribed under a regulation. However, none of the following is a UPA (section 20): the CCC; the parliamentary commissioner; the entity consisting of — the parliamentary commissioner; officers and employees of the parliamentary service assigned to the parliamentary commissioner; and persons engaged to provide the parliamentary commissioner with services, information or advice; or an entity declared by an Act not to be a UPA.

¹⁷² CC Act, s 33.

¹⁷³ CC Act, s 15.

¹⁷⁴ CC Act, s 34; each principle is elaborated upon in s 34.

¹⁷⁵ CC Act, Chapter 2, Part 3, Divisions 1, 4 and 5.

¹⁷⁶ CC Act, s 35(3); CCC Submission, 1 April 2022, p 24, para 82.

¹⁷⁷ CCC Submission, 1 April 2022, p 25, para 86.

¹⁷⁸ Coaldrake Review Report, 'Let the Sunshine in: Review of culture and accountability in the Queensland public sector' (28 June 2022), p 37. The Coaldrake Review recommended the establishing of a clearing house for complaints, and that the CCC 'avail itself of the opportunity provided by the clearing house and the other cultural changes prompted by this Review to redouble its attention on serious corruption and major crime' (p 46).

¹⁷⁹ CC Act, ss 176–177.

¹⁸⁰ CC Act, s 197.

¹⁸¹ Fitzgerald Report, pp 309, 372; CJ Act 1989, s 1.3 and Part 4.

¹⁸² CC Act, s 295(2).

¹⁸³ Prior to the 2021 Report No. 106, the PCCC had been required to report at three-yearly intervals.

¹⁸⁴ CC Act, ss 303(2), 306.

¹⁸⁵ PCC Commissioner Submission, 7 April 2022, p 1.

¹⁸⁶ PCC Commissioner Submission, 7 April 2022, p 1.

¹⁸⁷ PCC Commissioner Submission, 7 April 2022, p 1.

¹⁸⁸ PCC Commissioner Submission, 7 April 2022, pp 1–2.

¹⁸⁹ PCC Commissioner Submission, 7 April 2022, p 2.

¹⁹⁰ CCC Submission, 1 April 2022, p 31, para 126.

¹⁹¹ CCC Submission, 1 April 2022, p 31, para 125.

¹⁹² CCC Submission, 1 April 2022, p 31, paras 123–124.

¹⁹³ CCC Submission, 1 April 2022, p 32, paras 130–131.

¹⁹⁴ Hansard (NSW, Legislative Assembly) 26 May 1988, p 673.

¹⁹⁵ *Parliamentary Committees Act 1991* (SA), s 150(1).

¹⁹⁶ Legislative Assembly of the NT, *Standing Committee on the ICAC* (Web Page) <<https://parliament.nt.gov.au/committees/list/SCICAC#:~:text=The%20functions%20of%20the%20Standing,and%20137%20of%20the%20Act>>.

¹⁹⁷ *Independent Commission Against Corruption Act 2012* (SA) Schedule 4, s 3(1).

¹⁹⁸ Queensland Parliament, *Parliamentary Crime and Corruption Committee* (Web Page) <<https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=171>>.

¹⁹⁹ *Integrity Commission Act 2009* (Tas), s 28.





CHAPTER 4

The Crime and Corruption Commission's
structure and processes

CHAPTER 4: THE CRIME AND CORRUPTION COMMISSION'S STRUCTURE AND PROCESSES

This chapter concerns the way the CCC is organised and its internal processes.

4.1 Changes within the CCC since 2018

In 2018, the CCC began a comprehensive organisational review,²⁰⁰ unrelated to the matters dealt with in the PCCC Logan Council Report.²⁰¹

The review resulted in a series of organisational activities directed towards improvement, including changes to the overarching structure of the CCC's divisions, to the role of the CCC's executive-level governance group, and the internal operational policies and procedures applicable to CCC staff including police officers on secondment.²⁰²

This Inquiry was informed that the intention behind these organisational improvement activities was, initially, to develop 'clear, defined, repeatable processes to ensure consistency of approach and outcome' and then to 'leverage consistency to deliver ever more efficient and valuable services'.²⁰³ It appears that a need had been identified within the CCC to ensure consistent approaches to the way it performed its principal functions.²⁰⁴

The outcomes of the CCC's organisational improvement activities since 2018 have been:

- increased executive-level oversight for investigations²⁰⁵
- the documentation of standards, practices and processes applicable to all CCC staff²⁰⁶
- a simplified organisational structure intended to provide a better focus on the CCC's core functions.²⁰⁷

Executive oversight

The CCC is supported by a formal governance group comprising senior leaders whose role as group members involves 'leading discussions, providing advice, and making recommendations on strategic and operational matters critical to the performance of the CCC's functions'.²⁰⁸

This formal governance group is called the Executive Leadership Team (ELT).

A group of that kind has been in place since 2014 although its name, membership and role have changed over time.²⁰⁹ In its current iteration, the ELT, includes the Chairperson, the CEO, the SEO (Crime), the SEO (Corruption), the General Manager (GM) Operations Support, the GM Corporate Services and the GM Strategy Innovation and Insights.²¹⁰ It is chaired by the Chairperson or their delegate.²¹¹

The changes the CCC has introduced since 2018 has had the effect of expanding the role of the ELT to include receiving information, considering potential investigations and project proposals, and the continuous monitoring of approved investigations and projects.²¹²

The ELT's functions are not limited to the oversight of investigations but also extend to 'input' on broader CCC projects²¹³ including research, intelligence or corporate projects.²¹⁴ The ELT oversees approved investigations at a high-level. Aside from monthly updates on the progress of the investigations and consideration of any emerging risks or issues,²¹⁵ the ELT does not delve into the operational details of investigations (such as advising on investigative strategies or querying investigative tactics). That is understandable: the breadth of the ELT's role in the CCC does not lend itself to operational-level input on investigations.

The ELT's involvement in the assessment and review of operational matters is to 'ensure that resources are centrally coordinated, and operational activity monitored to ensure ongoing feasibility and delivery of intended outcomes'.²¹⁶

The current remit of the ELT is broad and encompasses strategic, corporate and operational functions including:

- *Strategic oversight* — connoting a role in identifying strategic issues and guiding the achievement of the CCC's strategic goals and objectives.
- *Corporate leadership* — describing the ELT's role in guiding both strategic and operational activities and driving good governance of the CCC (such as risk management, including fraud and corruption control, and budget and financial reporting).
- *Portfolio assessment* — relating to the ELT's role in determining priorities and approving investigations and projects including the allocation of resources to investigations and projects.
- *Portfolio review* — involving the ELT's role in overseeing investigations, and projects which have been approved and are underway.²¹⁷

The ELT meets weekly to assess matters (portfolio assessment), and monthly to review approved matters (portfolio review) and undertake broader corporate management functions.²¹⁸

Research undertaken by this Inquiry indicates that the term 'portfolio' is, in this context, derived from what is recognised as the 'Project Portfolio Management' methodology of organisational governance.²¹⁹ The methodology aims to ensure that 'projects' (which, in the context of the CCC, seems to include investigations identified and selected or given priority by the organisation) are aligned to an organisation's strategic objectives and are delivered effectively.²²⁰

Introduction of new policy and procedure documents

The first stage of the CCC's recent internal review activities resulted in the development and introduction of a suite of corporate documents in 2018²²¹ including an Operating Model, an Operational Framework and an Operations Manual.

The nature and purpose of these corporate documents and, in particular, the Operations Manual is important as they outline the policies and procedures by which all CCC staff, including seconded police officers, are expected to undertake their work.

An immediate concern, to our minds, springs from their language and phrasing. It is often opaque, unclear and imprecise: terms such as 'lifecycle',²²² 'value chain'²²³ and 'portfolio activities'²²⁴ align, we understand, with current corporate practice but too often have the effect of inhibiting ready comprehension. These documents address important matters; it is vital that staff, including police officers newly seconded to the CCC, are clearly and unequivocally instructed in the proper performance of their assigned duties and work. We have a general concern that their current prose style is detrimental, if not inimical, to that vital purpose.

The Operating Model

The Operating Model²²⁵ outlines the central activities of the CCC, and the role of the ELT in overseeing their performance ('delivery').

The key activities outlined in the Operating Model include:

- 'portfolio activities' which include the ELT's oversight role in portfolio review and assessment
- 'operational activities' which include core business and frontline work such as investigations, projects and witness protection
- 'support activities' which seems to reference skills utilised in the delivery of operational activities including legal, analytics, investigative, evidence management and specialist technical skills
- 'corporate activities' which support operational activities and strategy implementation, for example, human resources or records management.²²⁶

The Operating Model also introduces the concept of 'matter stages' which relate to how the CCC represents the phases of work leading up to and involved in the conduct of an investigation. These stages include assessment, feasibility, delivery and post-delivery, and are analysed further in Chapter 5.²²⁷

Notwithstanding our concerns about some of the verbiage used in these documents, the CCC's commitment to a detailed consideration of the elements of an effective investigation (involving ongoing monitoring, regular review and the evaluation of outcomes) is commendable.²²⁸

The Operational Framework

The Operational Framework was created with the intent of providing CCC staff, including seconded police officers, with guidance about the practices and processes by which the CCC conducts its activities and achieves the purposes of the CC Act.²²⁹ It aims to achieve 'greater consistency and governance of CCC operations'.²³⁰ A desire to achieve a consistent and uniform approach to the management of investigations seems to be the impetus for both the Operational Framework and the associated Operations Manual.²³¹

The Operational Framework outlines the CCC's history, functions and powers before setting out the policy and standards relevant to various activities. It foreshadows much of the content in the Operations Manual, and introduces the concept of 'matter management' to CCC staff; the term denotes the processes and

procedures for ensuring a consistent practice is undertaken for assessing what 'matters' should be investigated, and monitoring those matters as they progress.²³²

The Operations Manual

The Operations Manual was compiled following the development and implementation of the Operating Model and the Operational Framework.²³³ The Operations Manual is a collection of separate procedural documents, spanning over 500 pages²³⁴ and apparently intended to provide a single point of reference for operational activities²³⁵ relating to complaints handling and investigations, including support activities.²³⁶

The procedural documents outline the intended approach for assessing complaints, how the ELT's role in portfolio assessment and review is supported, and how discrete aspects of operational support activities are to be delivered by relevant teams within the CCC.

Restructuring the CCC's internal divisions

The introduction of these new corporate documents was followed by an organisational restructure initiated in 2019.²³⁷ The CCC's public documents assert that the restructure was to assist with the 'transition to a simplified, service-led organisational structure'.²³⁸

The process involved restructuring from eight internal divisions to five,²³⁹ and resulted in a reorganisation and reassignment of a significant proportion of the CCC's workforce.²⁴⁰ The former eight divisions were Operations Support, Intelligence, Financial Investigations, Crime, Corruption, Legal Services, Policy and Research, and Strategic and Corporate Services.²⁴¹ As a result of the organisational restructure, the current five divisions are:

- **Crime** led by the SEO (Crime) who is a civilian senior executive service (SES) officer²⁴²
- **Corruption** led by the SEO (Corruption) who is a civilian SES officer²⁴³
- **Operations Support** led by the GM Operations Support who is a detective chief superintendent on secondment from the QPS (the highest ranked seconded police officer at the CCC)²⁴⁴
- **Corporate Services** led by the GM Corporate Services who is a civilian SES officer²⁴⁵
- **Strategy, Innovation and Insights** which is ordinarily led by the GM Strategy Innovation and Insights (a civilian SES officer), although the role was vacant at the time of this Inquiry.²⁴⁶

QPS officers are only seconded to three of the CCC's divisions: Crime, Corruption, and Operations Support. These divisions are discussed below. The remaining two divisions — Corporate Services²⁴⁷ and Strategy, Innovation and Insights²⁴⁸ — are fully staffed by civilians.

Appendix F contains further information about the CCC's current organisational structure and reporting relationships.

4.2 The Crime Division

The Crime Division is organised into five business units:

- Office of the SEO (Crime) — which encompasses the leadership positions within the division and is broadly responsible for the delivery of the crime function under the CC Act.
- Crime Operations — which includes several operational teams tasked with supporting law enforcement investigations into organised offending, including major crime and intelligence operations.
- Proceeds of Crime — involved in delivering the CCC's functions related to confiscation.
- Crime Hearings and Legal — responsible for the provision of legal advice and advocacy and assessing whether hearings will assist with the solving of crimes.
- Crime Strategy — responsible for 'strategic intelligence and insights to improve operational effectiveness and identify crime prevention opportunities'.²⁴⁹

The SEO (Crime) leads the Crime Division. Under the CC Act, the CCC is required to employ a senior officer who is 'responsible to the Chairperson for the proper performance of the commission's crime functions'.²⁵⁰ Accordingly, the SEO (Crime) reports to the Chairperson regarding the performance of crime functions, including investigating major crime referred to it by the CRC and incidents involving criminal organisations which threaten or potentially threaten public safety.²⁵¹

The SEO (Crime) is also responsible for managing human resourcing and the budget allocated to their division, and reports to the CEO on these matters.²⁵²

The CCC advised that 14 police officers are seconded to the Crime Division²⁵³ and described these officers as 'central'.²⁵⁴ Officers include a detective superintendent who fulfils the role of Executive Director, Crime Operations and who manages the unit.²⁵⁵ Two detective inspectors are positioned as directors within Crime Operations, reporting to the Executive Director, Crime Operations.²⁵⁶

In this unit there are also four operations leaders, who are detective senior sergeants.²⁵⁷ The CCC explained the role of these detective senior sergeants as working within teams alongside other police officers (seven detective sergeants in total),²⁵⁸ civilian intelligence analysts, financial investigators, and operations support staff who provide administrative support to investigations teams.²⁵⁹

There are 19 civilian positions within the Crime Operations unit.²⁶⁰

4.3 The Corruption Division

The Corruption Division is now organised into four business units:

- Office of SEO (Corruption) — which encompasses the leadership positions within the division and is broadly responsible for the CCC's corruption function under the CC Act.
- Integrity Services — which receives and assesses complaints and provides oversight of the QPS disciplinary process.

- Strategy, Prevention and Legal — described by the CCC as providing 'strategic intelligence, corruption prevention, audits of UPA systems and processes, and legal advice relevant to corruption matters'.
- Corruption Operations — which contains several multidisciplinary operational teams responsible for conducting investigations related to corruption.²⁶¹

The SEO (Corruption) leads the Corruption Division.²⁶² As with the crime function, the CC Act requires the CCC to employ a senior officer who is 'responsible to the Chairperson for the proper performance of the commission's corruption functions'.²⁶³ The SEO (Corruption) reports to the Chairperson regarding the performance of corruption functions including raising integrity standards and conduct in the public sector, dealing with complaints or other information about corruption according to the principles enshrined in legislation, and investigating conduct which may be corrupt or may enable corruption.²⁶⁴

Like the SEO (Crime), the SEO (Corruption) is also responsible for managing human resourcing and budget allocations to their division, and reports to the CEO on these matters.²⁶⁵

The CCC advised there are 18 police officers seconded to Corruption Operations and again described these officers as central to the unit.²⁶⁶ Corruption Operations is managed by the Executive Director Corruption Operations, who is a detective superintendent.²⁶⁷ The remaining police officers seconded to the Corruption Operations unit include two detective inspectors, five detective senior sergeants and 10 detective sergeants.²⁶⁸

Corruption investigations are conducted by teams that rely on the skills of investigators (both police and civilian), financial investigators, intelligence analysts and lawyers.²⁶⁹

The CCC indicated that the composition of the teams within the Corruption Operations unit may change from time to time in response to the demands of a specific investigation.²⁷⁰ This means the CCC may configure teams within Corruption Operations differently in accordance with the skills required to effectively undertake a particular investigation.

There are also 28.8 full-time equivalent civilian positions in Corruption Operations. Civilian positions include managerial, investigator, financial investigator, intelligence analyst and administrative support roles.²⁷¹

Of these 28.8 civilian positions, 11 positions are held by officers with a background in policing.²⁷² Notably, of the six teams within the Corruption Operations unit, three are led by seconded police officers (detective inspectors),²⁷³ and three are led by civilians with a policing background (directors or the Manager, Corruption Operations).²⁷⁴ (See **Appendix F**.)

There are nine civilian investigator roles (including the Manager Corruption Operations) and intelligence, financial, and administrative roles plus seconded police officers in the Corruption Operations unit.²⁷⁵ Currently all persons employed in those civilian investigator roles have a law enforcement background.²⁷⁶ The information provided by the CCC indicates the totality of CCC's current corruption investigation staff (that is, 18 seconded officers and nine civilians) is derived from either serving police officers or from individuals with a background in law enforcement.

The implications of this reliance upon serving police and civilians with a policing background in the conduct of corruption investigations is discussed in Chapter 6.

4.4 The Operations Support Division

The Operations Support Division provides both overt and covert expertise (forensic computing, evidence/property management, electronic collections, intelligence support, human source management, and physical and technical surveillance) intended to support the investigative strategy of the CCC.²⁷⁷ The business unit dedicated to the CCC's witness protection function also falls within this division.²⁷⁸

The Operations Support Division is where most seconded police officers are located within the CCC. The CCC noted there are 53 QPS officers seconded to this division. This division is also home to 32.2 full-time equivalent civilian roles.²⁷⁹

The GM Operations Support, a detective chief superintendent, has operational oversight of the Operations Support Division.²⁸⁰ We understand this includes the management and coordination of operations (both overt and covert) and responsibility for the delivery of the Witness Protection Program.²⁸¹

The GM Operations Support reports directly to the Chairperson in relation to the Witness Protection Program, because the Chairperson is the primary decision maker under the *Witness Protection Act 2000* (Qld).²⁸² As with the SEOs of the Crime and the Corruption Divisions, the GM Operations Support also reports to the CEO on administrative matters, such as the management of human resources and budget allocations.²⁸³

The CCC advised that the Operations Support Division provides 'specialist technical capabilities in support of crime and corruption investigations'.²⁸⁴ In that role the GM Operations Support may liaise directly with the SEOs of the Crime and the Corruption Divisions or other senior leaders within those divisions to ensure these activities are coordinated.²⁸⁵

The GM Operations Support has direct oversight of administrative and human resourcing matters of all police officers seconded to the CCC, including those officers seconded to the Crime and the Corruption divisions. Further information about the oversight of QPS seconded officers is provided in Chapter 6.

Endnotes

²⁰⁰ CCC Submission, 1 April 2022, p 21, para 63.

²⁰¹ CCC Submission, 1 April 2022, p 21, para 64.

²⁰² CCC Submission, 1 April 2022, p 19, para 51; Attachment A, *Key events from the CJC to now*, pp A-1, A-5; and CCC Submission, 3 May 2022, pp 6–7.

²⁰³ CCC Submission, 3 May 2022, Attachment B, *CCC horizons*.

²⁰⁴ CCC Submission, 3 May 2022, pp 6–7.

²⁰⁵ CCC Submission, 1 April 2022, p 19, para 51.

²⁰⁶ CCC Submission, 1 April 2022, pp 21–22, paras 63–68.

²⁰⁷ CCC Submission, 3 May 2022, p 7, para 50.

²⁰⁸ CCC Submission, 1 April 2022, p 19, para 49; CCC Submission, 3 May 2022, p 2; Attachment A, *Executive Leadership Team Charter: Governance Committee*, p 3.

²⁰⁹ CCC Submission, 1 April 2022; Attachment A, *Key events from the CJC to now*, p A-5. Previously the ELT was larger including senior representatives from across the CCC's (formerly) eight divisions — including the SEO (Crime), SEO (Corruption), Executive Director Operations Support, Director of Financial Investigations, Director of Policy and Research, Director of Legal Services and Director of Intelligence (See CCC Annual Report 2017–18, pp 50–51). The organisational restructure initiated in 2019 had the effect of reducing the number of divisions, which in turn, reduced the number of ELT members (See CCC Annual Report 2018–19, pp 65–66; CCC Submission, 3 May 2022, p 7).

²¹⁰ CCC Submission, 1 April 2022, p 19, para 50. The CCC has confirmed the role of GM Strategy Innovation and Insights is currently vacant, so this role is not currently sitting on the ELT (CCC email to the Inquiry Secretariat, 12 May 2022, *Query regarding the composition of the ELT*). This position as a member of the ELT is also reflected in CCC Submission, 1 April 2022, Attachment B, *Operating Model Governance Arrangements*, p B-12.

²¹¹ CCC Submission, 3 May 2022, Attachment A, *Executive Leadership Team Charter: Governance Committee*, p 5.

²¹² CCC Submission, 1 April 2022, p 19, para 51.

²¹³ CCC Submission, 3 May 2022, Attachment A, *Executive Leadership Team Charter: Governance Committee*, p 4.

²¹⁴ CCC Submission, 1 April 2022, Attachment B, *Operating Model Governance Arrangements*, pp B-5, B-9; CCC Submission, 1 April 2022, Attachment C, *Operational Framework*, p C-12.

²¹⁵ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter Management, Planning and Conduct*, pp 12, 16; CCC Submission, 1 April 2022, *Operations Manual — Part 1: Identification of Matters: Section 1: Portfolio Assessment and Review*, p 7.

²¹⁶ CCC Submission, 1 April 2022, p 21, para 65.

²¹⁷ CCC Submission, 3 May 2022, Attachment A, *Executive Leadership Team Charter: Governance Committee*, p 3.

²¹⁸ CCC Submission, 3 May 2022, Attachment A, *Executive Leadership Team Charter: Governance Committee*, p 5; CCC Submission, 1 April 2022, *Operations Manual — Part 1: Identification of matters: Section 1: Portfolio Assessment and Review*, pp 3, 5.

²¹⁹ The CCC referred to the 'Portfolio Program and Project Management Framework' as a mechanism for achieving a 'consistent and structured approach to portfolio, program and project management (CCC Submission, 11 April 2022, p 5, para 34).

²²⁰ Teemu Mikael Lappi, Kirsi Aaltonen and Jaako Kujala, 'Project governance and portfolio management in government digitization' (2019) 13(2) *Transforming Government: People, Process and Policy*, p 162.

²²¹ CCC Submission, 3 May 2022, p 6, para 46; CCC Submission, 3 May 2022, Attachment B, *CCC horizons*.

²²² CCC Submission, 1 April 2022, Attachment B, *Operating Model Governance Arrangements*, p B-4; CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter Management, Planning and Conduct*, p 30.

²²³ CCC Submission, 1 April 2022, Attachment B, *Operating Model Governance Arrangements*, p B-5; CCC Submission, 1 April 2022, Attachment C, *Operational Framework*, p C-5.

²²⁴ CCC Submission, 1 April 2022, Attachment B, *Operating Model Governance Arrangements*, p B-5.

²²⁵ An operating model is an organisational management tool which links the strategic objectives of an organisation to its day-to-day activities (or operations). An organisation's 'strategy' will articulate why the organisation exists, and its priorities; an operating model should articulate what the organisation will do to fulfil the priorities articulated in that strategy (Ernst and Young Report, 'Operating Models: Delivering on strategy and optimizing processes' (2016), p 3).

²²⁶ CCC Submission, 1 April 2022, Attachment B, *Operating Model Governance Arrangements*, p B-4–B-5.

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- ²²⁷ CCC Submission, 1 April 2022, Attachment B, *Operating Model Governance Arrangements*, p B-4, B-8. There is an additional stage referred to by the CCC as 'benefits assessment' which appears to be the process of reflecting on the outcomes of the investigation and identifying any organisation-wide improvements that could be implemented as a result of learnings.
- ²²⁸ CCC Submission, 1 April 2022, Attachment B, *Operating Model Governance Arrangements*, p B-8.
- ²²⁹ CCC Submission, 1 April 2022, p 21, para 66.
- ²³⁰ CCC Submission, 3 May 2022, p 7, para 46.
- ²³¹ CCC Submission, 3 May 2022, pp 6–7, paras 45–46; Attachment B, *CCC horizons*.
- ²³² CCC Submission, 1 April 2022, Attachment C, *Operational Framework*, p C-26.
- ²³³ CCC Submission, 3 May 2022, p 7, para 46.
- ²³⁴ CCC Submission, 1 April 2022, *Operations Manual*.
- ²³⁵ CCC Submission, 1 April 2022, p 21, para 67.
- ²³⁶ CCC Submission, 1 April 2022, p 82, para 419.
- ²³⁷ CCC Submission, 3 May 2022, Attachment B, *CCC horizons*; CCC Submission, 3 May 2022, p 7, paras 47–51.
- ²³⁸ CCC Annual Report 2018–19, p 52.
- ²³⁹ CCC Submission, 3 May 2022, Attachment C, *Organisation structure design and transition planning*, pp 7–8.
- ²⁴⁰ CCC Submission, 3 May 2022, Attachment C, *Organisation structure design and transition planning*, p 10.
- ²⁴¹ CCC Annual Report 2017–18, p 56; CCC Submission, 3 May 2022, Attachment C, *Organisation structure design and transition planning*, p 7.
- ²⁴² CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 24.
- ²⁴³ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 12.
- ²⁴⁴ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 4.
- ²⁴⁵ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 29.
- ²⁴⁶ CCC email to the Inquiry Secretariat, 12 May 2022.
- ²⁴⁷ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 1, notes there are 80.9 full-time equivalent civilian positions in this division. The Corporate Services Division is responsible for central corporate functions, including 'finance and procurement, human resources, digital and information technology, records management, corporate legal risk and compliance, security and facilities, and communications' (CCC Submission, 1 April 2022, p 29, para 105).
- ²⁴⁸ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 1, notes there are 20.8 full-time equivalent civilian positions in this division. The Strategy, Innovation and Insights Division is described by the CCC as responsible for 'research and analysis, coordinates the development and implementation of our strategies, and drives innovation by turning insights into action, building critical capabilities, and implementing transformational change' (CCC Annual Report 2020–21, p 9).
- ²⁴⁹ CCC Submission, 1 April 2022, p 24, para 80.
- ²⁵⁰ CC Act, s 245(3)(a).
- ²⁵¹ CCC Submission, 3 May 2022, p 3, para 14; CC Act, s 25. Also noting the CCC indicated some decisions in relation to crime functions are subject to the approval of the CRC (CCC Submission, 3 May 2022, p 3, para 15).
- ²⁵² CCC Submission, 3 May 2022, p 3, para 16.
- ²⁵³ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 26.
- ²⁵⁴ CCC Submission, 1 April 2022, p 24, para 81.
- ²⁵⁵ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 26.
- ²⁵⁶ CCC Submission, 1 April 2022, p 24, para 81.
- ²⁵⁷ CCC Submission, 1 April 2022, p 24, para 81.
- ²⁵⁸ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 26.
- ²⁵⁹ CCC Submission, 1 April 2022, p 24, para 81.
- ²⁶⁰ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 26.
- ²⁶¹ CCC Submission, 1 April 2022, p 25–26, para 89.
- ²⁶² CCC Submission, 1 April 2022, p 25–26, para 89.
- ²⁶³ CC Act, s 245(3)(b).
- ²⁶⁴ CC Act, s 33.
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²⁶⁵ CCC Submission, 3 May 2022, p 3, para 16.

²⁶⁶ CCC Submission, 1 April 2022, p 26, para 90.

²⁶⁷ CCC Submission, 1 April 2022, p 26, para 90.

²⁶⁸ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, pp 13–19; CCC email to the Inquiry Secretariat, 24 May 2022, *Organisational Chart — Corruption Operations*.

²⁶⁹ CCC Submission, 1 April 2022, p 25, para 88.

²⁷⁰ CCC email to the Inquiry Secretariat, 24 May 2022, *Organisational Chart — Corruption Operations*.

²⁷¹ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, pp 14–19.

²⁷² CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, pp 14–19.

²⁷³ CCC Submission, 1 April 2022, p 26, para 90.

²⁷⁴ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 13.

²⁷⁵ CCC email to the Inquiry Secretariat, 24 May 2022, *Organisational Chart — Corruption Operations*.

²⁷⁶ CCC email to the Inquiry Secretariat, 24 May 2022, *Organisational Chart — Corruption Operations*.

²⁷⁷ CCC Submission, 1 April 2022, p 28, para 105.

²⁷⁸ CCC Submission, 11 April 2022, p 28, para 105.

²⁷⁹ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 1.

²⁸⁰ QPS Submission, 4 May 2022, p 1.

²⁸¹ CCC Submission, 1 April 2022, p 97, para 516.

²⁸² CCC Submission, 3 May 2022, p 3, para 17.

²⁸³ CCC Submission, 3 May 2022, p 3, para 17.

²⁸⁴ CCC Submission, 3 May 2022, p 3, para 17.

²⁸⁵ CCC Submission, 3 May 2022, p 3, para 17.





CHAPTER 5

Investigating, charging and prosecuting

CHAPTER 5: INVESTIGATING, CHARGING AND PROSECUTING

Our Terms of Reference refer to ‘CCC investigations’, and to the acts of ‘charging’ and ‘prosecution’. This chapter provides background and context to these terms to assist in an understanding of the following chapters.

5.1 The CCC investigation process

The CCC relies upon its Operations Manual to provide a single source regarding the performance of operational activities at the CCC, including how investigations should be conducted.²⁸⁶

The Operating Model and Operations Manual outline what the CCC refers to as the ‘lifecycle’ of an investigation (whether in relation to crime or corrupt conduct, police misconduct or confiscation) and categorises it into four stages: Assessment, Feasibility, Delivery and Post-Delivery.²⁸⁷

The Assessment Stage

The *Assessment Stage* for corruption matters is premised on the statutory requirement that the CCC must direct its resources to the more serious cases, or systemic examples, of corrupt conduct within a UPA.

A complaint is first assessed to determine if it falls within the CCC’s jurisdiction, and then categorised as high, medium or low.²⁸⁸ Some complaints categorised as ‘high’ will be referred to the ELT for a decision about how the investigation should proceed. A complaint categorised as ‘high’ and requiring referral to the ELT might involve, for example, a risk of death or serious injury to a member of the public resulting from a public officer’s conduct, high-level dishonesty, serious perjury or perversion of the course of justice, and politically sensitive or high-profile matters.²⁸⁹

Following categorisation, the next step in the process requires that an ‘assessment decision’ be made.²⁹⁰ An assessment decision is a ‘decision about whether the CCC should investigate information about major crime, criminal activity, corrupt conduct or police misconduct, or undertake a confiscation investigation’.²⁹¹

The Feasibility Stage

The *Feasibility Stage* requires that a report be provided to the ELT setting the purpose and scope of the investigation, the issues to be addressed, the investigative techniques to be used, and the resources required (including staffing numbers, and particular skills or abilities).²⁹²

The Delivery Stage

The *Delivery Stage* involves the collection and analysis of evidence and includes, where appropriate and warranted, the process of a seconded police officer charging a person.²⁹³ It also extends to activities like monitoring a corruption matter if it has been referred to a UPA,²⁹⁴ undertaking public hearings²⁹⁵ or reporting to other agencies.²⁹⁶

Roles and responsibilities during the Delivery Stage

The Operational Framework recognises four levels at which roles and responsibilities during the Delivery Stage are exercised.²⁹⁷ Seconded police officers are involved at each level.²⁹⁸ The four levels are:

- The *governance level* which appears to relate to the functions of the ELT (and the relevant SEO). This includes the ELT's role in making, recommending and endorsing important decisions such as matter scope, delivery plan, matter transition and delivery date changes.²⁹⁹
- The *management level* which relates to the relevant operational executive director or director responsible for the investigation.³⁰⁰ This executive director or director will allocate a case manager for each investigation and is responsible for ensuring that requirements are prioritised, and resourcing is appropriate.³⁰¹
- The *operational level*, at which the allocated case manager is responsible for leading the investigation and managing the day-to-day work of the investigation team.³⁰²
- The *technical level* which includes the decisions and activities of individual officers relating to technical activities (such as an operations support officer providing specialist services to assist in the evidence-gathering process).³⁰³ In the context of a corruption investigation this may be, for example, a specialist information technology officer or a financial investigator.

The case manager plays a pivotal role. They are responsible for regular review of resource requirements, managing the cycles of operational planning and decision-making in an investigation, coordinating the delivery of investigation 'products' and results, risk management and administrative tasks.³⁰⁴ The case manager is expected to report on progress to the ELT through the relevant operational executive director and SEO, on at least a monthly basis.³⁰⁵

Monthly reporting of the progress of an investigation required by the ELT, coupled with regular operational oversight provided, for example by directors in the Corruption Operations Unit and the Executive Director Corruption Operations, are apparently intended to operate as mechanisms for continual checks and oversight throughout an investigation.

The role of case manager may be assigned to a seconded police officer.³⁰⁶ At 1 April 2022, there were five detective senior sergeants assigned to the role of case manager for corruption-related investigations, and two detective senior sergeants assigned to this role for crime-related investigations.³⁰⁷

Operational directors at the CCC may theoretically be assigned to the role of case manager although we were informed that directors generally oversee multiple investigations at the management level.³⁰⁸

Post-Delivery Stage

The fourth and final step is the *Post-Delivery Stage*, which is intended to ensure that the processes and outcomes of an investigation are applied, monitored and evaluated through the CCC reporting processes.³⁰⁹ It also involves the completion of administrative or legal requirements prior to closure.

A Post-Delivery Assessment must also be completed, involving the provision of an Investigation Completion Report to the relevant SEO for endorsement. This fourth stage also involves a debrief for, at least, the case manager and the investigation team members.³¹⁰

The approach of the other Australian integrity bodies to corruption investigations

Each integrity body has a similar approach to investigative practices; each assesses and triages complaints before making discretionary decisions on which matters require investigation. Investigative techniques usually depend upon the nature of the matter in question. Each interstate integrity body may conduct public examinations, except for SA ICAC.

The integrity bodies in Queensland,³¹¹ Victoria, Tasmania, the Northern Territory (NT) and the Australian Capital Territory (ACT) have an additional function of 'own motion' or 'own initiative' investigations, in which their commissioner can initiate an investigation without the need for a referral or complaint.

5.2 Charging

The power to charge

The role of the community in the initiation of criminal proceedings diminished substantially in the 19th Century with the advent of professional police forces.³¹² The result is that today, in Queensland and other common law jurisdictions, police initiate most criminal prosecutions.³¹³ Prosecutions arising out of CCC investigations are no exception. The practice of the CCC is to cause police officers seconded to the CCC to initiate prosecutions arising out of its investigations. There are a number of means available to seconded police to do this.

Complaints by seconded police

First, a police officer seconded to the CCC may initiate a criminal proceeding under the *Justices Act 1886* (Qld) (Justices Act) by making a 'complaint'.³¹⁴

There are no provisions in the Justices Act specifying a minimum threshold test or criteria that must be satisfied before a complaint may be made under that Act.

Notice to appear

Alternatively, under section 382(2) of the PPRA a seconded police officer may charge by way of notice to appear. A notice to appear has the same effect as a complaint under the Justices Act.³¹⁵ However, the form of a notice to appear is less formal and less susceptible to challenge.³¹⁶ The QPS Operational Procedures Manual prima facie requires proceedings to be initiated by notice to appear in most cases.³¹⁷

Arrests by seconded police

The third means by which a seconded police officer may initiate the criminal justice process is by arrest. There are procedures available to police to arrest with, and without, a warrant.³¹⁸ Once an arrest is effected, police fall under a duty to swiftly bring the arrested person before a justice to be dealt with according to law.³¹⁹

A decision to make an *arrest* is not a decision to *prosecute* a person. Both at common law and under statute it is recognised that an arrest can be based on the mere suspicion of an offence, before investigations have been completed and investigators have formed a belief that a prima facie case

exists.³²⁰ Suspicion is a state of conjecture or surmise, where proof is lacking,³²¹ and can be formed on the basis of information that would not be regarded as admissible in a criminal proceeding.³²²

The reasons why, at common law and under statute, an arrest can be effected on mere suspicion are various. They may be generally attributed to a need in some cases to ensure that the administration of justice is not defeated, and public safety not unduly diminished, by a suspected offender remaining at large while investigations are completed.³²³

An arresting police officer must swiftly bring an arrested person before a justice, and has a duty to promptly complete their investigation and decide whether they will proceed against the arrested person.³²⁴ Section 376(3) of the PPRA requires a police officer to release a person who was arrested based on suspicion of commission of an offence once the police officer considers there is not enough evidence to bring the person before a court on a charge for that offence.

It is the subsequent decision to proceed after completing their investigations that constitutes the relevant decision to prosecute in arrest cases.

The Director of Public Prosecution Guidelines: the 'two-tier' test

The QPS Commissioner has issued a direction to all police officers under section 4.9 of the *Police Service Administration Act 1990* (Qld), requiring officers to apply the Director's Guidelines when deciding whether to charge.³²⁵ This is required of police officers seconded to the CCC.³²⁶

Those guidelines involve a two-tier test to inform the making of decisions to charge.³²⁷ The first limb of the test is the decision-maker must be satisfied that there is 'sufficient evidence'. The second limb is that the decision-maker must be satisfied that prosecution is in the public interest.

The Director's Guidelines explain that 'sufficient evidence' for the purpose of the first limb of the two-tier test is 'more than' just a prima facie case.³²⁸ The guidelines state that 'sufficient evidence' will exist only if there is a 'reasonable prospect' of conviction having regard to the persuasive strength of the admissible evidence.

All DPPs throughout Australia publish guidelines or statements setting out matters to be considered in the exercise of the discretion to charge.³²⁹ The decision in all jurisdictions, although differently formulated, involves a two-tier test requiring a consideration of the prospect of a conviction based on the available admissible evidence and the public interest question.³³⁰

The CCC's internal processes relating to charging

Under the CCC's internal processes, a seconded police officer considers whether to charge after a matter is referred to them by the Chairperson, the Deputy Chairperson or authorised delegate.³³¹

The process of briefing the Chairperson to consider referring a matter to a seconded police officer to consider charging is initiated by the 'case officer' (referring to a member of the investigation team³³² who may be a seconded police officer).³³³

The Operations Manual provides that advice is to be sought from the DPP or external counsel in matters that involve '... novel, complex or infrequently used criminal charges or the application of charges in a novel manner, and may include cases in which mandatory suspension or disqualification from office is a

consequence of charging or conviction'.³³⁴ For example, in the case of a corruption matter if the need for external advice is identified by the case officer, the matter is then considered by the Executive Director Corruption Operations or SEO (Corruption).³³⁵ The SEO makes the decision whether external advice should be sought in consultation with the Chairperson.³³⁶ If the legal advice indicates there are 'reasonable prospects of success in a prosecution' the advice provided is included in the suite of materials provided to the Chairperson as part of the consideration process.³³⁷

The executive director and the SEO must indicate in these materials if they agree with the external advice.³³⁸ In the event that the executive director and SEO disagree with the external advice provided in relation to the likelihood that prosecution would be successful, the executive director or SEO is required to provide the Chairperson with a 'detailed memorandum setting out the bases for disagreement and any recommended course of action'.³³⁹

Before the Chairperson considers whether to refer a matter to a seconded police officer, they are provided with briefing materials which must be considered, including:

- a criminal brief of evidence prepared by the case officer (also referred to by the CCC as a 'full brief of evidence' which includes available and possible defences)³⁴⁰
- observations on the brief by the allocated lawyer³⁴¹ (for corruption matters — from the Corruption Strategy, Prevention and Legal Unit within the Corruption Division),³⁴² and
- a memorandum recommending the referral of the matter by the Chairperson prepared by the case officer.³⁴³

For corruption matters, legal observations are a mandatory requirement, and one which can only be circumvented with the approval of the SEO (Corruption) or the Executive Director, Corruption Strategy, Prevention and Legal following advice prepared by the allocated case lawyer outlining the reasons why the observations are not necessary.³⁴⁴

The CCC's Operations Manual provides specific guidance regarding the preparation of legal advice (or observations) in corruption matters; the memorandum progressed to the Chairperson with respect to the Logan Council matters was not, it will be recalled, accompanied by any written legal advice or analysis in relation to the elements of a fraud charge.³⁴⁵

The briefing materials are reviewed by the executive director and SEO before being progressed to the Chairperson.³⁴⁶ This process provides opportunities for the executive director and the SEO to interrogate the prospects of success, the completeness of the materials and the appropriateness of the charges considered by the investigation team.

The Chairperson, the Deputy Chairperson or their delegate may decide to refer the matter to a seconded police officer,³⁴⁷ although these decisions are usually made by the Chairperson.³⁴⁸

In deciding whether to charge, the seconded police officer must have regard to the DPP Guideline's two-tier test.³⁴⁹

The seconded police officer to whom the matter is referred may be the case officer — which, in effect, may mean that the case officer who prepared the brief of evidence is then provided with that same brief of evidence and required to consider if charges are appropriate.³⁵⁰

By the time the referral is made to the seconded police officer to consider charging, the propriety of charging has been examined by a number of senior CCC personnel, and the Chairperson. The implications of this process on the independence of the seconded police officer deputed to consider the bringing of a charge is discussed further in Chapter 8.

5.3 Prosecuting

The CCC is an investigatory agency; it is not responsible for the prosecution of a matter once charges are laid.³⁵¹ Following charging, the CCC officers associated with an investigation often become key witnesses for the prosecution, and their statements/evidence forms part of the overall brief relied upon throughout the court process to establish the charge.

Responsibility for conducting a prosecution rests with either the DPP or the QPS Prosecution Service, depending upon the type and seriousness of the charge involved.

Generally, the DPP is responsible for prosecuting all criminal cases in the District and Supreme courts.³⁵² In certain limited circumstances the DPP will appear in criminal cases at the Magistrates Court level; predominantly, however, it is the QPS Prosecution Service that has carriage of these matters.³⁵³ The DPP also appears in the Mental Health Court, the Court of Appeal and the High Court of Australia³⁵⁴ and, in conjunction with the CCC, plays a role in restraining and confiscating criminal proceeds.³⁵⁵

The approach to charges and prosecutions in other states and territories in corruption proceedings

Three Australian jurisdictions (New South Wales (NSW), Victoria and Queensland) empower their integrity bodies or officers within them to lay charges; Western Australia (WA), South Australia (SA), and the ACT do not. In Tasmania, the Integrity Commission has no function to prosecute or even to investigate offences.

In each Australian state and territory, the DPP (or equivalent) has the carriage of corruption offences arising from investigations conducted by their respective integrity bodies.

Victoria differs in relation to summary matters, with IBAC's in-house prosecutors having carriage of those matters in court. Victoria IBAC's 2020-21 annual report explains its collaborative approach to working with the Office of Public Prosecutions (OPP), which conducts the commission's serious indictable offence prosecutions.³⁵⁶ Victoria IBAC acts as the informant, providing the brief of evidence for the OPP to prosecute³⁵⁷ and, where indictable offences are filed, the OPP will take over the conduct of the prosecution after Victoria IBAC files charges and before the first hearing of the matter.³⁵⁸

Endnotes

²⁸⁶ CCC Submission, 1 April 2022, pp 21–22, para 67.

²⁸⁷ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter management, planning and conduct*, p 8. Section 4.2 of this document provides an overview of the four stages of a ‘matter’: assessment, feasibility, delivery and post-delivery.

²⁸⁸ CCC Submission, 1 April 2022, *Operations Manual — Part 1: Identification of Matters: Section 3: Assessment of Matters*, p 4.

²⁸⁹ CCC Submission, 1 April 2022, *Operations Manual — Part 1: Identification of Matters: Section 3: Assessment of Matters*, p 5. See also CCC Submission, 1 April 2022, *Operations Manual — Part 1: Identification of Matters: Section 3: Assessment of Matters, Appendix A: Referral of corruption complaints to ELT* for a full list of the CCC’s criteria for matters which should be referred to the ELT for assessment.

²⁹⁰ CCC Submission, 1 April 2022, *Operations Manual — Part 1: Identification of Matters: Section 3: Assessment of Matters*, p 4.

²⁹¹ CCC Submission, 1 April 2022, *Operations Manual — Part 1: Identification of Matters: Section 1: Portfolio assessment and review*, p 8.

²⁹² CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter management, planning and conduct*, p 11. A feasibility report (produced at the end of the feasibility stage) must be supported by ‘a well-developed business case that is aligned with the CCC’s strategic objectives and resource priorities’: CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter management, planning and conduct*, p 11. The CCC advised ‘not all matters require a feasibility assessment. In instances where additional information is not required to determine the investigation is required or justified, and is technically feasible and cost-effective, the matter will progress from the assessment to delivery phase (with the appropriate approvals)’ (CCC submission, 20 June 2022, p 1).

²⁹³ CCC Submission, 19 April 2022, Attachment A, *Diagram of CCC’s operational framework as it relates to investigations*. This diagram notes one of the possible results of an investigation is ‘one or more persons being charged’ in reference to a key decision to ‘finalise a matter’. We interpreted this to indicate charging occurs as part of the matter finalisation process in the delivery stage.

²⁹⁴ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter management, planning and conduct*, p 13.

²⁹⁵ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter management, planning and conduct*, p 14.

²⁹⁶ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter management, planning and conduct*, p 15.

²⁹⁷ CCC Submission, 1 April 2022, p 95, para 504; CCC Submission, Attachment C, *Operational Framework*, pp C-26–C-27.

²⁹⁸ CCC Submission, 1 April 2022, p 95, para 505.

²⁹⁹ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter management, planning and conduct*, p 5.

³⁰⁰ CCC Submission, 1 April 2022, p 95, para 507.

³⁰¹ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter management, planning and conduct*, p 6.

³⁰² CCC Submission, 1 April 2022, pp 95–96, para 508.

³⁰³ CCC Submission, 1 April 2022, p 96, paras 510–511.

³⁰⁴ CCC Submission, 1 April 2022, pp 95–96, para 508.

³⁰⁵ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter management, planning and conduct*, p 11 states: ‘For a CCC investigation (except confiscation matters) in the feasibility stage, reporting is to occur on a **monthly** basis to the ELT Corporate and Portfolio Review meetings.’ (emphasis added)

³⁰⁶ CCC Submission, 1 April 2022, p 96, para 509, noting the CCC referred to the role of a Case Manager as an ‘Operations Leader’.

³⁰⁷ CCC Submission, 1 April 2022, p 96, para 509.

³⁰⁸ CCC Submission, 1 April 2022, Attachment C, *Operational Framework*, p C-27.

³⁰⁹ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter management, planning and conduct*, p 18.

³¹⁰ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter management, planning and conduct*, p 19.

³¹¹ CC Act, s 35(1)(f).

³¹² Dr Chris Corns, ‘Police Summary Prosecutions in Australia and New Zealand: Some Comparisons’ (2000) 19(2) *University of Tasmania Law Review* 284, p 287.

³¹³ See for example Moynihan Report, ‘Review of the Civil and Criminal Justice System in Queensland’ (2018), p 86.

³¹⁴ Justices Act, s 42.

³¹⁵ PPRA, s 388.

³¹⁶ *NK Collins Industries Pty Ltd v President of Industrial Court of Queensland* [2014] 2 Qd R 304.

³¹⁷ CCC Submission, 1 April 2022, p 89, para 466(d).

³¹⁸ Justices Act, ss 57, 59; PPRA, ss 365, 369.

³¹⁹ *Williams v The Queen* [1986] 161 CLR 278, 300 (Mason and Brennan JJ), 313 (Wilson and Dawson JJ). There is also a strictly defined capacity to arrest a person reasonably suspected to have committed, or be committing, an indictable offence for 'questioning', with a capacity to detain the person for no more than eight hours, an equally strictly defined capacity for extension of the detention period, and a requirement for Magistrate approval of periods of questioning of more than twelve hours: s 365(2) and Chapter 15 of the PPRA.

³²⁰ *New South Wales v Robinson* (2019) 266 CLR 619, 639 [30]; *Hussien v Chong Fook Kam* [1970] AC 942, 948.

³²¹ *George v Rockett* [1990] 170 CLR 104, 115.

³²² *Hussien v Chong Fook Kam* [1970] AC 942, 949; *Saad v Commissioner of Australian Federal Police* [2021] VSCA 246, [138].

³²³ *New South Wales v Robinson* (2019) 266 CLR 619, 639 [30]; PPRA, s 365.

³²⁴ *New South Wales v Robinson* (2019) 266 CLR 619, 639 [31] (Kiefel CJ, Keane and Nettle JJ).

³²⁵ QPS Operational Procedures Manual, section 3.4.1.

³²⁶ CCC Submission, 1 April 2022, p 84, para 431.

³²⁷ Director's Guidelines, pp 2–5.

³²⁸ The prima facie test is that applied by a magistrate at a committal hearing when considering if the available evidence is sufficient to put a defendant on trial (Justices Act, s 108(1)). The considerations surrounding the test are that if there is evidence that can be taken into account by a jury in its deliberation, and the evidence is capable of supporting a verdict of guilty, the matter must be left to the jury for its decision, even if that evidence is tenuous or inherently weak or vague (*Doney v The Queen* (1990) 171 CLR 207). The question is not whether on the evidence a defendant ought to be convicted, but whether on the evidence as it stands could a defendant be lawfully convicted. It is a question of law (*May v O'Sullivan* (1955) 92 CLR 654).

³²⁹ NSW ODPP Prosecution Guidelines, March 2021; DPP Victoria Policy of the Director of Public Prosecutions for Victoria, 24 January 2022; DPP Tasmania Prosecution Policy and Guidelines, 30 June 2022; ACT DPP The Prosecution Policy of the Australian Capital Territory, 1 April 2021; DPP South Australia Statement of Prosecution Policy and Guidelines, October 2014; Northern Territory Guidelines of the DPP; DPP Western Australia Statement of Prosecution Policy and Guidelines 2022; CDPP Prosecution Policy of the Commonwealth — Guidelines for the making of decisions in the prosecution process, 19 July 2021.

³³⁰ NSW ODPP Prosecution Guidelines, March 2021; DPP Victoria Policy of the Director of Public Prosecutions for Victoria, 24 January 2022; DPP Tasmania Prosecution Policy and Guidelines, 30 June 2022; ACT DPP The Prosecution Policy of the Australian Capital Territory, 1 April 2021; DPP South Australia Statement of Prosecution Policy and Guidelines, October 2014; Northern Territory Guidelines of the DPP; DPP Western Australia Statement of Prosecution Policy and Guidelines 2022; CDPP Prosecution Policy of the Commonwealth — Guidelines for the making of decisions in the prosecution process, 19 July 2021.

³³¹ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Matter Management: Section 2: Matter Briefs*, p 9.

³³² CCC Submission, 1 April 2022, p 96, para 509.

³³³ CCC Submission, 19 April 2022, Attachment A, *Diagram of CCC's operational framework as it relates to investigations*.

³³⁴ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Matter Management: Section 2: Matter Briefs*, p 6.

³³⁵ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Matter Management: Section 2: Matter Briefs*, p 6.

³³⁶ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Matter Management: Section 2: Matter Briefs*, p 6; CCC Submission, 19 April 2022, Attachment A, *Diagram of CCC's operational framework as it relates to investigations*.

³³⁷ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Matter Management: Section 2: Matter Briefs*, p 7.

³³⁸ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Matter Management: Section 2: Matter Briefs*, p 7.

³³⁹ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Matter Management: Section 2: Matter Briefs*, p 7.

³⁴⁰ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Matter Management: Section 2: Matter Briefs*, p 9.

³⁴¹ CCC Submission, 19 April 2022, pp 2–3, paras 11–14; Attachment A, *Diagram of CCC's operational framework as it relates to investigations*.

³⁴² CCC Submission, 1 April 2022, *Operations Manual — Part 2: Matter Management: Section 2: Matter Briefs*, pp 7–8.

³⁴³ CCC Submission, 19 April 2022, Attachment A, *Diagram of CCC's operational framework as it relates to investigations*.

³⁴⁴ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Matter Management: Section 2: Matter Briefs*, p 8.

³⁴⁵ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Matter Management: Section 2: Matter briefs*, pp 7–9; PCCC Logan Council Report, p 35; PCCC Logan Council Inquiry Transcript of Proceedings, 7 September 2021, p 15; PCCC Logan Council Inquiry Transcript of Proceedings, 18 August 2021, pp 39–40.

³⁴⁶ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Matter Management: Section 2: Matter Briefs*, p 7; CCC Submission, 19 April 2022, Attachment A, *Diagram of CCC's operational framework as it relates to investigations*.

³⁴⁷ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Matter Management: Section 2: Matter Briefs*, p 9.

³⁴⁸ CCC Submission, 1 April 2022, p 83, para 428.

³⁴⁹ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Matter Management: Section 2: Matter Briefs*, pp 9–10.

³⁵⁰ CCC Submission, 19 April 2022, Attachment A, *Diagram of CCC's operational framework as it relates to investigations*.

³⁵¹ Noting, however, that s 50(2) of the CC Act empowers the CCC to apply to QCAT for an order against a person in circumstances where there is evidence supporting the start of a disciplinary proceeding for corrupt conduct.

³⁵² Department of Justice and Attorney-General, *Office of the Director of Public Prosecutions* (Web Page) <<https://www.justice.qld.gov.au/about-us/services/public-prosecutions>>.

³⁵³ QPS, *Legal Division* (Web Page) <<https://www.police.qld.gov.au/organisational-structure/strategy-and-corporate-services/legal-division>>.

³⁵⁴ Department of Justice and Attorney-General, *Office of the Director of Public Prosecutions* (Web Page) <<https://www.justice.qld.gov.au/about-us/services/public-prosecutions>>.

³⁵⁵ *Criminal Proceeds Confiscation Act 2002* (Qld), s 4(6).

³⁵⁶ Victoria IBAC Annual Report 2020–21, p 31.

³⁵⁷ Victoria IBAC Annual Report 2019–20, p 51.

³⁵⁸ Victoria IBAC Submission, 1 April 2022, p 2.



CHAPTER 6

The use of seconded police by the Crime
and Corruption Commission

CHAPTER 6: THE USE OF SECONDED POLICE BY THE CRIME AND CORRUPTION COMMISSION

6.1 Overview

The involvement of seconded police officers in the work of the CCC and its predecessors over three decades has been essential. They were, from the outset, integral to its structure and operations — as the 1989 Fitzgerald Report had originally recommended, and the CCC’s submission to this Inquiry cogently summarises:

‘QPS officers have been seconded to the CCC since the commencement of the CJC. Their role at the CCC originates from a Fitzgerald Inquiry Report recommendation specifying the structure and use of seconded police officers in both investigative and specialist roles. Accordingly, when the CJC was established in 1989 to help restore confidence in Queensland’s public institutions, it was staffed with a blend of civilians, and seconded QPS officers.’³⁵⁹

Approximately 23 per cent of the CCC’s workforce are seconded police officers — 85 full-time equivalent QPS positions out of a total staff of 362.7 full-time equivalent positions.³⁶⁰

That close and substantial involvement is not universally supported. A number of submissions to this Inquiry advocated continuance on the same broad scale, but others expressed concerns and reservations.

Our Terms of Reference require an examination of the adequacy and appropriateness of the structure and organisation of the CCC in relation to the use of these officers. This chapter explores the processes of secondment, and arrangements for seconded police; and, whether these seconded police officers are equipped to translate their policing experience, skills and training into the unique environment that is the CCC.

Our task involves questions about whether the practice of seconding police should continue — whether it works, and is a desirable element of the CCC. More specifically, we examine the appropriateness of seconding police to each of the three CCC divisions which currently engage them, in particular, the Corruption Division.

It is appropriate to begin with an analysis of the history and current-day roles and responsibilities of police seconded to the CCC including the supervision arrangements in place, and the circumstance that seconded officers retain the full scope of their police powers while at the CCC.

6.2 History of seconded police at the CCC

Police officers have been seconded to the CCC and its antecedents since the inception of the CJC in 1989. The Fitzgerald Report contemplated the use of seconded police by the CJC’s Official Misconduct Division³⁶¹

and specifically recommended that it comprise ‘specially screened police of proven competence and experience’ who would work alongside lawyers, accountants, linguists, and other specialists.³⁶²

In the period since the 1989 Fitzgerald Report, the establishing Act for the CCC (or its relevant previous iterations) has always made provision for the secondment of QPS officers to the organisation. Presently, sections 174 and 255 of the CC Act provide the legislative basis for these secondments.

The processes for and the logistics of these arrangements and the oversight of seconded police officers are discussed later in this chapter. Briefly, any person seconded to the CCC is subject to the immediate direction and control of the CCC CEO — but, in the case of a police officer, their ‘efficient deployment’ is the joint responsibility of the CCC CEO and the most senior police officer seconded to the CCC.³⁶³ The result is a unique arrangement involving levels of dual oversight and supervision.

The other important distinction applying only to seconded police officers is that each continues to be a police officer for all purposes, and they have the functions and powers of a police officer without being limited to the performance of CCC functions.³⁶⁴

6.3 The duties and work of seconded police at the CCC

Police officers seconded to the CCC perform a range of roles to support the CCC’s functions and are considered, by that organisation, to be a critical element in achieving its objectives in a timely and cost-efficient manner.³⁶⁵

The proposition that trained, experienced and skilled police officers have the potential to undertake work associated with the CCC’s statutory functions is unsurprising. These officers bring with them a range of capabilities, including contemporary experience in applying investigative strategies and police powers; current knowledge of the administration of the criminal law, and specialist technical methodologies; and up-to-date training and experience in situational risk assessment and response (such as operational skill training and ‘use of force’ training).³⁶⁶

Currently, seconded police officers occupy the following types of roles at the CCC:³⁶⁷

- Investigators or senior investigators in multidisciplinary teams, including as operations leader (investigations) to manage specialist investigations and allocate resources across multiple investigations.
- Intelligence officers or senior intelligence officers to support the delivery of intelligence services.
- Witness protection officers and coordinators managing the Witness Protection Unit.
- In human source roles managing human sources for intelligence collection, and facilitating the proactive targeting of criminal activities which present significant risks to the Queensland community.
- Surveillance officers conducting physical or technical surveillance activities and providing specialist support. More senior officers are involved in planning, coordinating, providing, and maintaining physical or technical surveillance activities and resources.

- Providing leadership, management and supervision of human and technical resources used in the delivery of electronic surveillance and associated specialist technical support services.
- Strategy and performance officers including researching and analysing organisational performance and community engagement benchmarks and advising on the effectiveness of strategies.
- GM Operations Support who is responsible for managing and coordinating overt and covert operational support operations relating to criminal, corruption and intelligence investigations.

6.4 Retention of police powers for duration of secondment

The practical reality of a police officer seconded to the CCC continuing to be a police officer ‘for all purposes’³⁶⁸ is that it enables and empowers them to exercise the full scope of police powers while working at the CCC, including the power to lay a charge by complaint, arrest or notice to appear — that is, to charge for criminal offences.

The source of a serving police officer’s powers (apart from the power to lay a complaint under section 42 of the Justices Act) lies in the PPRA.³⁶⁹ These include the power to:

- arrest with and without a warrant
- issue and serve notices to appear
- apply for search warrants
- prevent loss of evidence
- apply for covert search warrants
- undertake controlled operations and controlled activities
- assume identities
- apply for surveillance device warrants
- question and detain suspects
- carry out forensic procedures.

6.5 Oversight arrangements for seconded police at the CCC

There is some complexity in the structural and industrial arrangements in place for seconded police. The CCC and the QPS refer to seconded police officers at the CCC as the ‘CCC Police Group’.³⁷⁰ The submissions of the QPS and CCC to this Inquiry frame their position within the CCC in, however, slightly different terms.

The QPS considers its seconded officers at the CCC to be part of a discrete ‘CCC Police Group’³⁷¹ which sits within the broader QPS workforce structure. From the perspective of the CCC, police in the CCC Police Group are dispersed, based on their respective capabilities, across three CCC divisions — Operations Support, Crime, and Corruption; and are subject to the reporting lines within those divisions.

While this is not a discrepancy in itself, the different framing of this cohort of seconded police officers does illustrate the complexity of oversight arrangements involving two separate organisations.

Dual oversight and the CCC Police Group

The efficient deployment and management of the CCC Police Group is the joint responsibility of the CCC CEO, and the most senior officer seconded to the CCC who is a detective chief superintendent.³⁷² The assignment of this dual responsibility is imposed by section 255 of the CC Act.

The concept of ‘joint responsibility’ reflects the circumstance that, while officers are seconded to the CCC and are subject to the immediate direction and control of the CCC CEO, they remain employees of the QPS at all times.³⁷³

At the QPS, the CCC Police Group falls under the Crime, Counter Terrorism and Specialist Operations portfolio led by a deputy commissioner. The detective chief superintendent seconded to the CCC reports to this deputy commissioner upon a narrow range of matters touching administrative and human resource issues.³⁷⁴ That continued role for the QPS is unsurprising in the context of the QPS’ ongoing industrial responsibilities to its seconded officers at the CCC — namely, the ongoing responsibility of the QPS Commissioner for their management and welfare under section 4.8 of the Police Service Administration Act.³⁷⁵

Police seconded to the CCC Crime Division are supervised by the SEO (Crime), and police seconded to the CCC Corruption Division are supervised by the SEO (Corruption).³⁷⁶ This includes ‘operational oversight’ which means the detective chief superintendent in the CCC Police Group does not direct the everyday, operational activities of the officers seconded to those two divisions; this is the role of the respective SEOs via the organisational structures in place in those divisions.³⁷⁷

Dual procedural obligations for seconded police

Seconded police officers are required to abide by the legislation applicable to police officers, including the PPRA³⁷⁸ and the Police Service Administration Act, in addition to QPS service manuals such as the QPS Operational Procedures Manual (OPM).³⁷⁹ That is consistent with their continued employment by the QPS, and the fact they will be exercising police powers during their secondment.³⁸⁰ Additionally, seconded officers are subject to (Police) Commissioner Directions, and the QPS discipline system.³⁸¹

Seconded police officers are also, simultaneously, required to comply with the legislative and procedural requirements of CCC officers including secrecy provisions under the CC Act,³⁸² and the CCC’s detailed Operations Manual.³⁸³

Complexity arises from the dual application of QPS and CCC procedural documents and the possible risk of confusion at the operational level in the application of those documents if there is any inconsistency.

These dual procedural requirements for seconded police officers make it important to:

- ensure seconded police officers are provided on commencement with a comprehensive induction into the CCC which identifies any differences procedurally between the QPS and CCC operating environments

- review the procedural guidance for seconded police officers to ensure areas of inconsistency are highlighted and guidance is provided to officers on which procedure should apply.

While the CCC and QPS did not specifically address the possibility of inconsistencies between their various procedural documents, or the process for resolving an inconsistency, both agencies are aware of the dual procedural requirements operating over seconded police officers.³⁸⁴ The CCC appears to be attuned to the need for ‘ongoing management of the Operations Manual and delivery of training on any changes to ensure that *all* staff, including seconded police officers, understand the impact of the changes on their practice’.³⁸⁵ We discuss the review of internal policies and procedures in greater detail in Chapter 7.

6.6 The secondment processes at the CCC

There are two approaches to police secondments to the CCC — the Expression of Interest (EOI) Model and the Partnership Model.³⁸⁶

The EOI model applies to police officers seeking to work at the CCC in investigations, strategy and performance, human source management (informants) and witness protection.³⁸⁷ The partnership model applies to seconded police officers seeking to work in surveillance, forensic computing and intelligence.³⁸⁸

A ‘Focus Maintenance Group’ within the CCC chaired by the detective chief superintendent at the CCC is responsible for monitoring police secondment processes.³⁸⁹ A suite of administrative instruments has been developed between the CCC and the QPS to facilitate secondments, including:

- Memorandum of Understanding (MOU) — effective from September 2020³⁹⁰
- Secondment of Police Officers to the CCC (the Secondment Policy) — effective from September 2020³⁹¹
- Concept of Operations document for each of the models — effective from October 2020.³⁹²

The EOI Model

In simple terms, an EOI is advertised in the QPS Gazette, police officers register their interest for the vacancy, a recruitment panel is convened to assess the merit of the candidates against the competency requirements for the role, and a selection is made from the pool of applicants.³⁹³ An interview process is not typically conducted but may be, if required.³⁹⁴

For the investigative roles (in either the Crime or Corruption divisions) the applicant must hold a detective appointment,³⁹⁵ which requires:

- a three-year period of ‘competent performance in an investigative field’
- completion of the Detective Training Program (which also results in a nationally accredited Advanced Diploma of Police Investigations)
- experience in the investigation of a wide range of criminal offences, preparation of briefs of evidence, and the use of ‘contemporary strategies in the investigation, prevention and disruption of crime’

- a commitment to self-development and a ‘high standard of personal and professional integrity’, including a professional attitude towards ‘duties, colleagues, superiors and members of the public’
- supporting recommendations from superior officers.³⁹⁶

The CCC accepts that ‘this approach provides very high confidence in the breadth and depth of experience required to undertake efficient and effective criminal investigations’.³⁹⁷

Training for, and appointment of, police officers to the role of detective sits with the QPS.³⁹⁸ The Detective Training Program involves training in investigative processes and procedures, crime specific processes and procedures, and case investigation management skills. It involves a training course, practical experience and the submission of an e-workbook.³⁹⁹ The course content is wide-ranging and includes specific types of investigations (such as homicide), investigative processes, skills and techniques in gathering intelligence, and broader skills like problem solving and critical decision-making.⁴⁰⁰

Broader topics beyond recognised areas of criminal law, like offences against the administration of law and justice, against office, and against public authority are not addressed in the program.⁴⁰¹ The QPS’ view is that detectives develop diverse transferrable skills throughout their careers, and benefit from working in multidisciplinary teams at the CCC, including with legal staff, who may provide support, advice and guidance in relation to issues that extend beyond the officer’s knowledge of the criminal law.⁴⁰²

The duration of a secondment depends upon the area in which the officer will work. Those in investigations, and strategy and performance, have a minimum tenure of three years and maximum of five.⁴⁰³ Due to the highly specialised nature of witness protection work, officers in that area have a minimum tenure of three years and maximum tenure of eight.⁴⁰⁴ In limited circumstances the secondment can be longer, for example where an officer is within two years of retirement, or where extension is operationally beneficial to the CCC.⁴⁰⁵

We consider that a satisfactory balance is struck by the prescribed minimum and maximum secondment periods for the EOI model. The minimum tenure encourages secondees to adapt to the CCC culture and to develop expertise in the CCC’s functions, and also ensures that the CCC can utilise their professional development before the officer returns to the QPS. Maximum periods of tenure ameliorate risks of complacency or lowered motivation and bring in new secondees with fresh perspectives and, it may be expected, enthusiasm.

The Partnership Model

This is a ‘hybrid’ model of secondment⁴⁰⁶ in which the QPS creates and builds the skills and knowledge of seconded officers for highly specialised tasks (for example, surveillance or intelligence)⁴⁰⁷ but the CCC maintains control and command over them by determining and allocating their operational tasks and priorities.⁴⁰⁸

For areas of CCC work involving operations like physical or technical surveillance, forensic computing and intelligence, vacancies can be filled directly from a selection process or by officer rotation from the QPS ‘partner capability’⁴⁰⁹ — a term indicating that officers trained in performing these technical roles may rotate between the CCC and the QPS depending upon the operational requirements of each agency. The ‘recruitment process includes a provision that officers may be required to perform duties at either the QPS

or CCC work unit'.⁴¹⁰ The Focus Maintenance Group at the CCC considers, and supports, the 'rotation of officers between the QPS and CCC work units'.⁴¹¹

Police seconded under the partnership model retain a closer connection to the QPS during their secondment than those seconded under the EOI model, reflecting the identification by each agency of areas where there is benefit to both in maintaining 'consistency in methodology, capability development, recruitment and training'.⁴¹²

The CCC and the QPS consider that they have adequate procedures and safeguards in place in respect of the rotation of seconded police officers under the partnership model to ensure that sufficient separation exists to maintain the integrity and security of CCC operations, and to preserve public confidence in the independence of the CCC as an integrity agency with, among its responsibilities, oversight of the QPS.⁴¹³

There is no minimum period of secondment under the partnership model⁴¹⁴ but the maximum period must not exceed five years.⁴¹⁵

Are the secondment processes adequate and appropriate?

Officers seconded from the QPS to the CCC — regardless of the model of secondment — retain a high degree of 'linkage' with the QPS.

The job positions into which police officers are seconded at the CCC remain, from a corporate services and human resource management perspective, within the QPS workforce establishment. The CCC receives government funding for these job positions.⁴¹⁶ The CCC transfers that funding to the QPS to pay for the costs relating to the secondees.⁴¹⁷ The QPS is responsible, in practical terms, for paying their salaries and associated entitlements.⁴¹⁸

The CCC advises that to change the overall profile and composition of its contingent of seconded police officers (for example, by seeking to change a job position from detective sergeant to detective senior constable, or to split one job position into multiple positions to reflect changing operational demands) the CCC must negotiate with the QPS and relevant police union/s, and the exercise can be time-consuming.

The CCC would prefer, it submitted, an arrangement that allows it greater scope to anticipate and respond to its operating environment and to adapt itself and its workforce profile to existing and emerging work patterns and needs⁴¹⁹ — to source secondees from the QPS with a greater degree of flexibility and to be able to adapt its workforce structure, from time to time, with increased dexterity in response to its changing operational requirements and priorities.

That submission is logical and persuasive. The statutory functions of the CCC and the nature of its work call for a high degree of ready responsiveness. We consider that the current arrangements for secondments from the QPS to the CCC do not provide the CCC with adequate and appropriate flexibility over the mix of job positions, skills and experience for this large portion of its staff.

6.7 Induction and training of seconded police

Induction processes

All new CCC staff, including seconded police, are inducted to the CCC when they commence.⁴²⁰

The CCC advises that since March 2020 the CCC CEO has personally briefed new staff during CCC corporate induction sessions to ensure, for example, that they understand the CCC's disclosure obligations to the PCCC and PCC Commissioner regarding improper conduct by CCC staff under section 329 of the CC Act.⁴²¹ The CCC submits that these briefings are an important part of its governance and compliance framework, and an effective way to instil relevant information in new CCC staff.⁴²²

The CCC and QPS are different organisations with different operating environments and remits, irrespective of any overlap in functions. An induction which canvasses the need for compliance with disclosure and confidentiality requirements and CCC policies and procedures is critical, but the process must also ensure that seconded police understand how their role at the CCC will differ from the QPS. The application of the policies and procedures contained in the Operations Manual requires seconded police officers, for example, to have a strong grasp of the role of the ELT in portfolio assessment and review processes, and particular organisational precepts like the staged approach to 'matter management'.

Induction offers the first opportunity for the CCC to introduce police secondees to its culture, and to ensure that differences between QPS and CCC operational methods are clearly articulated.

Ongoing training

All staff including seconded police officers are required to complete a range of mandatory courses via the CCC's digital training platform — 'CCC Learning'.⁴²³ That training 'reflects the specific role being undertaken and the delegations and authorisations attached to it'.⁴²⁴ The courses provided at the time of induction include training on the CCC's Code of Conduct, Queensland's Human Rights Act, workplace health and safety, 'Working at the CCC', recordkeeping, information privacy, and risk management awareness, among others.⁴²⁵ There are also a range of optional courses available via CCC Learning which, the CCC explains, relate to CCC-specific powers and processes, and broader leadership and management skills.⁴²⁶

Notwithstanding the training delivered by the CCC to seconded police officers, the CCC also appears to rely heavily on the training investment made by the QPS in its police officers prior to secondment including the Detective Training Program for those who will fill investigator roles. The QPS has an extensive training and development program, and the capability delivered by this training is leveraged by the CCC.⁴²⁷

Training for seconded police officers by the QPS also continues throughout the secondment period and the CCC 'facilitates the QPS' continued investment in this training while police are seconded to the CCC'.⁴²⁸ It does this by allowing seconded officers to undertake any mandatory QPS training which is 'necessary to maintain capabilities and performance standards'.⁴²⁹ The 'Police Group Application', developed by the CCC in 2020, assists supervisors to monitor training compliance and performance standards, and tracks training modules required by the QPS and the CCC to ensure essential capabilities are maintained.⁴³⁰

That ongoing training provided by the QPS is, as noted earlier, unsurprisingly focused upon criminal activity. Training in anti-corruption work is equally critical in an organisation like the CCC; the Organisation for Economic Cooperation and Development recommends:

'Special continuous training [as] one of the most crucial requirements for the successful operation of an anti-corruption body, whether it is newly established or already existing. Corruption is a complex and evolving phenomenon; prevention and prosecution of corruption require highly

specialised knowledge in a broad variety of subjects. Furthermore, in-service training should be the norm, and a number of agencies are having agency-specific training plans aimed at increasing staff's qualifications and skills.⁴³¹

The QPS Detective Training Program does not necessarily equip its graduates to investigate corruption in all its manifestations. Broader course content relating to corruption cases, like administrative and public law or public interest disclosures, would likely be irrelevant to a significant proportion of participants. The program cannot be expected to provide training in highly specialised areas of law and public policy that may be relevant to anti-corruption investigations.

6.8 Should the CCC continue to use seconded police?

The approach of other Australian crime and anti-corruption bodies

The use of seconded police at the CCC is markedly different from other Australian anti-corruption bodies. While all jurisdictions can use seconded police, three do not and four do so in limited numbers and with restrictions on the ability to use their police powers (see **Appendix E** for a more detailed cross-jurisdictional comparison).

The CCC stands alone in the number of seconded police officers employed. It has a base establishment (the number of funded QPS positions) of 85 full-time equivalent police officer positions, representing nearly a quarter of its total workforce.⁴³²

In NSW, Victoria and the NT seconded police do not form part of the integrity body's workforce, with the NT advising of its intention not to change that position.⁴³³

In NSW, seconded police have not been used since 2008 but when in use retained their police powers for the duration of the secondment.⁴³⁴

Likewise, the NT ICAC can (but does not) include police officers who retain their police powers and are only amenable to the direction of NT ICAC.⁴³⁵

In Victoria, while IBAC may enter into agreements for the use of the services of any staff of a state department or public body, it has not to date engaged seconded police officers even though, alone among state integrity bodies, it has the power to lay charges in its own name and to prosecute.⁴³⁶

Remaining jurisdictions curtail the number and powers of seconded police. SA ICAC caps the number at eight at any one time, and those officers are required to take leave without pay from SA Police during secondment.⁴³⁷ Secondment occurs through a 2019 Memorandum of Administrative Arrangement between the SA Police Commissioner and the SA ICAC which enables officers to retain and exercise their police powers, including the power of arrest.⁴³⁸

WA's CCC (which, like its Queensland equivalent, has a dual crime and corruption function) had two seconded police officers as of 29 March 2022 and one seconded officer with proceeds of crime experience for the 2020–2021 reporting period.⁴³⁹ Seconded police officers in WA do not retain their police powers and play no role in decisions to commence a prosecution arising out of a WA CCC investigation.⁴⁴⁰ They are, effectively, WA CCC officers for the secondment period.

The ACT and Tasmanian jurisdictions also limit their use of seconded police. Tasmania reports using seconded police 'from time to time' but, while retaining their police powers, they are not seconded to conduct criminal investigations.⁴⁴¹ A seconded police officer with the Tasmanian Integrity Commission is not required to provide information to, or take direction from, the Police Commissioner or any senior officer.⁴⁴² For the duration of the secondment they are an authorised 'investigator or inquiry officer' of the commission and perform the functions and exercise the powers associated with those roles.⁴⁴³

The use of seconded police in the ACT is not specified in the Territory's Act, although it was reported in 2020 that one police officer was seconded to the Integrity Commission following an agreement between the commission and ACT Policing.⁴⁴⁴

Because only the Queensland and WA integrity bodies retain both a crime and corruption function, an analysis of other agencies with a major crime function was also undertaken. The NSW Crime Commission is expressly permitted to use seconded police officers.⁴⁴⁵ The Australian Criminal Intelligence Commission operates its major crime function at a Commonwealth level and is permitted to use seconded police officers.⁴⁴⁶ At 30 June 2021, it had 20 seconded police officers.⁴⁴⁷

In percentage terms, Queensland's 23 per cent of the CCC workforce⁴⁴⁸ contrasts starkly with the maximum number of police who may be seconded to SA ICAC (11.99 per cent),⁴⁴⁹ and the ACT's Integrity Commission at 5.56 per cent.⁴⁵⁰ Even with dual crime and corruption functions, seconded police in WA's CCC comprise only 1.6 per cent of its workforce.⁴⁵¹ The Australian Criminal Intelligence Commission has just 2.51 per cent of seconded police within its staff.⁴⁵²

Queensland's position is exceptional. No other jurisdiction provides its integrity body with a significant number of seconded police investigating crime or corruption while retaining their full police powers (and doing so with substantially greater powers than the actual state or territory police service).

Use of seconded police in the CCC's Crime and Operations Support divisions

For the Operations Support Division and the Crime Division reliance upon seconded police is both necessary and, in our view, uncontroversial.

In the Operations Support Division, which is responsible for providing critical technical expertise for major crime and corruption investigations and supporting the Witness Protection Program,⁴⁵³ seconded police officers represent over 60 per cent of its staff.⁴⁵⁴ This preponderance reflects the highly specialised nature of the roles within the division. Secondment arrangements offer a convenient and efficient method for attracting qualified persons to these roles, and reflects the fact that the QPS is best equipped to ensure and maintain the currency of an officer's technical skills.

In the Crime Division, with its law enforcement focus on investigations into major and organised crime and intelligence operations,⁴⁵⁵ there are 14 police officers.⁴⁵⁶ The use of police with full police powers reflects the need for strong criminal investigation skills in the work undertaken by the division, and the QPS offers a ready-made pool of personnel with the necessary training, skills and expertise.

Use of seconded police by CCC for its corruption functions

Only the Corruption Operations unit of the Corruption Division uses seconded police as part of its workforce; the other two units, Integrity Services and Corruption Strategy, Prevention and Legal do not.⁴⁵⁷

The Integrity Services unit is responsible for receiving complaints about corruption and police misconduct which may give rise to an investigation,⁴⁵⁸ and the Corruption Strategy, Prevention and Legal unit provides intelligence and prevention services and legal advice related to corruption matters.⁴⁵⁹

Actual investigations are the responsibility of the Corruption Operations unit. There are 18 seconded police in that unit, and a further 11 civilian staff with policing backgrounds.⁴⁶⁰ At 25 May 2022, apart from one junior investigations assistant role, all investigator positions within the Corruption Operations unit were occupied by a serving or former police or law enforcement officer.⁴⁶¹

There are multiple investigation teams within the Corruption Operations unit and their composition changes from time to time.⁴⁶² One team is responsible for the *feasibility assessments* required before the CCC's ELT will approve a matter progressing to a full investigation;⁴⁶³ the other investigation teams conduct full investigations.⁴⁶⁴

In the Corruption Operations unit, leadership roles are dominated by current police or civilians with a law enforcement background. The executive director is a detective superintendent,⁴⁶⁵ and its six investigation teams are led by either detective inspectors or, again, civilian officers with law enforcement backgrounds.⁴⁶⁶

Submissions to this Inquiry concerning use of seconded police

A number of submissions to this Inquiry support the continued and ongoing use of seconded police officers by the CCC,⁴⁶⁷ including submissions from those with current or past experience or expertise in corruption investigations.

The continued use of seconded police is strongly supported by the CCC.⁴⁶⁸ Likewise, the QPS regards itself as a 'key partner agency to the CCC' whereby 'together, [they] play a crucial role in preventing, disrupting, responding to, and investigating major criminal and corrupt behaviour'⁴⁶⁹ and, in relation to corruption, specifically contends that: 'Seconded police officers play a strategic role in the execution and delivery of the CCC corruption function, specifically the investigation of a complaint about, or information or a matter involving, corruption.'⁴⁷⁰

Professor Ross Martin QC (a former CMC Chairperson)⁴⁷¹ says it is difficult to envisage how, without police expertise and powers, complex investigations involving the gathering of surveillance evidence and search evidence could be undertaken by the CCC. The removal of these officers would, he argues, necessitate the establishment of temporary police taskforces — by inference, an unnecessary duplication or replacement.⁴⁷²

A succinct summary of the advantages brought to the CCC by seconded police officers was advanced by Mark Le Grand, the inaugural director of the Official Misconduct Division of the CJC throughout the 1990s.⁴⁷³ Like Professor Martin, Mr Le Grand says: 'Due consideration of the investigative role assigned to the CCC will demonstrate that the CCC could not operate effectively without access to seconded police officers. The need for successful investigations outweighs the risks the police culture imposes.'⁴⁷⁴

Mr Le Grand identifies the following beneficial factors:

- access to police information, much of which is drawn from what police observe or know and is not committed to paper but rather shared through a sense of comity and fraternity
- access to police resources, for example when additional officers are needed in the field during operations
- access to the community given police are integral parts of their local community and because of that they see things daily through their law enforcement lens
- the security of operations, noting that some of the matters investigated entail substantial risk to the safety or security of investigators
- the need to avoid the danger of overlapping or conflicting operations.⁴⁷⁵

To similar effect, the CCC submitted that seconded police:

- hold the rank, and have the required training, of a detective which equips them with investigative skills, refined in the context of criminal investigations⁴⁷⁶
- bring with them their police powers and training in the execution of those powers⁴⁷⁷
- ensure the CCC has ready access to skills which may otherwise be difficult to source from the public or private sectors.⁴⁷⁸

Retired QPS Commissioner, Bob Atkinson AO APM, observes: 'competent, experienced investigators are a valuable commodity.'⁴⁷⁹

Professor A J Brown considers seconded police can bring particular skills to CCC corruption work: ⁴⁸⁰

- where criminal offences are alleged or arise police bring skills and powers for which they are trained, and in which there is public confidence
- their training, and understanding of how to exercise police powers, is current and up to date
- wherever corruption concerns (criminal or non-criminal) involve similar investigative challenges to other complex areas of white-collar crime (such as those involving fraud or deception), then police officers seconded to the CCC who have had training and experience and have proven, recent high levels of achievement in those kinds of investigations are likely to possess suitable experience and skills which would be difficult to source elsewhere.⁴⁸¹

There are contrary views, and the use of seconded police by the CCC is not without its critics. This Inquiry received submissions from several current and former local government councillors,⁴⁸² framed in the context of their personal experiences with the CCC and its officers, expressing strong opposition to current police officers being seconded to the CCC.

Institutional capture risk

One criticism of the use of seconded police officers is that it creates a risk of 'institutional capture'.⁴⁸³ The PCC Commissioner expressed concerns on these lines based, in part at least, on what occurred in the Logan Council investigation, and submitted that evidence from the PCCC Logan Council Inquiry indicated

‘institutional capture of seconded police officers by the CCC is a real and substantial issue’.⁴⁸⁴ Conversely, Professor Brown referred to the need to protect the functions of the CCC as a body that remains ‘both institutionally and culturally independent of the QPS’.⁴⁸⁵

Capture risks are not limited to malicious or conscious attempts to subvert the independence of an institution charged with oversight or regulatory functions.⁴⁸⁶ The risk of an institution becoming ‘captured’ may arise through subtle forms of inappropriate influence absent of sinister intent — such as the institution identifying or aligning with the values of those whose conduct it aims to oversee (or regulate).⁴⁸⁷

Seconded police officers at the CCC maintain their role, functions and responsibilities as officers and employees of the QPS but are also required to apply the policies, practice and processes required by the CCC including maintaining the confidentiality of that work. The presence at, and the use by, the CCC of a high number of seconded police officers may give rise to the risk of an inappropriate alignment or identification by the CCC with the interests of the QPS — in circumstances where the CCC has a role in regulating, and investigating misconduct in, the QPS.⁴⁸⁸ In conjunction these two factors might lead, it is then submitted, to an actual or perceived marring of the CCC’s independence and a diminution of public confidence.⁴⁸⁹

In that context Queensland’s Human Rights Commissioner suggested that consideration be given to seconding police from outside Queensland, whether from interstate or overseas police forces⁴⁹⁰ and referenced the *United Nations Handbook on police accountability, oversight and integrity*⁴⁹¹ which suggests that having police as members of an external oversight agency should, generally, be avoided.

Against that, as Mr Le Grand observed, police seconded from the QPS have knowledge and expertise with respect to practices, processes and conditions germane to Queensland,⁴⁹² and reliance upon a cohort drawn from interstate (or elsewhere) who lack that knowledge and expertise may risk disadvantaging the CCC’s investigative capacity.

While the risk of institutional capture might be diminished by engaging police officers from other jurisdictions there are obvious practical hurdles. First, there is no evidence of a readily accessible pool of high-performing, suitable and appropriately qualified interstate (or overseas) police officers or former police officers, or others with the necessary skills seeking employment as investigators and wanting to relocate to Queensland. Secondly, they would likely need extensive and time-consuming training in local practices and procedures.

We also note, in this context, Mr Le Grand’s submission regarding the measures taken by the original CJC to reduce the risks inherent in relying upon police officers to undertake investigations of other police officers.⁴⁹³ They included recruiting civilian investigators as permanent employees who would be spread throughout the CCC’s ‘multidisciplinary’ teams and ‘whose singular loyalty was to the CJC,’ and ensuring that investigations were supervised and regularly reviewed by team leaders who were lawyers with the result that these investigations were not under the ultimate control of seconded police.⁴⁹⁴

The risk of narrowing corruption investigations: a ‘law enforcement’ approach

While seconded police bring investigative skills and capabilities, these skills should not be viewed as universally applicable in the context of corruption investigations.

In addition to the need for institutional and cultural independence from the QPS, Professor Brown notes the need to protect the functions of the CCC to ensure it is ‘not simply a law enforcement agency’ but rather one ‘whose responsibilities include investigation and prevention of corrupt conduct which may extend beyond, or not fit, the parameters of criminal offences which define police roles and training’.⁴⁹⁵

Corruption investigations are often broader than the investigation of criminal offences. Corruption takes a wide variety of forms.⁴⁹⁶

Possible types of corruption include:

- *Grand corruption* which is ‘a systematic or well-organised plan of action involving high-level public officials that causes serious harm, such as gross human rights violations.’⁴⁹⁷
- *Petty corruption* which involves ‘individual acts of official bribery, kickbacks, embezzlement of public funds or self-enrichment by public official’.⁴⁹⁸
- *Political corruption* which involves the ‘manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth’.⁴⁹⁹
- *Grey corruption* — conduct which is commonly viewed as corrupt but considered minor by the law, or where rules and laws are considered ambiguous.⁵⁰⁰ Examples of grey corruption may include favouritism, accepting gifts, excessive expenditures, influence peddling, and deceit in political debate or commentary.⁵⁰¹

Questionable conduct does not always constitute criminal activity. Criminal sanctions are only one mechanism for addressing corrupt or otherwise unethical behaviour which may come to light as part of an investigation. A corruption investigation might not unearth sufficient evidence of criminality but may reveal that systemic or organisational changes are required to prevent any recurrence.⁵⁰² Other appropriate responses may include education and training to change attitudes and beliefs, cultural interventions such as codes of conduct, and improved internal controls and detection mechanisms.⁵⁰³ Conduct which requires a disciplinary, management or other institutional response but does not or cannot be proven to reach a criminal threshold may require a different skillset to those which are innate to a trained police officer.⁵⁰⁴

Anti-corruption agencies informed by a law enforcement approach to corruption prevention have been criticised as ‘centralised, top-down institutions relying heavily on well-publicised prosecutions, threats of sanctions, and moral exhortations’.⁵⁰⁵ Commentary indicates that, for ‘hidden’ crimes such as corruption and other integrity offences the association between punishment and deterrence is weak because responsibility is often diffused within organisational structures — where an individual acts alone, responsibility may be assigned, but larger-scale corruption is difficult to ascribe to any particular person.⁵⁰⁶ This negatively impacts prosecution outcomes, which reduces deterrence.⁵⁰⁷

There is a risk that a law enforcement approach to corruption can manifest as an ‘orientation towards individual criminal acts and actors’ which ‘may cause an [anti-corruption agency] to miss the forest for the trees, or bias it towards cases with clear wrongdoing and identifiable wrongdoers’.⁵⁰⁸

Law enforcement models also have an increased focus on reactive responses to corrupt activities, including expensive and time-consuming prosecutions, which present a significant risk by reducing the resources available to engage proactively via prevention activities.⁵⁰⁹

The PCC Commissioner submitted that the CCC's corruption teams appear to be 'overweight' with seconded police officers. While conceding that the expertise of police officers is important, the PCC Commissioner says there is a 'tendency of those teams to see criminal charges as the focus'.⁵¹⁰

The CCC appears to be aware of the importance of broader perspectives in successful corruption investigations — the CCC CEO notes: 'For those matters that progress to delivery, the scope of the investigation will be formulated in a way that enables investigators to produce 'outcomes'.⁵¹¹ This approach allows the CCC to focus not only on specific allegations and the disciplinary or criminal action that might be an appropriate response, but also on identifying factors that create serious or systemic vulnerabilities across the public sector.'⁵¹²

Professor Brown says reliance upon police investigators is not necessarily appropriate where:

- the conduct being investigated is not criminal but may require disciplinary action or where it involves political elements or has political implications
- the focus of the investigation needs to be systemic in nature: identifying what happened, how and why, and what can be done to reinforce or toughen policies, procedures, and processes to prevent future risks arguably requires different investigatory skills.⁵¹³

Seconded police, while skilled investigators in the criminal sphere, may not have the broader skills and training necessary to investigate the breadth and depth of corruption matters.

The use of seconded police by the CCC should continue

While the position in Queensland is markedly different from other Australian jurisdictions, there are advantages in continuing the practice of secondment rather than abandoning it for any of the suggested alternatives — such as using only persons with non-law enforcement backgrounds, or in combination with 'civilian' former police, or employing police from outside jurisdictions.

Seconded police officers bring to the CCC investigative knowledge, training, experience and expertise, and can help to ensure an investigation is conducted properly, effectively and according to law.

By the time police officers are seconded to the CCC, the QPS has invested significantly in their development through its extensive training and development programs. The CCC is provided with skilled police officers, who also continue their professional development during their secondment.⁵¹⁴

Seconded police officers bring skills and experience that are essential to the discharge of the CCC's functions. The identified risks or challenges connected with their continued use can be overcome administratively through a range of measures involving improvements to their induction and training, as well as changes to the structure of the CCC which build a stronger foundation for a multidisciplinary approach to corruption investigations. We consider the use of seconded police officers by the CCC is appropriate and should continue, and that the identified risks can be sufficiently addressed through the recommendations set out below, and other measures discussed in Chapter 7.

We recommend that:

- The current secondment arrangements between the QPS and the CCC be amended to provide the CCC with adequate and appropriate flexibility over the mix of job positions, skills and experience within the CCC Police Group.
- The CCC and the QPS jointly review the mix of job positions, skills and experience within the CCC Police Group at least once every two years with a view to ensuring the composition of the CCC Police Group reflects the CCC's operational needs and priorities.
- The MOU between the CCC and the QPS be amended to reflect the need for the CCC to have adequate and appropriate flexibility over the mix of job positions, skills and experience within the CCC Police Group.

The PCC Commissioner also submitted that the PCCC Logan Council Inquiry raised concerns about the organisational culture of the CCC and that actions of individual CCC staff revealed in that Inquiry were symptomatic of a culture of 'resistance to institutional oversight and review'.⁵¹⁵ The PCCC recommended that the CCC engage in a 'reform of culture (including seeking external advice) to assist in creating a best practice organisational culture that aligns with the purpose, functions and goals of the [CCC]'.⁵¹⁶

In response to the PCCC recommendation, the CCC says it will 'continue its program of reform [noting the significant strategic and operational improvements it has implemented already] and be responsive to the PCCC's recommendation by undertaking an external review of current practices in relation to the assessment of corrupt conduct complaints.' The Terms of Reference will include a focus on '**culture, principles, people, processes, systems, and technology, information, intelligence and analytics**'.⁵¹⁷

We recommend that the adequacy of the CCC's current organisational culture in safeguarding against institutional capture should form part of the forthcoming external review of the CCC.⁵¹⁸

Seconded police officers should continue to retain their powers

There is significant utility in police officers retaining their full police powers for the term of their secondment, but they must exercise those powers lawfully. That exercise continues to be counterbalanced by the same oversight instruments and safeguards that exist for police officers outside a CCC secondment.

The current position represents a straightforward approach to importing crucial investigative powers into the CCC, rendering the organisation self-sufficient in its ability to conduct its investigations.

The fact that a seconded officer 'brings with them' their existing powers under the PPRA means that the CCC is not reliant upon an external agency to conduct any of the practical aspects of an investigation.

Without the retention of police powers by seconded police officers, investigations would otherwise be required to be 'outsourced' to police officers remaining within the QPS, or for the CCC to employ civilian investigators who are legislatively invested with those powers.

Under an outsourcing arrangement, the CCC's autonomy and control over investigative matters would be reduced. Information and intelligence sharing across the agencies would need to increase, which would likely require a relaxation in confidentiality obligations operating upon CCC officers. The CCC would be unnecessarily dependent on the QPS from a logistical and operational perspective.

An outsourcing arrangement may also see CCC matters deprioritised among QPS-centric work and in turn, investigative timeframes extended. This may be exacerbated because the empowered QPS officer is detached from and without investment in the actual CCC investigation. It would also require an added layer of administrative and managerial processes between the two agencies to be effective.

The existing arrangement overcomes these challenges. It enables the CCC to conduct its investigations via in-house investigators who are integral to the actual investigation and who are embedded within the CCC.

In his submission, Mr Le Grand highlights the advantages of police powers being used in the context of CCC investigations.⁵¹⁹ He recalls experiences where he required additional resources in the field, 'at a moment's notice', to secure a crime scene, to complete a search or to provide security when matters took a dangerous turn. The ability of a seconded police officer to assist in those matters is contingent on the retention of their powers. Mr Le Grand cautions that investigations can be unpredictable and it is invaluable to have a suite of police powers available for spontaneous use.

The current approach should be maintained. Sections 174 and 255 of the CC Act ensure the independence of the CCC and offer a pragmatic approach to importing crucial investigative powers into the operations of the CCC.

We recommend that police officers who are seconded to the CCC retain their policing powers as per section 174 and 255 of the CC Act.

Endnotes

³⁵⁹ CCC Submission, 1 April 2022, p 33, paras 132–133.

³⁶⁰ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 1, shows 85 full-time equivalent (FTE) QPS positions compared to 277.7 FTE civilian positions. There is some discrepancy among the various submissions received from the QPS and CCC. For example, the CCC indicated that as of 14 March 2022, there was 88 QPS officers seconded to the CCC comprising a) 83 officers against the 85 FTE QPS positions and b) an additional five QPS officers assisting with corruption investigations (who were not shown on the organisational chart provided). The QPS Submission, 28 March 2022, p 7 reflects a QPS cohort of 85 officers. We have concluded the base QPS establishment seconded to the CCC is 85 FTE positions (53 positions in Operations Support, 14 in Crime and 18 in Corruption).

³⁶¹ Fitzgerald Report, p 311.

³⁶² Fitzgerald Report, p 313.

³⁶³ CC Act, s 255(4). Except in relation to decisions to charge — a seconded police officer cannot be directed by the CCC or the CCC Chairperson to commence criminal charges; and before commencing a criminal proceeding, the officer must have formed the requisite suspicion or belief required for the proceeding to be commenced (*PRS v Crime and Corruption Commission* [2019] QCA 255 [81] (and [2019] QSC 83 [52])).

³⁶⁴ CC Act, s 255(5).

³⁶⁵ CCC Submission, 1 April 2022, p 35, para 154.

³⁶⁶ CCC Submission, 1 April 2022, p 36, para 156.

³⁶⁷ CCC Submission, 1 April 2022, p 104, para 549.

³⁶⁸ CC Act, ss 174, 255.

³⁶⁹ See PPRA, s 5.

³⁷⁰ QPS Submission, 28 March 2022, p 4; CCC Submission, 1 April 2022, p 34, para 143 refers to the ‘QPS CCC Police Group’.

³⁷¹ QPS Submission, 28 March 2022, p 4.

³⁷² QPS Submission, 28 March 2022, p 5.

³⁷³ QPS Submission, 4 May 2022, p 5.

³⁷⁴ QPS Submission, 4 May 2022, p 1.

³⁷⁵ QPS Submission, 4 May 2022, p 5.

³⁷⁶ QPS Submission, 4 May 2022, p 3.

³⁷⁷ The submissions received from both the QPS and CCC were clear on the formal reporting arrangements for seconded police officers and that the Detective Chief Superintendent/GM of Operations Support does not have any oversight over seconded police officers in the Crime and Corruption Divisions. This separation from operational oversight of seconded police officers in these two divisions was stressed by the QPS. We accept this premise and are confident this is indeed the way the two agencies understand the reporting arrangements. See: QPS Submission, 4 May 2022; CCC Submission, 1 April 2022.

³⁷⁸ CCC Submission, 1 April 2022, p 51, para 253.

³⁷⁹ QPS Submission, 28 March 2022, p 6.

³⁸⁰ QPS Submission, 28 March 2022, p 6.

³⁸¹ QPS Submission, 28 March 2022, p 6.

³⁸² CC Act, s 213; CCC Submission, 1 April 2022, Attachment C, *Operational Framework*, p C-14.

³⁸³ CCC Submission, 1 April 2022, pp 20–21, paras 62–67.

³⁸⁴ QPS Submission, 28 March 2022, p 6; CCC Submission, 1 April 2022, p 87, para 454.

³⁸⁵ CCC Submission, 10 June 2022, p 2.

³⁸⁶ CCC Submission, 1 April 2022, p 99, para 526.

³⁸⁷ CCC Submission, 1 April 2022, Attachment I, *Concept of Operations — CCC and QPS Secondment Arrangements, EOI Model*, p I-4.

³⁸⁸ CCC Submission, 1 April 2022, Attachment H, *Concept of Operations — CCC and QPS Secondment Arrangements, Partnership Model*, p H-5; QPS Submission, 4 May 2022, p 4.

³⁸⁹ CCC Submission, 1 April 2022, Attachment H, *Concept of Operations — CCC and QPS Secondment Arrangements, Partnership Model*, p H-6; CCC Submission, 1 April 2022, Attachment I, *Concept of Operations — CCC and QPS Secondment Arrangements, EOI Model*, p I-4.

³⁹⁰ CCC Submission, 1 April 2022, Attachment G, *Memorandum of Understanding between Commissioner of the Queensland Police and CEO of the CCC*, p G-7.

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- ³⁹¹ CCC Submission, 1 April 2022, Attachment F, *Policy: Secondment of Police Officers to the CCC*, p F-3.
- ³⁹² CCC Submission, 1 April 2022, Attachment H, *Concept of Operations — CCC and QPS Secondment Arrangements, Partnership Model*, p H-2; Attachment I, *Concept of Operations — CCC and QPS Secondment Arrangements, EOI Model*, p I-2.
- ³⁹³ CCC Submission, 1 April 2022, p 99, para 528.
- ³⁹⁴ QPS Submission, 28 March 2022, p 7.
- ³⁹⁵ CCC Submission, 1 April 2022, p 100, para 532.
- ³⁹⁶ QPS Submission, 28 March 2022, p 8.
- ³⁹⁷ CCC Submission, 1 April 2022, p 100, para 532.
- ³⁹⁸ QPS Submission, 28 March 2022, p 8.
- ³⁹⁹ QPS Submission, 28 March 2022, pp 7–10.
- ⁴⁰⁰ QPS Submission, 28 March 2022, p 9.
- ⁴⁰¹ QPS Submission, 28 March 2022, p 7.
- ⁴⁰² QPS Submission, 28 March 2022, p 7.
- ⁴⁰³ CCC Submission, 1 April 2022, p 100, para 530.
- ⁴⁰⁴ QPS Submission, 28 March 2022, p 6.
- ⁴⁰⁵ QPS Submission, 28 March 2022, p 6.
- ⁴⁰⁶ CCC Submission, 1 April 2022, Attachment H, *Concept of Operations — CCC and QPS Secondment Arrangements, Partnership Model*, p H-6.
- ⁴⁰⁷ QPS Submission, 28 March 2022, p 4; QPS Submission, 5 May 2022, p 4.
- ⁴⁰⁸ CCC Submission, 1 April 2022, Attachment H, *Concept of Operations — CCC and QPS Secondment Arrangements, Partnership Model*, p H-2; QPS Submission, 28 March 2022, p 4.
- ⁴⁰⁹ QPS Submission, 28 March 2022, p 7.
- ⁴¹⁰ CCC Submission, 1 April 2022, Attachment H, *Concept of Operations — CCC and QPS Secondment Arrangements, Partnership Model*, p H-6.
- ⁴¹¹ CCC Submission, 1 April 2022, Attachment H, *Concept of Operations — CCC and QPS Secondment Arrangements, Partnership Model*, p H-13.
- ⁴¹² CCC Submission, 1 April 2022, Attachment F, *Policy: Secondment of Police Officers to the CCC*, p F-1.
- ⁴¹³ CCC Submission, 1 April 2022, Attachment F, *Policy: Secondment of Police Officers to the CCC*, p F-1.
- ⁴¹⁴ CCC Submission, 1 April 2022, Attachment H, *Concept of Operations — CCC and QPS Secondment Arrangements, Partnership Model*, p H-7; CCC Submission, 1 April 2022, Attachment F, *Policy: Secondment of Police Officers to the CCC*, p F-2.
- ⁴¹⁵ CCC Submission, 1 April 2022, p 100, para 530.
- ⁴¹⁶ CCC Submission, 17 June 2022, pp 2–3.
- ⁴¹⁷ CCC Submission, 17 June 2022, p 3.
- ⁴¹⁸ CCC Submission, 17 June 2022, pp 2–3.
- ⁴¹⁹ CCC Submission, 10 June 2022, p 3.
- ⁴²⁰ CCC Submission, 1 April 2022, p 129, para 691. The ‘CCC Induction’ is also referenced in the respective *Concepts of Operations* documents for the two secondment models provided to the Inquiry.
- ⁴²¹ CCC Submission, 1 April 2022, p 129, paras 687–691.
- ⁴²² CCC Submission, 1 April 2022, p 129, para 691.
- ⁴²³ CCC Submission, 1 April 2022, p 35, para 150.
- ⁴²⁴ CCC Submission, 1 April 2022, p 35, para 150.
- ⁴²⁵ CCC email to the Inquiry Secretariat, 2 June 2022, *Mandatory Courses CCC Learning*, pp 41–42.
- ⁴²⁶ CCC Submission, 1 April 2022, p 35, para 150.
- ⁴²⁷ CCC Submission, 1 April 2022, p 35, para 147.
- ⁴²⁸ CCC Submission, 11 May 2022, p 2, para 12.
- ⁴²⁹ CCC Submission, 11 May 2022, p 2, para 12.
- ⁴³⁰ CCC Submission, 1 April 2022, p 35, para 152; 11 May 2022, p 2, para 12.
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⁴³¹ OECD, 'Specialised Anti-Corruption Institutions — Review of Models' (2013), p 32.

⁴³² CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, shows 85 full-time equivalent (FTE) QPS positions compared to 277.7 FTE civilian positions. There is some discrepancy among the various submissions received from the QPS and CCC. For example, the CCC indicated that as of 14 March 2022, there was 88 QPS officers seconded to the CCC comprising a) 83 officers against the 85 FTE QPS positions and b) an additional five QPS officers assisting with corruption investigations (who were not shown on the organisational chart provided). The QPS Submission, 28 March 2022, p 7 reflects a QPS cohort of 85 officers. We have concluded the base QPS establishment seconded to the CCC is 85 FTE positions (53 positions in Operations Support, 14 in Crime and 18 in Corruption).

⁴³³ NSW ICAC Submission, 18 March 2022, p 7; Victoria IBAC Submission, 1 April 2022, p 1; NT ICAC Submission, 7 April 2022, p 1.

⁴³⁴ NSW ICAC Submission, 18 March 2022, p 7.

⁴³⁵ NT ICAC Submission, 7 April 2022, p 1.

⁴³⁶ Victoria IBAC Submission, 1 April 2022, p 2.

⁴³⁷ SA ICAC Submission, 1 April 2022, pp 1–2.

⁴³⁸ SA ICAC Submission, 1 April 2022, p 2.

⁴³⁹ WA CCC Annual Report 2020–2021, p 41.

⁴⁴⁰ WA CCC Submission, 29 March 2022, p 1.

⁴⁴¹ Tasmania Integrity Commission Submission, 1 April 2022, p 2.

⁴⁴² Tasmania Integrity Commission Submission, 1 April 2022, p 2.

⁴⁴³ Tasmania Integrity Commission Submission, 1 April 2022, p 2.

⁴⁴⁴ ACT Integrity Commission Annual Report 2019–2020, p 23.

⁴⁴⁵ *Crime Commission Act 2012* (NSW), s 74(1), (4).

⁴⁴⁶ *Australian Crime Commission Act 2002* (Cth), s 58.

⁴⁴⁷ Based on statistics from Australian Criminal Intelligence Commission Annual Report 2020–21, p 82.

⁴⁴⁸ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 1.

⁴⁴⁹ Based on employee statistics from SA ICAC Annual Report 2020–21, p 16; and the reported number of police secondees in the SA ICAC Submission, 1 April 2022, pp 1–2.

⁴⁵⁰ Based on employee statistics from ACT Integrity Commission Annual Report 2020–21, p 62; and the reported number of police secondees in the ACT Integrity Commission Annual Report 2019–20, p 23.

⁴⁵¹ WA CCC Submission, 29 March 2022, p 1; WA CCC, *Our People* (Web Page) <<https://www.ccc.wa.gov.au/about-us/our-people>>.

⁴⁵² Based on employee statistics from the Australian Criminal Intelligence Commission Annual Report 2020–21, p 82.

⁴⁵³ CCC Submission, 1 April 2022, p 28, para 105; QPS Submission, 28 March 2022, p 5.

⁴⁵⁴ CCC Submission, 1 April 2022, p 28, para 105; CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 1.

⁴⁵⁵ CCC Submission, 1 April 2022, p 24, para 80.

⁴⁵⁶ CCC Submission, 1 April 2022, Attachment E, *Budgeted FTE by QPS and Civilian roles in the CCC as at January 2022*, p E-2; QPS Submission, 28 March 2022, p 5 notes the Crime Division has 14 QPS officers. The CCC Submission, 1 April 2022, p 24, para 81 notes 'In total, there are 13 police officers in the Crime Operations'. After review of the information provided to us by the CCC, we concluded this count did not include the Executive Director Crime Operations which is Detective Superintendent who manages the business unit (the 14th officer).

⁴⁵⁷ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 1.

⁴⁵⁸ CCC Submission, 1 April 2022, p 26, para 89. The CCC describes this business unit as: 'Integrity Services — receives and assesses corruption and police misconduct complaints, performs the CCC's statutory monitoring function and provides oversight of the QPS disciplinary process'.

⁴⁵⁹ CCC Submission, 1 April 2022, pp 25–26, para 89. The CCC describes this business unit as: Strategy, Prevention and Legal — provides strategic intelligence, corruption prevention, audits of [units of public administration's] systems and processes, and legal advice relevant to corruption matters.

⁴⁶⁰ CCC email to the Inquiry Secretariat, 24 May 2022, *Organisational Chart — Corruption Operations*.

⁴⁶¹ CCC email to the Inquiry Secretariat, 24 May 2022, *Organisational Chart — Corruption Operations*. This number excludes civilian financial investigators who, we understand, do not lead investigations but contribute specialist forensic accounting capability to aid corruption investigations.

⁴⁶² CCC email to the Inquiry Secretariat, 24 May 2022, *Organisational Chart — Corruption Operations*.

⁴⁶³ CCC Submission, 1 April 2022, *Operations Manual: Part 1: Identification of Matters: Section 1: Portfolio Assessment and Review*, p 7; CCC Submission, 19 April 2022, p 2, paras 7–8.

⁴⁶⁴ CCC Submission, 19 April 2022, p 2, paras 7–8.

⁴⁶⁵ CCC Submission, 1 April 2022, p 26, para 90.

⁴⁶⁶ CCC email to the Inquiry Secretariat, 24 May 2022, *Organisational Chart — Corruption Operations*. As at 24 May 2022, there were six corruption investigation teams in Corruption Operations. Three teams were led by two Detective Inspectors, two teams are led by two civilian Directors, and the remaining team is led by a civilian Manager.

⁴⁶⁷ QPS Submission, 28 March 2022; QPS Submission, 4 May 2022; CCC Submission, 1 April 2022; CCC Submission, 3 May 2022; Professor A J Brown Submission, 11 April 2022; Professor A J Brown Submission, 4 May 2022; Queensland Police Commissioned Officers' Union of Employees Submission, 29 March 2022; Queensland Council for Civil Liberties Submission, 7 April 2022; Robert (Bob) Atkinson Submission, 31 March 2022; Mark Le Grand Submission, 27 March 2022.

⁴⁶⁸ CCC Submission, 1 April 2022, pp 33–37.

⁴⁶⁹ QPS Submission, 28 March 2022, p 3.

⁴⁷⁰ QPS Submission, 28 March 2022, p 4.

⁴⁷¹ Professor Ross Martin QC served as the CMC Chairperson from February 2012–March 2013.

⁴⁷² Professor Martin QC Submission, 26 April 2022, p 4.

⁴⁷³ Mark Le Grand was the inaugural Director of the Official Misconduct Division of the original CJC from 1990 to 1999. Prior to this, he was General Counsel to the inaugural Chairman of the CJC, Sir Max Bingham QC, when in Melbourne he had headed the Victorian Office of the National Crime Authority (NCA). At the time of being approached by Sir Bingham to join the CJC, Mr Le Grand oversaw the South Australian Office of the NCA. Prior to that, he was the Deputy Director of the Commonwealth Director of Public Prosecutions and had assisted on numerous high-profile Royal Commissions and Taskforces.

⁴⁷⁴ Mark Le Grand Submission, 27 March 2022, p 3.

⁴⁷⁵ Mark Le Grand Submission, 27 March 2022, pp 3–4. Likewise, the CCC explains that seconded police officers bring a range of capabilities to the organisation including, but not limited to, knowledge of policing powers; investigative strategy; knowledge of the administration of criminal law in the Queensland context; and specialist technical skills. In addition, these officers can interface with the broader QPS through their detailed knowledge of QPS systems and processes (CCC Submission, 1 April 2022, p 36, para 156).

⁴⁷⁶ CCC Submission, 1 April 2022, p 100, para 532.

⁴⁷⁷ CCC Submission, 1 April 2022, p 36, para 156; Professor A J Brown Submission, 4 May 2022, p 3; Professor Ross Martin QC Submission, 26 April 2022, pp 3–4.

⁴⁷⁸ CCC Submission, 1 April 2022, p 36, para 157; Professor A J Brown Submission, 4 May 2022, p 3.

⁴⁷⁹ Robert (Bob) Atkinson Submission, 31 March 2022, p 1.

⁴⁸⁰ Professor A J Brown Submission, 11 April 2022; Professor A J Brown is a Professor of Public Policy and Law, Program Leader, Public Integrity & Anti-Corruption, Centre for Governance and Public Policy, Griffith University; and, over the last 20 years, advised has led some of the world's most comprehensive research into public interest whistleblowing and the operation of legislated whistleblower protections.

⁴⁸¹ Professor A J Brown Submission, 4 May 2022, pp 3–4.

⁴⁸² McInnes Wilson Lawyers Submission on behalf of former councillors, 1 April 2022; Current and former Ipswich City councillors Paul Tully, David Pahlke, Charlie Pisasale, Andrew Antonioli, David Morrison, Sheila Ireland, Cheryl Bromage, Kerry Silver, Kylie Stoneman, Wayne Wendt and David Martin Submission, 28 March 2022.

⁴⁸³ Referred to in the literature as 'regulatory capture' as the 'capture' of, or exertion of influence over, regulatory bodies by the industries or persons of whose behaviour they are designed to monitor and regulate. The theory arose from the field of economics, largely from the work of George Stigler outlined in his seminal article, see George J Stigler, 'The Theory of Economic Regulation' (1971) *The Bell Journal of Economics and Management Science* 2(1) 2, 21; Tim Prenzler, 'Civilian Oversight of Police: A Test of Capture Theory' (2000) 40(4) *British Journal of Criminology* 659, 674.

⁴⁸⁴ PCC Commissioner Submission, 7 April 2022, p 11.

⁴⁸⁵ Professor A J Brown Submission, 11 April 2022, p 3.

⁴⁸⁶ Tim Prenzler, 'Civilian Oversight of Police: A Test of Capture Theory' (2000) 40(4) *British Journal of Criminology* 659, 662. In this study, Prenzler applied capture theory to the field of external oversight of police conduct using the former CJC as a case study.

⁴⁸⁷ Tim Prenzler, 'Civilian Oversight of Police: A Test of Capture Theory' (2000) 40(4) *British Journal of Criminology* 659, 662. Prenzler notes that: 'Capture theory explains poor performance in regulation with reference to techniques by which the group being regulated subverts the impartiality and zealousness of the regulator. At one end of the spectrum are conscious relationships of bribery or blackmail. At the other end are institutional arrangements generating subtle forms of inappropriate influence, sometimes with the best intentions in mind. Sources of undue influence include personnel interchange and identified with industry values through frequent contact.'

⁴⁸⁸ Tim Prenzler, 'Civilian Oversight of Police: A Test of Capture Theory' (2000) 40(4) *British Journal of Criminology* 659, 664, 667, 671–672.

⁴⁸⁹ Independent Expert Panel (Simone Webbe, Hon. Glen Williams AO, Felix Grayson APM) Report, 'Simple, Effective, Transparent, Strong: An independent review of the Queensland police complaints, discipline and misconduct system', May 2011, p 16.

⁴⁹⁰ Queensland Human Rights Commissioner Submission, 1 April 2022, pp 13–14.

- ⁴⁹¹ United Nations Office on Drugs and Crime, *Handbook on police accountability, oversight and integrity* (United Nations, 2011) pp iv–v.
- ⁴⁹² Mark Le Grand Submission, 27 March 2022, pp 3–4.
- ⁴⁹³ Mark Le Grand Submission, 27 March 2022, p 2.
- ⁴⁹⁴ Mark Le Grand Submission, 27 March 2022, p 2.
- ⁴⁹⁵ Professor A J Brown Submission, 11 April 2022, p 3.
- ⁴⁹⁶ A J Brown, Samuel Ankamah, Ken Coghill, Adam Greycar, Kym Kelly, Tim Prenzler, Janet Ransley, ‘Draft Report of Australia’s National Integrity System Assessment — Governing for Integrity: A Blueprint for Reform’ (Transparency International; Griffith University, 2019).
- ⁴⁹⁷ Transparency International, *Grand corruption — Our priorities* (Web Page) <<https://www.transparency.org/en/our-priorities/grand-corruption>>.
- ⁴⁹⁸ A J Brown, Samuel Ankamah, Ken Coghill, Adam Greycar, Kym Kelly, Tim Prenzler, Janet Ransley, ‘Australia’s National Integrity System Assessment — Governing for Integrity: A Blueprint for Reform’ (Draft Report, April 2019), Chapter 4, p 2.
- ⁴⁹⁹ Transparency International, *Corruptionary A-Z* (Web Page) <<https://www.transparency.org/en/corruptionary/political-corruption>>.
- ⁵⁰⁰ Tim Prenzler, Bricklyn Horne, Alex McKean, ‘Identifying and preventing grey corruption in Australian politics’, in Maximilian Edelbacher, Peter Kratoski (eds), *The Prevention of fraud and corruption: Major types, prevention and control* (Springer, 2018), pp 61–81; Adam Graycar, Aiden Sidebottom, ‘Corruption and control: a corruption reduction approach’ (2012) 19(4) *Journal of Financial Crime*, 384–399.
- ⁵⁰¹ Tim Prenzler, ‘Grey corruption issues in the public sector’ (2021) 7(2) *Journal of Criminological Research, Policy and Practice*, 137–149.
- ⁵⁰² This sentiment was echoed in the submission of Professor A J Brown, 4 May 2022, p 6.
- ⁵⁰³ L W J C Huberts, ‘What can be done against public corruption and fraud: expert views on strategies to protect public integrity’ (1998) 29 *Crime, law, and social change*, 209–224.
- ⁵⁰⁴ This sentiment was echoed in the submission of Professor A J Brown, 4 May 2022, p 4.
- ⁵⁰⁵ Ian Scott, Tim Gong, ‘Evidence-based policy-making for corruption prevention in Hong Kong: A bottom-up approach’ (2015) 37 *Asia Pacific Journal of Public Administration*, 88.
- ⁵⁰⁶ Daniel S Nagin, Robert M Solow, Cynthia Lum, ‘Deterrence, criminal opportunities, and police’ (2015) 53(1) *Criminology*, 74–100.
- ⁵⁰⁷ Professor A J Brown Submission 4 May 2022, Attachment 2, A J Brown, Samuel Ankamah, Ken Coghill, Adam Graycar, Kym Kelly, Tim Prenzler, Janet Ransley, ‘Chapter 5 in Australia’s National Integrity System: Priorities for Reform (Draft Report, April 2019)’ p 4.
- ⁵⁰⁸ Gabriel Kuris, ‘Watchdog or guard dogs: Do anti-corruption agencies need strong teeth?’ (2015) 34(2) *Policy and Society*, 125, 135.
- ⁵⁰⁹ Professor A J Brown Submission 4 May 2022, Attachment 2, A J Brown, Samuel Ankamah, Ken Coghill, Adam Graycar, Kym Kelly, Tim Prenzler, Janet Ransley, ‘Chapter 5 in Australia’s National Integrity System: Priorities for Reform (Draft Report, April 2019)’ p 4.
- ⁵¹⁰ PCC Commissioner Submission, 7 April 2022, p 12.
- ⁵¹¹ CCC email to the Inquiry Secretariat, 27 May 2022.
- ⁵¹² CCC email to the Inquiry Secretariat, 27 May 2022.
- ⁵¹³ Professor A J Brown Submission, 4 May 2022, p 5.
- ⁵¹⁴ CCC Submission, 1 April 2022, p 35, paras 147–151; QPS Submission, 28 March 2022, p 4.
- ⁵¹⁵ PCCC Logan Council Report, p 67, p 114 (Finding 8).
- ⁵¹⁶ PCCC Logan Council Report, p 142 (Recommendation 4).
- ⁵¹⁷ CCC Submission, 1 April 2022, p 46, paras 231–233.
- ⁵¹⁸ CCC Submission, 1 April 2022, p 46, paras 232–233. The external review, we understand, is intended to fulfill Recommendation 4 of the PCCC Logan Council Report, p 142.
- ⁵¹⁹ Mark Le Grand Submission, 27 March 2022, pp 3–4.





CHAPTER 7

A multidisciplinary approach to
corruption investigations and internal
checks and balances

CHAPTER 7: A MULTIDISCIPLINARY APPROACH TO CORRUPTION INVESTIGATIONS AND INTERNAL CHECKS AND BALANCES

7.1 Greater emphasis on a multidisciplinary approach

Multidisciplinary teamwork involves staff from diverse disciplines working together to integrate expertise, knowledge and skill to advance understanding or solve problems where solutions are beyond the scope of a single discipline.⁵²⁰

We recommend, drawing upon our examination in Chapter 6, measures to provide a greater emphasis on a multidisciplinary approach within the Corruption Division of the CCC and to diversify the skills and experience at the leadership level within its Corruption Operations unit. The measures build the CCC's ability to investigate corruption through:

- a corruption prevention and policy focus for the Corruption Division
- increased recruitment of civilian investigators
- reduced reliance on seconded police officers as lead corruption investigators
- improved training methods to ensure investigators, including seconded police or officers with law enforcement backgrounds, are appropriately equipped to provide a broad, systemic focus upon corruption investigations.

Diversifying the leadership level of the Corruption Operations unit

Diversification and greater civilianisation of the leadership roles is needed to ensure and advance a multidisciplinary approach to corruption investigations.

We do not recommend all director-level positions in the Corruption Operations unit be held by civilians but over time we recommend that the CCC transition to a predominantly civilian leadership model, provided that it is able to recruit appropriately experienced civilians to these roles.

The executive director-level position (the role currently held by a seconded police officer) should be transitioned to a civilian role.⁵²¹ This is no criticism of the detective superintendent currently in the position. However, it is necessary to ensure multiple perspectives are available and infused in corruption investigations (which is particularly important when all directors are either seconded police officers or civilians with a law enforcement background).⁵²²

The SEO (Corruption) provides overall leadership of the Corruption Division and oversight over the progress of investigations as part of the ELT. The role is a pivotal safeguard: it serves as the final check and

balance before consideration is given to referring an investigation to the DPP for advice concerning whether the conditions for laying a charge are satisfied. While the holder of this position must be an experienced lawyer,⁵²³ it is desirable that they be someone with an understanding of the public sector, an ability to interrogate the appropriateness of criminal charges, and an understanding of the application of human rights to the CCC's corruption function. The holder of this role need not be drawn from a law enforcement, or a criminal prosecution or defence background, but should possess the experience and qualifications to direct, guide and safeguard the integrity of corruption investigations.

We recommend that:

- The CCC transition to a predominantly civilianised model for its Corruption Division and only retain the number of seconded police officers required at and below director-level to ensure there are effective and efficient corruption investigations.
- The Executive Director Corruption Operations be transitioned to a civilian position as soon as possible.

Greater civilianisation of the CCC Corruption Operations unit

We are of the opinion that increasing the number of civilian corruption investigators drawn from diverse backgrounds will enhance the CCC's multidisciplinary approach and build the CCC's internal capability to investigate corruption.

Investigators must be equipped with the professional skills and knowledge to investigate both criminal and non-criminal matters in the context of alleged corruption, and understand the systemic relationships between the alleged corruption and the broader organisational, political and policy context (including factors such as organisational culture and leadership, policy settings, processes and systems, ethics, education and training).⁵²⁴

The CCC and QPS should review each seconded police officer position in the Corruption Operations unit when it becomes vacant (either through attrition or a secondment period concluding). An assessment whether the position continues to require a police officer in the role should be jointly undertaken by the CCC and QPS. This will support a greater emphasis on a multidisciplinary approach by the CCC to its corruption function.⁵²⁵

We recommend that:

- Over the next five years, the CCC and the QPS jointly review each seconded police officer position within the Corruption Division at or before the conclusion of the secondment period for each of these positions.
- The joint review process be documented in the existing MOU between the CCC and the QPS and include principles to guide the review process, including:
 - the need for the CCC to increase its civilian investigator capability, and
 - the benefits of retaining a proportion of seconded police officers in the division for the purpose of exercising policing powers and contributing to investigations where criminal investigation expertise is required.

Improving induction and training for corruption investigators

The importance of induction and training for staff in corruption bodies is acknowledged by interstate anti-corruption bodies. Victoria IBAC has in recent years recognised induction and ongoing training for investigations staff as critical.⁵²⁶ It now has a dedicated position which focuses on these issues.⁵²⁷ That role has been instrumental in undertaking a training needs analysis and devising a comprehensive training plan for its investigators.⁵²⁸ The training officer:

- works with Victoria IBAC's human resources team to ensure that mandatory corporate training has been undertaken by staff⁵²⁹
- coordinates informal peer-to-peer mentoring for new staff
- provides training to staff⁵³⁰
- identifies appropriate external courses which may be appropriate to grow the capability of Victoria IBAC's investigators.⁵³¹

The investigation division of NSW ICAC has recently formed a Strategic Capability Committee, whose charter is to assist in developing a strategic workforce framework to detail the key skills and knowledge required of divisional staff; and to assist in developing a divisional planning tool which identifies learning and development requirements to meet the needs of investigations now and into the future.⁵³²

We recommend that the CCC should ensure corruption investigators, whether seconded police officers or civilians, are adequately and appropriately inducted upon their commencement at the CCC and should provide ongoing training that equips its officers to investigate corruption effectively.

The CCC has an opportunity to induct seconded police officers into the CCC 'way of working' at the commencement of an individual officer's secondment and concedes further work could be done in the induction phase to 'familiarise seconded police with the CCC's operating model and the principal pieces of legislation relevant to [its] corruption function and include a training needs analysis to guide capability development while at the CCC'.⁵³³

An enhanced, business unit level induction process would:

- assist seconded police to adjust (as required) to a broader investigatory approach which suits the examination of corruption allegations
- help to embed a multidisciplinary approach to corruption investigations
- address the interplay between the QPS service manuals and the CCC's Operations Manual, and resolve, in the mind of the secondee, what action to take if faced with any inconsistency
- identify, from the outset, any capability gaps for an individual seconded police officer (or civilian) and ensure a plan is in place to remedy these.

The business unit level induction process should be complemented by ongoing training, including for police officers on secondment, designed to build the ability of the Corruption Division to examine corruption allegations.

We recommend that a new Training and Development Officer position be established and funded for the CCC. That position would have responsibility for ensuring staff engaged in corruption investigations are adequately equipped to investigate corruption and:

- undertake an initial comprehensive ‘training needs analysis’ for all current staff at the CCC engaged in corruption investigations
- identify areas for development for individual officers and devise appropriate training plans, including sourcing external or cross-agency training as required
- develop the enhanced business unit level induction processes (referred to above) to ensure the induction of new staff adequately prepares them for the nature of the work in the Corruption Division and, for seconded police officers, how the work will differ from that at the QPS
- manage the training requirements for all corruption investigators and ensure it includes measures that develop an officer’s understanding of broader issues of administrative law, public sector management and public sector frameworks, governance and policy⁵³⁴
- manage the CCC’s Operations Manual and delivery of training on any changes to ensure all staff, including seconded police officers, understand the impact of the changes on their daily practice.

We recommend that the Queensland Government fund the CCC to devise and implement a Training Strategy and Plan focused on improving the skills of all investigators assigned to corruption investigations. That strategy and plan should include, where necessary, outsourcing external training courses which are appropriate and adequate, and aligned with best practice for integrity investigations.

A corruption prevention and policy focus for the Corruption Division

In 2014, the CCC’s corruption prevention function was removed, rendering it no longer responsible for the prevention of misconduct and the integrity of public administration.⁵³⁵ The amendment focused the CCC on investigating serious cases of corrupt conduct and ensuring complaints about corruption were dealt with in an appropriate way, but withdrew the function of preventing corrupt conduct. The crime prevention function remained unaffected.

With a change in government in 2015, the CCC’s prevention function was again cast in terms of helping to prevent both major crime and corruption⁵³⁶ and the CC Act was amended to fully reinstate the ‘corruption prevention function’, thereby enabling the CCC to build the capacity of UPAs to prevent corruption.⁵³⁷ Amendments also augmented the legislated principles governing the CCC in its performance of its corruption function, so that those principles included the following:

- to the greatest extent practicable, the CCC and UPAs should work together to prevent corruption (under the *cooperation* principle)
- the CCC has a lead role in building the capacity of UPAs to prevent and deal with cases of corruption effectively and appropriately (new *capacity building* principle)
- the CCC has an overriding responsibility to promote public confidence in the integrity of units of public administration (under the *public interest* principle).⁵³⁸

However, the reinstatement of the corruption aspect of its prevention role did not, the CCC advised, include corresponding funding to enable the re-establishment of its corruption prevention capability.⁵³⁹ The CCC currently has only one position dedicated to its prevention function. The role sits within the Corruption Division in the (current) Strategy, Prevention and Legal unit.⁵⁴⁰ An aspect of the role is identifying 'systemic issues in corruption investigations and developing and disseminating corruption prevention content'.⁵⁴¹

The CCC is lagging when compared to other Australian Integrity bodies in its prevention capability; specifically, in its capacity to ensure a prevention perspective forms part of every corruption investigation, complementing the skills of its investigators and lawyers in teams.

The value of a broad prevention perspective in investigations is supported by the ACT Integrity Commission which noted, in its submission to another inquiry, methods of addressing corruption 'emerging across many distinct disciplines, including management, sociology, psychology, behavioural economics, criminology and others'.⁵⁴² The ACT Integrity Commission contends that the ability to 'contextualise and synthesise information from a variety of disciplines and apply them in an anti-corruption context' is what leads to effective education and prevention solutions.⁵⁴³

NSW ICAC and Victoria IBAC also emphasise the role of prevention expertise in corruption investigations, and both agencies integrate this perspective within their multidisciplinary teams.

NSW ICAC investigation teams are 'linked' to corruption prevention and research units.⁵⁴⁴ Its corruption prevention officers contribute to investigations by providing 'a potentially alternative point of view'⁵⁴⁵ and examining organisational factors that foster vulnerability to corruption and look at the broader structural and systemic issues to make recommendations.⁵⁴⁶ If the risk is substantial, policy research and analysis is undertaken and recommendations to address issues of substantial sector-wide corruption risk and public concern are made.⁵⁴⁷ While the corruption prevention officers are not 'investigators' (determining whether corrupt conduct has occurred) they are assigned to each corruption investigation.⁵⁴⁸

NSW ICAC's Corruption Prevention Division is also primarily responsible for examining the 'laws, practices and procedures' within the public sector that may be vulnerable to corrupt conduct, while 'educating, advising and assisting public authorities and the community' on methods of eradicating corruption.⁵⁴⁹ The role includes fostering the integrity and positive reputation of public administration.⁵⁵⁰

Victoria IBAC also has a dedicated Prevention and Communication Division.⁵⁵¹ Like NSW's ICAC, Victoria IBAC assigns an officer from the Prevention and Communication Division to each investigation as part of its multidisciplinary investigation approach. The officer is involved in 'researching and formulating the policy recommendations with input of the other members of the team, especially the [Deputy Commissioners], as the investigation progresses'.⁵⁵² The role is not meant to check the exercise of investigators' powers; rather, the role is 'key in determining and articulating the systemic issues and the direction of the reports and recommendations'.⁵⁵³ This is particularly important where an investigation does not reveal the need for criminal or disciplinary proceedings but there are systemic or institutional matters identified which requires addressing.⁵⁵⁴

The interstate uses of prevention expertise in corruption investigations are consistent with Professor Brown's opinion that multidisciplinary corruption teams should include diversely skilled investigators coupled with legal and policy expertise, and his suggestion that, 'at least one generalist policy officer or

public servant with familiarity with the functions, standards and normal operational practice in the type of agency or work involved'.⁵⁵⁵

A new Corruption Strategy and Prevention unit to be created

We recommend that a Corruption Strategy and Prevention unit be established as a new and additional business unit within the CCC Corruption Division. The establishment of that unit should avoid an unduly narrow focus on law enforcement in corruption matters, a risk that arises from the CCC's present, heavy reliance on seconded police officers and those from a law enforcement background. It will also serve to address the concerns raised in the recent Coaldrake Review pertaining to the CCC's need to 'protect itself against suggestions that it embarks on speculative and trivial inquiries at the expense of more serious cases'.⁵⁵⁶

The change will see the Corruption Division move from its three current units to four units, namely: Corruption Operations; Integrity Services; and separating the Corruption Strategy, Prevention and Legal unit into two units — Corruption Legal and the new Corruption Strategy and Prevention. This will renew focus on corruption prevention and align the CCC with the approach in other jurisdictions.

Additional funding will be needed to support the CCC in establishing the new unit. It should be led by a civilian executive director with proven experience or expertise in the public sector, and particularly in public administration and integrity. The executive director will report to the SEO (Corruption) and be supported by a team of suitably qualified professionals drawn from diverse backgrounds who can provide a broad, non-law enforcement perspective to the CCC's corruption investigations, thereby complementing the skills of investigators, lawyers and technical specialists.⁵⁵⁷ We are informed by the CCC that the following additional positions will be needed to deliver this initiative (in addition to an executive director): one director, two principal advisors, two project officers and one project support officer.⁵⁵⁸

The Corruption Strategy and Prevention unit will:

- provide a prevention and policy perspective across the 'lifecycle' of each corruption investigation
- analyse the context in which alleged corrupt conduct occurred, broaden the possible 'outcomes' of an investigation, and temper a law enforcement approach by shedding light on institutional factors relevant to the conduct under investigation
- provide more accessible and high-quality report writing
- ensure the investigation scope and strategy reflects the public sector management, governance and policy elements of corruption risk; help target investigations; and support the delivery of corruption prevention outcomes.⁵⁵⁹

7.2 Strengthening internal controls and accountability mechanisms

Effective internal controls and accountability mechanisms are critical to promoting public confidence in the CCC's work and its decision-making.⁵⁶⁰ While progress has been achieved by the CCC since 2018 to strengthen its internal accountability mechanisms, there remain opportunities to better ensure

appropriate operational oversight of corruption investigations; improve the quality of, and compliance with, established policies and procedures; and enhance existing internal review processes to include a post-prosecution review.

These measures will ensure more oversight by CCC officers who are not seconded police. This will reduce the risk of institutional capture involved in the use of seconded police and enable greater emphasis on the multidisciplinary approach that is needed to balance the law enforcement background of seconded police.

Enhanced operational oversight of corruption investigations

We examined the governance arrangements in place within interstate integrity bodies in assessing if, and how, the CCC could strengthen its operational oversight for corruption investigations.

For NSW ICAC, the functions provided by the CCC's ELT are divided between two governance groups: the Executive Management Group, and the Investigation Management Group.

The Executive Management Group comprises the three commissioners, the CEO, and the four executive directors responsible for NSW ICAC's legal, investigative, prevention and corporate functions.⁵⁶¹ This executive-level group oversees the organisation's strategic and corporate functions and has oversight of major projects.⁵⁶²

The Investigation Management Group specifically oversees investigations and includes the same members of the Executive Management Group, except for the Executive Director of Corporate Services Division. The role of this group is to provide operational oversight of investigations — from considering and reviewing the business case for an investigation, through to monitoring the delivery of criminal prosecutions. This group also oversees the preparation of briefs of evidence for the NSW DPP and is responsible for making or endorsing key decisions during an investigation.⁵⁶³

Victoria IBAC's corporate governance and operational governance functions are also separated; it now relies on three committees following a review of its internal governance arrangements in 2020.⁵⁶⁴

The review led to the replacement of its single 'Executive Committee' with two new committees — the Corporate Governance Committee and the Operations Governance Committee. The rationale for this division was to enable 'more focused discussions supporting cross-divisional collaboration'.⁵⁶⁵

For Victoria IBAC, strategic oversight, such as strategic planning and implementation, is the remit of the Executive Leadership Team Committee; oversight of corporate functions, such as financial management, and risk and compliance, is the remit of the Corporate Governance Committee; and operational oversight such as the provision of advice and oversight of investigations falls under the remit of the Operations Governance Committee.⁵⁶⁶

The Operations Governance Committee comprises the Commissioner, the deputy commissioners and the executive directors responsible for operations, prevention and legal functions and it operates as an 'advisory forum' rather than a decision-making body.⁵⁶⁷

A new executive director-level group to provide corruption investigation oversight

The establishment of a new Corruption Strategy and Prevention unit in the Corruption Division will provide an opportunity to bring together diverse views at the executive director-level of the Corruption Division as a whole (as already occurs in NSW and Victoria). This will provide input on investigations and oversee and monitor an investigation and its briefs of evidence and reports.

This can be achieved in one of two ways: through the expansion of the existing Corruption Division management meeting remit, or (the preferred option) by creating a new executive director-level group dedicated to investigation oversight. The latter is consistent with the approach in NSW.

The new executive director-level group will be chaired by the SEO (Corruption) and report to the ELT during the feasibility stage, delivery stage and post-delivery stage of the investigation. The executive director of the newly created Corruption Strategy and Prevention unit will be a member of the proposed group.

The executive director-level group will provide high-level oversight for:

- *feasibility assessments* to ensure the scope of a proposed investigation is appropriate, and considers all possible avenues for investigation
- ongoing inquiry during the *delivery stage* to:
 - provide input on, and endorse, key decisions throughout an investigation
 - make recommendations with respect to key actions relevant to the direction and progress of the investigation
 - embed a multidisciplinary approach including ensuring differing views on the investigation tactics and possible charges are considered
 - promote efficient use of technical and specialist capabilities sourced from the Operations Support unit of the Corruption Division
 - ensure non-law enforcement avenues and outcomes are considered throughout the investigation (for example, educative and prevention focused options which become evident as the investigation progresses)
- *post-delivery processes* to ensure lessons arising from specific investigations and prosecutions (discussed further below) are identified, conclusions and knowledge are communicated, and practices within the Corruption Division are continuously improved.

An expanded role for the weekly director meetings

Presently, each of the of the directors overseeing Corruption Operations investigation teams, the director of the Strategy, Prevention and Legal unit and the executive manager (from the Office of the SEO) hold a weekly 'directors' meeting'.⁵⁶⁸ This group is focused on 'operational matters, including current status, challenges faced, resourcing implications (including legal resourcing)'.⁵⁶⁹

We recommend that the weekly directors' meeting be expanded to include the director of the new Corruption Strategy and Prevention unit so as to provide a mechanism to enhance this group's focus on prevention and systemic responses to corruption.⁵⁷⁰ It should continue its current operational focus, but it should have formal reporting to the new executive director-level forum (see above).

The role of the weekly director-level group will be amended to include ensuring that:

- capability gaps are identified and strategies to remediate these gaps are implemented (such as the need for training or sourcing of specialist skills)
- regular input is provided to the investigation team, including providing guidance whenever necessary on the consideration of non-law enforcement avenues and outcomes
- there is compliance with the CCC's operational policies and procedures, and opportunities to improve and strengthen these operational materials are identified
- investigation teams adopt a multidisciplinary approach, and there are regular opportunities for differing views to be discussed.

Improved quality of, and compliance with, policies and procedures

Ensuring policies and procedures are understood and applied correctly by staff requires clear, standard policies and procedures and regular training, in particular on powers and duties.⁵⁷¹

Departures from established processes borne of human error may occur. These departures could arguably be dealt with through normal managerial action, as would be the case in most UPAs. But the CCC is no ordinary government body. As the 'watchdog' of the public sector, exercising far-reaching powers of investigation under a necessary veil of secrecy, it is incumbent upon the CCC's leadership and staff to ensure rigorous compliance with its established processes and continuous improvement of those processes in line with best practice.

However, compliance mechanisms do not ensure policies and procedures are understood and applied correctly by staff; they only provide that departures from agreed standards are reported.

The CCC has established a standard process for investigations, now articulated in the Operating Model and the Operational Framework. The Operations Manual developed by the CCC since 2018 spans over 500 pages and is designed to ensure staff know what is expected of them in the conduct of their duties. The work to date is sound but improvements are required to ensure the Operations Manual is clear, concise, consistent, accessible and easy to understand. It does not always achieve that.

For example, the guidance relating to 'key decisions' — a critical safeguard for ensuring actions are appropriately authorised — is confusing. The procedure for conducting investigations makes frequent reference to 'key decisions' being made without a *simple* explanation of which role or entity is making the decision. Identifying the decision maker for a given action requires reference to multiple sections of the manual and, even then, remains ambiguous in some instances.⁵⁷²

It would be more effective for the procedures to be framed specifically and simply — what must occur, who must do it, when it must occur and how it must be done.⁵⁷³

As the individual procedural documents apply across multiple divisions (for example, the procedure for conducting investigations relates to both a crime and a corruption investigation), a global approach to reviewing and improving policies and procedures should be adopted to avoid unnecessary duplication and possible confusion.

To effectively support this process, the CCC needs a new, dedicated position — a policy and procedure specialist — permanently funded and tasked with the ongoing review and improvement of its internal policies and procedures and ensuring these documents can be used effectively by operational staff.

The policy and procedure specialist role will:

- review existing policies and procedures to ensure consistency, clarity, and accessibility, including consulting with QPS to identify and resolve any inconsistencies with the QPS service manuals
- support business units to identify improvements and consult on proposed changes to ensure the framing of guidance is clear, simple and specific
- incorporate lessons learned from investigations and prosecutions where those lessons relate to improved procedures
- work with the new training and development officer to identify opportunities to train staff on policies and procedures and improve these documents based on advice from staff.

Ensuring post-prosecution reviews

We have noted the ‘strategic and operational changes’ implemented by the CCC since 2018 to improve its internal procedures, practices and processes which outline how investigations are conducted and overseen.⁵⁷⁴

However, the existing processes do not yet sufficiently capitalise on opportunities for improvement and reflection *once prosecution outcomes are known*. While the CCC has introduced processes to enable the ELT to oversee the progress of prosecution in the post-delivery stage of investigation,⁵⁷⁵ the CCC must formalise its post-prosecution review exercises to ensure opportunities to improve processes and practices within the CCC and the DPP are identified and implemented.

The executive director-level forum, discussed above, should participate in the post-prosecution review process.

The CCC highlights the challenge in settling upon the appropriate time for a post-prosecution review to take place, noting there may be significant delay between the laying of a charge arising from a corruption investigation and the outcome of any proceedings. Work in this regard was underway at the CCC at the time of this Inquiry. The CCC intends working with DPP to devise an appropriate model for post-prosecution review.⁵⁷⁶

In our view, it is appropriate that this work continue and that it be part of the MOU to be developed between the CCC and DPP, as set out in the next chapter in the context of creating an external oversight mechanism for charges arising from corruption investigations — an external measure designed to complement the internal measures and checks and balances set out in this chapter.

Endnotes

⁵²⁰ Susan A Nancarrow, Andrew Booth, Steven Ariss, Tony Smith, Pam Enderby, Alison Roots, 'Ten principles of good interdisciplinary team work' (2013) 11(19) *Human Resources for Health*, p 9; CordisBright Report, 'What are the key factors for successful multidisciplinary team working?' (2018). The characteristics of a good multidisciplinary team are: clear leadership and management, communication, shared objectives, training and development, adequate resources and procedures, an appropriate mix of skills and abilities, a culture of collaboration and trust, clarity of vision, and respecting and understanding roles (Susan A Nancarrow, Andrew Booth, Steven Ariss, Tony Smith, Pam Enderby, Alison Roots, 'Ten principles of good interdisciplinary team work' (2013) 11(19) *Human Resources for Health*, p 9).

⁵²¹ This was suggested by the CCC in response to a question relating to any existing positions that could be filled by civilians instead of seconded police officers: CCC Submission, 10 June 2022, p 3.

⁵²² CCC Submission, 11 April 2022, Attachment A, *CCC detailed chart*, pp 13–19; CCC email to the Inquiry Secretariat, 24 May 2022, *Organisational chart — Corruption Operations*.

⁵²³ The role description for the SEO (Corruption) states 'it is a requirement of the role to be admitted as a legal practitioner, Barrister or Solicitor. Possession of tertiary qualifications in other relevant disciplines such as criminology, governance or management will be highly regarded' (CCC Submission, 10 May 2022, Attachment B, *SEO Role Descriptions: Senior Executive Officer (Corruption)*, p 2).

⁵²⁴ Professor A J Brown Submission, 30 June 2022, p 1.

⁵²⁵ This was suggested by the CCC in response to a question relating to the challenges experienced by the CCC regarding the structure and the mix of positions and levels of positions for seconded police officers in the Corruption Division: CCC Submission, 10 June 2022, p 3.

⁵²⁶ Victoria IBAC email to the Inquiry Secretariat, 11 May 2022.

⁵²⁷ Victoria IBAC email to the Inquiry Secretariat, 11 May 2022.

⁵²⁸ Consultation with Victoria IBAC and the Inquiry Secretariat, 8 June 2022.

⁵²⁹ Victoria IBAC email to the Inquiry Secretariat, 11 May 2022.

⁵³⁰ Consultation with Victoria IBAC and the Inquiry Secretariat, 8 June 2022.

⁵³¹ Consultation with Victoria IBAC and the Inquiry Secretariat, 8 June 2022.

⁵³² NSW ICAC email to the Inquiry Secretariat, 16 May 2022.

⁵³³ CCC Submission, 10 June 2022, p 2.

⁵³⁴ CCC Submission, 10 June 2022, p 2.

⁵³⁵ 2014 Amendment Act.

⁵³⁶ CC Act, ss 23–24.

⁵³⁷ *Crime and Corruption Amendment Act 2016* (Qld).

⁵³⁸ *Crime and Corruption Amendment Act 2016* (Qld), ss 3–4.

⁵³⁹ CCC email to the Inquiry Secretariat, 27 May 2022.

⁵⁴⁰ CCC Submission, 11 April 2022, Attachment A, *CCC detailed organisational chart*, p 20. This organisational chart refers to a Principal Advisor (PO6). The CCC confirmed this position is the Principal Prevention Officer (CCC email to the Inquiry Secretariat, 22 June 2022).

⁵⁴¹ CCC email to the Inquiry Secretariat, 27 May 2022.

⁵⁴² ACT Integrity Commission Submission to the Inquiry into the education and prevention functions of Victoria's integrity agencies, 28 August 2020, p 9.

⁵⁴³ ACT Integrity Commission Submission to the Inquiry into the education and prevention functions of Victoria's integrity agencies, 28 August 2020, p 9. Full report available from: Victorian Integrity and Oversight Committee, 'Inquiry into the education and prevention functions of Victoria's integrity agencies', April 2022.

⁵⁴⁴ NSW ICAC Annual Report 2020–2021, p 10; NSW ICAC email to the Inquiry Secretariat, 6 June 2022, Corruption Prevention Division; NSW ICAC email to the Inquiry Secretariat, 7 June 2022, *Corruption Prevention Division*.

⁵⁴⁵ NSW ICAC email to the Inquiry Secretariat, 6 June 2022; NSW ICAC email to the Inquiry Secretariat, 7 June 2022, *Corruption Prevention Division*.

⁵⁴⁶ NSW ICAC email to the Inquiry Secretariat, 6 June 2022; NSW ICAC email to the Inquiry Secretariat, 7 June 2022, *Corruption Prevention Division*.

⁵⁴⁷ *Independent Commission Against Corruption Act 1988* (NSW) s 13; NSW ICAC email to the Inquiry Secretariat, 6 June 2022, *Corruption Prevention Division*.

⁵⁴⁸ NSW ICAC email to the Inquiry Secretariat, 6 June 2022, *Corruption Prevention Division*.

⁵⁴⁹ NSW ICAC Annual Report 2020–2021, pp 10–11.

⁵⁵⁰ NSW ICAC Annual Report 2020–2021, p 11.

⁵⁵¹ Victoria IBAC Annual Report 2020–21, p 49.

⁵⁵² Victoria IBAC email to the Inquiry Secretariat, 11 May 2022.

⁵⁵³ Victoria IBAC email to the Inquiry Secretariat, 5 June 2022.

⁵⁵⁴ Victoria IBAC email to the Inquiry Secretariat, 6 June 2022.

⁵⁵⁵ Professor A J Brown Submission, 4 May 2022, p 5. Professor A J Brown explained, in addition to the forensic aspects of corruption investigations, there are also tactical and strategic decisions which need to be made which ‘involve questions of public duty and public trust which will always go beyond simply criminal process’. These tactical and strategic decisions include considering if the prosecution of conduct is in the public interest and alternative policy responses to the conduct.

⁵⁵⁶ Coaldrake Review Report, ‘Let the Sunshine in: Review of culture and accountability in the Queensland public sector’ (28 June 2022), p 39.

⁵⁵⁷ CCC email to the Inquiry Secretariat, 27 May 2022. The CCC informs us that before the removal of the corruption prevention function in 2014, the CMC (as it was then) employed, on average, seven people to support its prevention function. The one position the CCC currently has performing its prevention function; and a training officer, Indigenous liaison officers and prevention officers.

⁵⁵⁸ CCC email to the Inquiry Secretariat, 27 May 2022.

⁵⁵⁹ CCC email to the Inquiry Secretariat, 27 May 2022.

⁵⁶⁰ CCC Submission, 1 April 2022, p 16, para 32.

⁵⁶¹ NSW ICAC has four divisions: Legal Division, Investigation Division, Corruption Prevention Division and Corporate Services Division. The executive director of the Legal Division is also the Solicitor to the Commission. NSW ICAC Annual Report 2020–2021, p 9.

⁵⁶² NSW ICAC Annual Report 2020–2021, p 48.

⁵⁶³ NSW ICAC Annual Report 2020–2021, p 49.

⁵⁶⁴ Victoria IBAC Annual Report, 2020–2021, p 16.

⁵⁶⁵ Victoria IBAC Annual Report 2020–2021, p 16.

⁵⁶⁶ Victoria IBAC Report, ‘Governance charter: Governance arrangements of IBAC’ (2021), p 13.

⁵⁶⁷ Victoria IBAC Report, ‘Governance charter: Governance arrangements of IBAC’ (2021), pp 14, 24.

⁵⁶⁸ CCC Submission, 10 June 2022, p 4.

⁵⁶⁹ CCC Submission, 10 June 2022, p 4.

⁵⁷⁰ CCC Submission, 10 June 2022, p 4, wherein the CCC supported this as a mechanism for doing so.

⁵⁷¹ United Nations Office on Drugs and Crime, ‘Colombo Commentary on the Jakarta Statement on Principles for Anti-Corruption Agencies’ (2020), p 41.

⁵⁷² For example, the key decision to transition between sub-stages within the Delivery stage is the ‘Case Manager or the Delegate’, though the ‘delegate’ for some of these transitions is difficult to ascertain. See CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter Management, Planning and Conduct*, p 28.

⁵⁷³ Researchers in the healthcare sector have noted the importance of framing operational guidelines (such as clinical guidelines) concretely and precisely to improve the clarity for those individuals who must follow the guidelines. This is referred to as ‘behavioural specification’. See for example: Susan Michie, Marie Johnston, ‘Changing clinical behaviour by making guidelines specific’ (2004) 328(7435) *BMJ*, pp 343–345.

⁵⁷⁴ CCC Submission, 1 April 2022, p 46, para 232.

⁵⁷⁵ CCC Submission, 1 April 2022, Attachment B, *Operating Model Governance Arrangements*, p B-8; CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 1: Matter Management, Planning and Conduct*, p 18–20.

⁵⁷⁶ CCC Submission, 21 April 2022, pp 3–4, paras 12–14.





CHAPTER 8

Decisions to charge arising from
corruption investigations

CHAPTER 8: DECISIONS TO CHARGE ARISING FROM CORRUPTION INVESTIGATIONS

This chapter considers the following issues:

- Section 49 of the CC Act and CCC charging practice. This section discusses the history of section 49, the impact of the 2018 amendments and the present use of section 49. The impact of key High Court decisions is also discussed including how the cases informed the 2018 amendments to section 49.
- Decisions to charge arising from a corruption investigation, including the approaches of other Australian integrity bodies and the role of police seconded to the CCC and the Chairperson and other CCC officers.
- External mechanisms, or options, for ensuring the soundness of the charging decision arising out of corruption investigations, including referring matters to the QPS to charge, obtaining advice from external counsel or seeking the advice of the DPP before charging. This section specifically considers the advantages, disadvantages and implementation issues associated with seeking DPP advice before charging.

8.1 Background

The CCC does not adopt a practice of commencing criminal proceedings in its own name. Instead, it causes police officers seconded to it, utilising the powers discussed in Chapter 5, to set the process of criminal justice in motion following completion of its investigations.

That practice was not the subject of specific recommendations in the 1989 Fitzgerald Report. Instead, the report stated: ‘The Official Misconduct Division will not prosecute. It will be obliged, when investigations reveal the need for prosecution, to provide all materials pertinent to the investigation, including those potentially damaging to any prosecution case, to the Director of Prosecutions. The fundamental right of defendants to know of and have available to them all evidence potentially of assistance in their defence must be preserved’.⁵⁷⁷

This recommendation was incorporated into the CJ Act in section 2.24, the original predecessor to section 49 of the CC Act which relates to prosecutions arising from corruption investigations — the particular section highlighted for examination by our Terms of Reference. The adequacy and appropriateness of section 49 in its current form is discussed below and, as will become apparent, its operation is highly relevant to the development of present-day charging practices at the CCC.

Neither the 1989 Fitzgerald Report nor section 49 of the CC Act expressly address the question whether the CJC/CCC would or should have the power to lay charges in its own name. Given the extract above from the Fitzgerald Report that all pertinent materials were to be provided to the DPP and the recommendation that police officers be seconded to the CCC, it seems unlikely that the power was intended to be conferred. It appears, then, that the current practice of a seconded police officer exercising the discretion to charge *while embedded within the CCC* is consistent with the original recommendation: the CCC does not charge, nor does it prosecute using its own power or authority.

8.2 Section 49 of the *Crime and Corruption Act 2001* and the CCC charging practices

Section 49 of the CC Act in its current form (references to ‘the commission’ are references to the CCC) reads:

49 Reports about complaints dealt with by the commission

- (1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, corruption and decides that prosecution proceedings or disciplinary action should be considered.
- (2) The commission may report on the investigation to any of the following as appropriate:
 - (a) a prosecuting authority, for the purposes of any prosecution proceedings the authority considers warranted;
 - (b) the Chief Justice, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;
 - (c) the Chief Judge of the District Court, if the report relates to conduct of a District Court judge;
 - (d) the President of the Childrens Court, if the report relates to conduct of a person holding judicial office in the Childrens Court;
 - (e) the Chief Magistrate, if the report relates to conduct of a magistrate;
 - (f) the chief executive officer of a relevant unit of public administration, for the purpose of taking disciplinary action, if the report does not relate to the conduct of a judge, magistrate or other holder of judicial office.
- (3) If the commission decides that prosecution proceedings for an offence under the Criminal Code, section 57 should be considered, the commission must report on the investigation to the Attorney-General.
- (4) A report made under subsection (2) or (3) must contain, or be accompanied by, all relevant information known to the commission that:

- (a) supports a charge that may be brought against any person as a result of the report; or
 - (b) supports a defence that may be available to any person liable to be charged as a result of the report; or
 - (c) supports the start of a proceeding under section 219F, 219FA or 219G against any person as a result of the report; or
 - (d) supports a defence that may be available to any person subject to a proceeding under section 219F, 219FA or 219G as a result of the report.
- (5) In this section — ***prosecuting authority*** does not include the director of public prosecutions.

The current and now longstanding practice of the CCC is to treat its seconded police officers as a ‘prosecuting authority’ within the meaning of section 49. This practice was in place at the time charges were laid against the former Logan City councillors.⁵⁷⁸ Until subsection (2) was amended and subsection (5) was inserted in section 49 in 2018 the DPP was also a ‘prosecuting authority’ for the purpose of the section.

History of the removal of the DPP from the definition of ‘prosecuting authority’ in section 49

As far back as 2003, the DPP expressed concerns about the CCC’s practice of referring all corruption matters to the DPP for advice before charging. An appreciation of these concerns and their influence on the evolution of section 49 is central in an examination of the adequacy and appropriateness of the present provision and the CCC’s charging practices.

In 2001, the CM Act repealed the CJ Act and the Crime Commission Act and merged the CJC and QCC into a refocused CMC. Section 49 of that Act largely replicated repealed section 33 of the CJ Act.⁵⁷⁹ Changes were made in 2018 but, to fully appreciate the significance of the amendments, it is useful to identify the events that preceded and prompted them. (**Appendix G** contains a legislative history of section 49.)

In 2003-2004, the PCMC examined the question of the CMC being empowered to lay charges arising from a corruption investigation without first seeking the advice of the DPP.⁵⁸⁰ At the time, the CMC’s practice was to refer to the DPP all cases in which it decided that prosecution proceedings should be considered and, other than in emergent situations where police officers could rely on their powers to effect arrests, the CMC considered the only part it should play in determining whether charges should be laid was as set out in section 49.⁵⁸¹

In a submission to the PCMC, the Department of Justice and Attorney-General — incorporating the views of then DPP Leanne Clare SC — expressed concern about the practice of the CMC obtaining advice from the DPP prior to charging and recommended enabling the CMC to make its own decision about whether charges should be laid. Salient factors were said to include that the CMC officers who prepared the briefs were senior to the Crown prosecutor who would ultimately review the matter at the ODPP;⁵⁸² and that the process resulted in duplication, sapped the ODPP’s resources and led to significant delays by the ODPP in considering the matters.

Ms Clare observed: ‘While the briefs can be complex or at least lengthy, the key issue, as to whether there is a proper case to be tried, is generally obvious on a summary consideration. However, the professional obligation to advise is much broader, so that the quality of the evidence and the possible need for further investigation of a particular area to strengthen the case is also necessary. The upshot is that some matters will languish for months before a person is charged because my office is unable to provide timely advice, advice which for the most part does not value add but is repetitious.’⁵⁸³

A supportive view was advanced by the Parliamentary Commissioner Robert Needham (later, CMC Chair from 2005 to 2009): ‘If the [CMC] was to use its own internal police officers to lay charges, I would not see that as the taking over of a prosecutorial role. All they would be doing is finalising the investigation by laying the charge and then handing over the brief to the appropriate organisation that would then pursue that charge through prosecution...Serious matters, matters involving politicians, judges, prominent people, matters in which the commission itself feels there could be the need for the exercise of prosecutorial discretion as to whether or not to prosecute — I could understand those being referred to the DPP, because it would not be much sense to have the commission commencing a charge which it is thought might eventually be dropped by the DPP. That could reflect in fact quite unfavourably on the commission.’⁵⁸⁴

Further, Mr Needham said that the necessary checks and balances for decisions to lay a charge already existed within the criminal justice system: ‘In so far as the CMC needs a vetting process on its decision to prefer a charge, that process is already there within our criminal justice system. Any of the more serious matters will go through at committal, and that in itself is a vetting process. If the magistrate forms the opinion that there is not a prima facie case, then the matter is not sent on for trial. Then when it goes on to the DPP, there is always the discretion in the DPP that even though the matter might perhaps have an arguable prima facie case, it is a matter that should not go to trial. Those checks and balances are there anyway.’⁵⁸⁵

The then CMC Chair, Brendan Butler AM QC and the Assistant Commissioner of the Misconduct Division, Stephen Lambrides, expressed contrary opinions.⁵⁸⁶

Mr Butler considered that section 49 should continue to apply and operate in the manner it always had. He did not want the CMC to be invested with the ability to lay charges for a corruption investigation without first seeking the advice of a prosecuting authority. He indicated: ‘It obviously would be undesirable for us to charge somebody and then find that when the matter comes to committal the DPP is briefed to prosecute it and it is decided not to proceed at that time. That obviously operates adversely to the interests of the person involved. Because of the nature of the matters we do — they tend to be larger, complex, more sensitive matters — it makes sense to have that additional decision-making step in the process.’⁵⁸⁷

Mr Butler emphasised, too, the importance of maintaining the separation of the investigative function from the prosecutorial function. He advanced additional reasons to maintain the status quo:

- the small number of matters referred to the DPP — between 10-18 per year
- that most matters referred to the DPP by the CMC involve sensitive, complex or serious issues which, as the Parliamentary Commissioner suggested, should be referred to the DPP

- there would be adverse effects if proceedings were initiated by the CMC but the DPP later elected to discontinue them: a diminution of public confidence in the CMC, increased allegations of political bias and, perhaps, exposure of CCC officers to unnecessary publicity.⁵⁸⁸

Mr Butler also made an observation which, 15 years later, resonated in the 2021 PCCC Logan Council Inquiry — ‘The laying of charges by the CMC has a significant adverse impact upon the subject officer, particularly as these matters are often reported in the media. If the CMC were to lay charges in good faith and later the DPP elected to discontinue proceedings on the basis that a conviction is not likely to be secured or on public interest grounds, criticism of the CMC and allegations of political bias would only be increased. It is far better, from a public confidence perspective, for the matter to be considered by the DPP prior to the laying of charges so that any issue her office has with the case can be resolved expeditiously, in many cases prior to the matter entering the public arena.’⁵⁸⁹

For Mr Lambrides it was less a question of capacity than one of propriety, appropriateness and good practice. He told the PCMC: ‘I think it is very important to maintain the separation of the investigative from the prosecutorial function. I think it is part of the rich accountability fabric which covers the CMC. I think it is important that we do the investigations and somebody else determines, first of all, whether there is a prima facie case and, secondly, whether prosecution is warranted. I would strongly urge upon you that the situation should remain the same from the point of view of the accountability aspect. That does not in any way suggest that we could not, or we would not have the skills. But I would very much urge upon you the importance of the separation of the prosecutorial and the investigative function.’⁵⁹⁰

Ultimately the PCMC was not persuaded by the CMC’s submissions. But it accepted that referral to the DPP would be appropriate for two kinds of matters: matters that relate to a CMC officer; or matters that fall into a limited category of cases in which, having regard to the nature and seriousness of the misconduct, or the public office held by the subject officer, it is necessary in the interests of justice that the matter be referred to the DPP to consider whether to lay criminal charges.⁵⁹¹

In its Report No. 64 issued in 2004, the PCMC recommended legislative amendments to the CM Act to put the power of seconded police officers in this regard beyond doubt. In its response, the Queensland Government contended that amendments were unnecessary because police officers seconded to the CMC already retained and possessed the power to charge for offences. Issues of delay and resource duplication could, the government said, be addressed administratively by the DPP and CMC without amendments.⁵⁹²

In 2006, the CMC acknowledged that its seconded police officers had the necessary power to bring charges. Section 255 of the legislation as it then stood, according to evidence given by the new CMC Chair, Mr Needham, made it clear that seconded police officers retained all their powers as individual police officers.⁵⁹³

In the next three-yearly PCMC Review in 2009, the CMC informed the PCMC of a protocol with the DPP whereby the CMC would only report matters under section 49 if the matter:

- was likely to attract considerable public interest
- was one where circumstances might warrant the DPP exercising the discretion not to prosecute although sufficient evidence existed
- was one on which the CMC sought advice of the DPP for any reason.⁵⁹⁴

The 2018 amendments to section 49 of the CC Act

Section 49 was substantially amended in 2018.⁵⁹⁵

The reference to the DPP was removed from section 49(2), and the DPP was excluded from the definition of ‘prosecuting authority’ for the purpose of the section by section 49(5). The explanatory notes make it plain that the amendment was intended to remove the power of the CCC to refer corruption investigation briefs to the DPP for the purposes of considering prosecution proceedings.⁵⁹⁶ (The amendment did not affect the ability of the CCC to refer corruption investigation briefs to the QPS for the purpose of considering prosecution proceedings.)

The impetus for the 2018 amendment appears to have been a submission by the then DPP, Michael Byrne QC to the PCCC as part of its three-yearly review of the CCC in 2016. Mr Byrne raised concerns about the practical application of section 49, and said that these concerns had been raised with the PCMC in previous reviews. The following difficulties with the practice of the CCC providing briefs to the DPP in relation to corruption investigations were referred to:

- Because of competing priorities, these briefs would regularly languish for months in the ODPP before a proper advice could be provided to the CCC.
- The referral of an investigation for advice prior to charging was not a procedure afforded to other investigative bodies in the state — it had the unattractive effect of ‘bridging the divide’ between the investigative function and the independent prosecutorial function. The CCC employs lawyers, and has sworn police officers attached to it. They, among others employed there, have the experience and can provide appropriate advice whether charges should result from an investigation.
- The absence of specific funding for work on these briefs made it an undesirable impost upon the limited budgetary resources of the ODPP.
- Three High Court decisions, namely *X7*,⁵⁹⁷ *Lee (No 1)*⁵⁹⁸ and *Lee (No 2)*⁵⁹⁹ posed practical problems regarding the use of coerced evidence. Under section 49(4) of the CC Act, the CCC had to provide all relevant information that supported a charge, and any defence(s). That meant, in practice, the CCC had to provide the ODPP with compelled evidence. Members of the prosecution team who had been exposed to that material could not, then, prosecute the matter; and this necessitated the creation of ‘ethical walls’ and a further impost upon the ODPP’s budgetary resources. The significance of the three cases is discussed further below.⁶⁰⁰

Accordingly, the DPP recommended that section 49 be amended to remove the availability of the CCC referral procedure with regards to the DPP. In May 2016, the CCC advised the PCCC that it saw no reason why such an amendment could not be made, based upon Mr Byrne’s submission.⁶⁰¹

The PCCC in its Report No. 97 dated June 2016 accepted these submissions and recommended that the government consider amending section 49 to remove the power of the CCC to refer corruption investigation briefs to the ODPP for the purposes of considering prosecution proceedings.⁶⁰²

The government’s response indicated that it would remove that power on the basis that ‘the proposed amendment will not affect the ability for evidence gathered by the [CCC] during its corruption investigation

to be provided to the QPS and consequentially the ODPP as a part of the usual prosecutorial process.⁶⁰³ The subsequent 2018 Amendment Act gave effect to that response.

These events and their legislative consequences appear to be based, at least in part, upon a perception that the necessary checks and balances, touching decisions about the bringing of charges arising from a corruption investigation, already existing within the criminal justice system would adequately apply and safeguard decisions.

X7, Lee No. 1 and Lee No. 2

As highlighted by the former DPP in 2016, the cases of *X7, Lee No. 1 and Lee No. 2* posed practical problems for the CCC and DPP regarding the use of coerced evidence. These three cases influenced the charging practices of the CCC and the debate concerning amendments to section 49 of the CC Act. It is therefore necessary to consider how the cases affect the CCC's powers and their potential impact on the use of coerced evidence gathered by the CCC. (**Appendix H** provides further analysis of the legal issues regarding access to, and use of, coerced evidence in decisions to charge and continue prosecutions.)

In our legal system, a criminal trial is 'accusatorial'.⁶⁰⁴ A fundamental aspect of the 'accusatorial' system of criminal trials is what is known as the 'companion principle'.⁶⁰⁵ The 'companion principle' is that an accused cannot be compelled, in any way, to assist the prosecution to make its case.⁶⁰⁶ It is so named because it is a 'companion' to the fundamental principle that in a criminal trial the onus rests on the prosecution to prove the case against the accused beyond reasonable doubt.⁶⁰⁷ Observance of the companion principle is seen in our law as a requirement of a fair trial.⁶⁰⁸ However, the companion principle can be modified or abrogated by statute expressed in sufficiently clear terms.

Related to the companion principle is what is known compendiously as the 'right to silence'.⁶⁰⁹ On closer examination, this 'right' manifests in a 'disparate group' of separate rights and immunities that 'differ in nature, origin, incidence and importance'.⁶¹⁰ Two of those rights and immunities are the privilege against self-incrimination ('incrimination privilege') and the immunity of an accused from being compelled to testify to an offence with which they have been charged ('testimony immunity').⁶¹¹

Both incrimination privilege and testimony immunity may be abrogated by statute — but, only if it is expressed in sufficiently clear terms.⁶¹²

Where incrimination privilege has been abrogated by statute, a corresponding 'use immunity' is commonly provided by the same statute.⁶¹³ A 'use immunity' restricts use of incriminating answers given under compulsion. Typically, a statutory use immunity prohibits those answers from being admitted into evidence in proceedings against the person who gave the answers.⁶¹⁴ Less commonly, statute law may prohibit the admission of evidence derived from answers given under compulsion against the person who gave those answers (known as 'derivative use immunity').⁶¹⁵

The enactment of a use immunity balances the object of a provision that abrogates incrimination privilege with the object of maintaining a fair trial; it enables an investigatory body to compel answers from a person to questions that will assist its investigations, without those answers being used to assist a prosecution to make a case against them.⁶¹⁶

A common exception to use immunity provisions permits answers being admitted into evidence in proceedings where the person who gave those answers is charged with perjury, or another offence

involving dishonesty, in relation to those answers.⁶¹⁷ The purpose of the exception is to discourage untruthful answers given under compulsion.⁶¹⁸ It therefore involves a limited derogation from the companion principle, but only to the extent necessary to ensure the effectiveness of the purpose of the provision that has abrogated incrimination privilege.⁶¹⁹

X7 and *Lee No. 1* involved a purported use of statutory powers to coerce evidence from persons about the subject matter of charges then pending against those persons. In each case, the relevant statutory provisions had abrogated the incrimination privilege.⁶²⁰ The relevant statutes also conferred use immunities in respect of evidence coerced under the provisions.⁶²¹ However, in *X7* a majority of the High Court found that the relevant statute did not abrogate the accused person's testimony immunity — and, hence, held that the attempt to coerce evidence from the accused person was unlawful. In *Lee No. 1* a majority of the High Court held that the statutory provisions in that case *did* overcome testimony immunity and, therefore, the use of coercive powers was lawful.

Lee No. 2 was different to *X7* and *Lee No. 1* in two important respects. First, *Lee No. 2* did not involve the use of coercive powers while the coerced person was the subject of pending charges. On the contrary, the coercive powers in that case had been used *prior* to the coerced person being charged. Secondly, it did not involve a challenge to the exercise of coercive powers. Rather, the issue turned on the subsequent use of the coerced material for a particular purpose: the provision of that material to persons involved in the prosecution of the coerced person expressly for the purpose of ascertaining that person's defence with a view to rebutting it.⁶²² The relevant legislation required a direction to be made by the investigating agency prohibiting publication of coerced evidence if there was a risk of prejudice to the coerced person's fair trial.⁶²³ Such a direction was made in respect of some of the coerced evidence,⁶²⁴ but not in respect of other parts of it.⁶²⁵ After referring to the companion principle,⁶²⁶ the High Court said that the purpose of these provisions was to protect the fair trial of a person who 'might' be charged with offences.⁶²⁷

The High Court elaborated: 'The protective purpose...would usually require that the Commission [the relevant investigating authority] quarantine evidence given by a person to be charged from persons involved in the prosecution of those charges. It would require the Commission to make a direction having that effect and to maintain that prohibition in the face of requests for access to the evidence.'⁶²⁸

Because this purpose was not met, the appellant's trial differed in a fundamental respect from that which our criminal justice system seeks to provide.⁶²⁹

The High Court found that the decision to disclose the coerced evidence without regard to the purposes of these protections was not authorised by the relevant legislation, and that the publication of the coerced evidence to the prosecutors was for a 'patently improper purpose', namely, the ascertainment of the appellant's defences.⁶³⁰ It said: 'However, the critical question on these appeals is not whether the publication was unlawful and wrongful. It is whether, as a result of the prosecution being armed with the appellant's evidence, there has been a miscarriage of justice in the eyes of the law.'⁶³¹

In concluding that the disclosure of the coerced evidence had resulted in a substantial miscarriage of justice, the High Court stated: 'It is a breach of the principle of the common law, and a departure in a fundamental respect from a criminal trial which the system of criminal justice requires an accused person to have, for the prosecution to be armed with the evidence of an accused person obtained under compulsion concerning matters the subject of the charges.'⁶³²

Coercive powers under the CC Act

The Fitzgerald Report recommended that the Official Misconduct Division of the CJC (the precursor to the division of the CCC that deals with corruption investigations) have access to special powers not ordinarily available to investigative bodies.⁶³³ These included powers to ‘compel the production of documents and things and to attend and give evidence’ and powers, exercisable at hearings, to override incrimination privilege.⁶³⁴ The need for these powers was identified as a function of the extreme difficulty of detecting and, therefore, combating corruption and organised crime.⁶³⁵

The powers recommended in the Fitzgerald Report were granted by Parliament to the CJC.⁶³⁶ Its successors, the CMC and now the CCC, continue to be vested with them.⁶³⁷ These powers are coercive in nature: a person subject to them faces criminal sanction for non-compliance with the obligations to produce documents or to attend and give evidence.⁶³⁸ They are also exceptional in our system of law, being capable of exercise despite the pendency of criminal proceedings⁶³⁹ and the prospect that an individual who complies with them might tend to incriminate themselves in doing so.⁶⁴⁰

The coercive powers in the CC Act fall into two main categories. First, there are various administrative powers under Chapter 3 of the CC Act to require various forms of evidence, generally by way of notice. A table of those powers is set out below.⁶⁴¹

Power	Purpose
Power to require information/documents ⁶⁴²	To obtain a statement, document or thing from a UPA appointee in relation to a crime, criminal proceeds confiscation or specific intelligence (crime) investigation.
Power to enter ⁶⁴³	To enter, search, inspect, seize and remove documents or things from an official premises in relation to a corruption investigation.
Notice to produce ⁶⁴⁴	To obtain a document or thing from a person in relation to a crime, criminal proceeds confiscation or specific intelligence (crime) investigation.
Notice to discover ⁶⁴⁵	To obtain a statement, document or thing from a person in relation to a corruption investigation or specific intelligence operation (corruption).
Monitoring order ⁶⁴⁶	To direct a financial institution to give information obtained by the institution regarding transactions conducted through an account held by a person reasonably suspected of having involvement in serious crime related activity or having acquired directly or indirectly, serious crime derived property in relation to a criminal proceeds confiscation investigation.
Suspension order ⁶⁴⁷	To direct a financial institution to notify a commission officer immediately regarding transactions initiated, or about to be initiated, and refrain from completing the transaction for 48 hours in connection with an account

	held by a person reasonably suspected of having involvement in serious crime related activity, or having acquired serious crime derived property, either directly or indirectly.
Additional powers warrant ⁶⁴⁸	To enter, inspect and make copies of records or to seize passports, travel documents, instruments of title to property, securities and financial documents in the possession or control of a person concerned with a corruption investigation or crime investigation (relating to terrorism) from a premises. To compel a person to give the CCC sworn affidavits or statutory declarations relating to the property, financial transactions, movements of money or other assets by a UPA appointee or associate (for a corruption investigation) or a person or associate being investigated in relation to a crime investigation (relating to terrorism).

While these provisions generally provide protections where ‘privilege’ applies, the definition of ‘privilege’ in respect of corruption matters does not include incrimination privilege.⁶⁴⁹ The result is that incriminating evidence can be coerced by way of a notice to discover in a corruption investigation under section 75 of the CC Act.

The second broad category of powers to coerce evidence under the CC Act relates to information or documents coerced in hearings.

Section 176 of the CC Act empowers the CCC to hold a hearing in relation to any matter relevant to the performance of its functions. Section 177(1) generally requires that a hearing not be open to the public. Incrimination privilege is not permitted as a basis to resist requirements by the CCC for production of documents or things at its hearings.⁶⁵⁰ Incrimination privilege is also not a permissible ground for a witness at a CCC hearing to refuse to answer a question put to them.⁶⁵¹ In crime investigations and intelligence and witness protection function hearings, it may ground a discretionary decision by the presiding officer not to insist on an answer being given.⁶⁵²

The CCC advises ‘compelled evidence’ from hearings has been obtained in 20 out of 147 corruption investigations finalised in the period from 30 June 2018 to 30 June 2021.⁶⁵³ Moreover, the number of witnesses it has examined in corruption investigations between 30 June 2016 and 30 June 2021 has never fallen below 51 in a financial year.⁶⁵⁴

CC Act protections in respect of coerced evidence

Section 331 of the CC Act expressly provides that the CCC may do any or all of the following, despite any proceeding that may be in or before a court, tribunal, warden, coroner, magistrate, justice or other person:

- commence, continue, discontinue or complete an investigation or hearing of any part or aspect of the investigation or hearing
- give a report in relation to the investigation or hearing or any part or aspect of the investigation or hearing

- an act or thing that is necessary or expedient for a purpose mentioned in paragraph (a) or (b) above.

It has been held by the Queensland Court of Appeal that the effect of this provision ‘plainly is designed to effect a change to the accusatorial process of criminal justice by committing the accused person to be questioned about the subject matter of his charge, notwithstanding the prejudice to his defence (identified by the majority in *X7*) which may result’.⁶⁵⁵

The CC Act contains a number of protections designed to ensure a fair trial of an accused person whose evidence has been obtained under the CCC’s coercive powers.

Section 197 of the CC Act renders inadmissible evidence that has been coerced from an individual who has claimed privilege against self-incrimination in respect of that evidence, except in certain circumstances, namely:

- where the individual consents
- if the proceeding is about:
 - the falsity or misleading nature of the evidence, or
 - an offence against the CC Act, or
 - a contempt of a person conducting a hearing under the CC Act
- if the proceeding is a proceeding other than a proceeding for a prosecution of an offence under the *Criminal Proceeds Confiscation Act 2002* and the evidence is admissible under section 265 of that Act.⁶⁵⁶

Section 197(7) expressly provides that evidence obtained as a direct or indirect consequence of coerced evidence is admissible against the individual.

In addition to the protection conferred by section 197, section 331(2) of the CC Act provides that where there is a proceeding for an indictable offence conducted by or for the state, the CCC must, if failure to do so might prejudice the accused’s right to a fair trial, do one or more of the following:

- conduct any hearing relating to an investigation as a closed hearing during the currency of the proceeding
- give a direction under section 202 to have effect during the currency of the proceeding (that is, section 202 makes it an offence for a person, without the CCC’s written consent or contrary to the CCC’s order, to publish evidence given or produced at a CCC hearing, or anything about that evidence — the provision is not contravened when the publication is made ‘to start a prosecution’⁶⁵⁷)
- make an order under section 180 (i.e. section 180(3)(a) empowers the presiding officer at a CCC hearing to prohibit the publication of evidence given or produced at that hearing or anything about that evidence).

The Queensland Court of Appeal has held that the risk of prejudice to an accused's right to a fair trial by reason of the exercise of coercive powers under the CC Act is 'specifically recognised in s 331(2), which provides remedial mechanisms'.⁶⁵⁸

How these matters affected the 2018 amendments to section 49 of the CC Act

The significance of *X7, Lee No. 1 and Lee No. 2* was that, as a 'prosecuting authority' within the meaning of section 49 of the CC Act, the DPP was required by section 49 to receive coerced evidence for the purpose of considering whether prosecution proceedings should be commenced. This effectively meant that the DPP had to allocate multiple prosecutors: one who would consider whether charges should be laid, and another who would conduct any ensuing prosecution proceedings with no knowledge of the coerced evidence. The result, according to the former DPP, Michael Byrne, was an undue burden on the limited resources of the ODPP.

The 2018 amendments to section 49 of the CC Act and the Local Government Act

The 2016 PCCC Review of the CCC activities — with its submissions closing in July 2015, public hearings in October and November 2015, and the tabling of its report in June 2016 — occurred at a time when the CCC was about to embark on a suite of complex, high-profile corruption investigations which were not contemplated by the PCCC, the DPP or, perhaps, even the CCC itself during the 2016 PCCC review process. The policy shift around charging practices heralded by the 2018 amendments had a significant impact.

Following local government elections on 19 March 2016, the CCC received complaints about the conduct of candidates for several local councils, which led to the commencement of its 'Operation Belcarra'. It was intended, among other things, to examine practices that may give rise to actual or perceived corruption, or otherwise undermine public confidence in the integrity of local government, with a view to identifying strategies or reforms to help prevent or decrease corruption risks and increase public confidence.⁶⁵⁹

The CCC concluded that the (then) legislative and regulatory framework was deficient, and made recommendations to strengthen equity, transparency, integrity and accountability in local governments throughout Queensland.⁶⁶⁰

On 6 March 2018, the Local Government Electoral (Implementing Stage 1 Of Belcarra) and Other Legislation Amendment Bill 2018 (Belcarra Stage 1 Bill) was introduced to Parliament. It was debated during the sittings of 15 May 2018 in conjunction with the Local Government (Councillor Complaints) and Other Legislation Amendment Bill 2018 (the Councillor Complaints Bill) already before the House.⁶⁶¹

In the lead up to the joint debate, on 2 May 2018 the (then) Ipswich Mayor, Andrew Antonioli, was charged with alleged dishonesty offences stemming from investigations by the CCC.⁶⁶² (Mr Antonioli had been elected mayor following a by-election triggered by the resignation of former Ipswich Mayor, Paul Pisasale, the day after the CCC had searched his office as part of a separate investigation.⁶⁶³)

On 3 May 2018, Parliament was put on notice that urgent measures would be introduced to '... strengthen the legislative powers of the local government minister [Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs] to dismiss councils when they have lost the trust of their community'.⁶⁶⁴

On 15 May 2018, amendments were moved to amend the LG Act and the *City of Brisbane Act 2010* to provide for councillors charged with certain offences, including serious integrity offences, to be automatically suspended from office pending the determination of the charges by the courts (this amendment would ultimately become section 175K of the LG Act, as referred to in our Terms).⁶⁶⁵

On 17 May 2018, the two Bills were passed by Parliament and came into effect a short time later.⁶⁶⁶

In combination, the CCC's Operation Front (that is, the investigation into the former councillors and mayor of the Logan City Council), and the coinciding 2018 amendments to the CC Act and the LG Act led to this sequence of events:

- On 26 April 2019, the Logan City councillors and the mayor were arrested and charged by a police officer seconded to the CCC.
- On 2 May 2019, the Logan City Council was dissolved and an administrator appointed (a consequence of the new section 175K of the LG Act).
- The CCC sent a partial brief on the charges to the DPP on 28 June 2019, an update on 5 August 2019 and the full brief on 11 September 2019.
- The committal hearing for the former councillors and the mayor commenced on 30 November 2020 and continued over nine hearing days. On the ninth day, it was adjourned to the following year.
- Former CCC Chairperson, Alan MacSporran QC, wrote to the DPP in a 20-page letter dated 2 February 2021, referring to conversations with Crown prosecutors and to a meeting on 10 December 2020 at which the Crown prosecutor had shared his preliminary views.
- On 6 April 2021, the DPP prepared a comprehensive memorandum (with the assistance of others) foreshadowing a decision to discontinue the charge of fraud against the mayor and former councillors on the grounds of insufficient prospects of success to justify continuing further. The memo was provided to Mr MacSporran on 7 April 2021, and he and the DPP met on 9 April 2021 to discuss it.
- On 14 April 2021, the ODPP discontinued the charges.⁶⁶⁷

The advice of the DPP was not sought before or after the charges were laid.⁶⁶⁸ A full brief of evidence was not provided to the DPP until almost five months later — by which time the former councillors and mayor had been suspended, and the entire Logan City Council dismissed.

The present use of section 49 of the CC Act

On its face section 49 appears to prevent the CCC from exercising a discretion to report on a corruption investigation to the DPP, in circumstances where the CCC considers that prosecution proceedings should be considered. It does not prevent the CCC from reporting on a corruption investigation to the QPS, which may then refer that matter to the DPP for consideration. Nor does it prevent reporting to the DPP on crime investigations.

In practice, section 49 has not stopped the CCC from seeking the views of the DPP when it wishes. The CCC has indicated that between 1 July 2018 and 30 June 2021 it referred five matters relating to five corruption investigations to the DPP.⁶⁶⁹ All of these referrals occurred after the 2018 amendments to section 49 had commenced. In each case, in response to the referral, the DPP provided advice or gave its support to the proposed charge.

The appropriateness of whether there should, in fact, be a requirement that the CCC obtain a recommendation from the DPP before police officers use their discretion to charge is examined later in this chapter.

8.3 The decision to charge arising from a corruption investigation

The approach of other Australian anti-corruption bodies

NSW ICAC officers charge a defendant by preparing and serving a court attendance notice, which commences a criminal proceeding.

The NT ICAC cannot initiate a prosecution; the decision to charge rests with the NT Police Force or the DPP.

SA ICAC does not have the power to charge, and this Inquiry was advised that a seconded police officer has never laid charges arising from an ICAC investigation.

In WA, the CCC has no legislative authority to commence a prosecution arising from an investigation. Matters are referred to the WA Police Force which conducts its own investigations (using evidence obtained by the CCC) and then independently decides whether to charge

A Tasmanian Integrity Commission investigator or inquiry officer has no power, under Tasmanian legislation, to charge on behalf of the Commission, or otherwise.

The position in Victoria, again, differs from the position in Queensland and elsewhere across Australia. Victoria IBAC can lay charges, and has the power to prosecute. Victoria IBAC can charge for any offence under the *Independent Broad-based Anti-Corruption Commission Act 2011* or any offence in relation to any matter arising out of an IBAC investigation. This Inquiry was advised that decisions to prosecute are guided by internal Victoria IBAC and Victoria OPP policies and must include consideration of the *Charter of Human Rights and Responsibilities Act 2006*, *Victim's Charter Act 2006*, and Victoria's Model Litigant Guidelines.

The question of the independence of charging decisions by seconded police

The question whether seconded police officers can make decisions to commence prosecutions with appropriate independence from the CCC was considered in *PRS v Crime and Corruption Commission*.⁶⁷⁰ The primary judge said:

[52] However, a police officer seconded to the CCC but retaining his or her powers, vested by the PPRA, retains the responsibility of exercising those powers lawfully; just as if he or she

were not seconded to the CCC. It is the police officer who must form the 'reasonable suspicion' before issuing a notice to appear. The CCC cannot direct any police officer to act unlawfully. In particular, the CCC could not direct a seconded police officer to issue a notice to appear without him forming the requisite suspicion. If the police officer, though, forms the requisite suspicion, the police officer exercises the powers given to him or her under the PPRA to issue a notice to appear and it is therefore the police officer, not the CCC, who will charge the applicant.

The Court of Appeal agreed with that reasoning.⁶⁷¹

In its submission to this Inquiry, the CCC made a point of asserting that neither it, nor its Chairperson, decides to lay criminal charges: 'The final decision whether to lay criminal charges always lies with a seconded police officer, who is required to apply the two-tier test described in the ODPP's Director's Guidelines. A seconded police officer **is not subject to a direction or order by the CCC or the Chairperson to lay criminal charges.**'⁶⁷² (emphasis added)

In summarising its processes, the CCC advised that, if the CCC decides in a corruption matter that prosecution proceedings should be considered by a police officer seconded to the CCC, the Chairperson (or Deputy Chairperson, or the delegate of the Chairperson) may refer the matter to an appropriate police officer seconded to the CCC. That police officer will consider the matter and, if warranted, issue the appropriate charge(s).⁶⁷³

The QPS made a similar, complementary submission: 'The two-tier test is applied rigorously by officers seconded to the CCC as an investigation is considered within a multidisciplinary team...the decision to arrest and/or commence proceedings or not, solely remains with the investigating officer, even if the Chairperson or any other officer or staff member of the CCC has been briefed and/or expressed a view on the investigation.'⁶⁷⁴

Those submitters opposed to allowing seconded police to bring charges in CCC corruption investigations advanced the risk that an officer may be vulnerable to the influence of CCC legal staff and their independence might be impaired because of their position within the organisation. The responsibility of a seconded police officer in performing what are, essentially, dual roles — investigative and prosecutorial — was also said to make it difficult for them to be, or be seen to be, truly independent.

Gold Coast City Council Mayor, Tom Tate, submitted that the use of seconded police officers to both investigate and lay charges provides 'insufficient separation of powers and at the very least a perceived lack of impartiality'.⁶⁷⁵

Retired QPS Commissioner, Bob Atkinson, observed: '...it is unlikely that a QPS officer seconded to the CCC would have the confidence to resist a prosecution where the Chair of the CCC has authorised such prosecution'.⁶⁷⁶

Former Moreton Bay City Councillor, Adrian Raedel, went further: 'Seconded police officers appear entirely beholden to the CCC and the decision to prosecute has seemingly become a "rubber stamp" exercise, where insufficient consideration is given by the seconded police officers to the viability of the evidence.'⁶⁷⁷

A similar sentiment was expressed by Mark Le Grand in the particular context of the investigation concerning the former councillors: 'It is unrealistic to suggest...there was any independent element in the

laying of these charges...[the charging officer]...was the investigating case officer who had previously recommended that charges be laid. The reality is that the charges were effectively approved by and laid under the auspices of the CCC.⁶⁷⁸

On behalf of the former Logan City councillors it was urged that, in circumstances where the CCC has demonstrated such grave misjudgement as is alleged in their cases, the power should be expressly removed from the CCC; and an express limitation placed upon the capacity of any police officer seconded to the CCC to charge unless the matter is approved by the DPP.⁶⁷⁹

Likewise, the joint submission of the Ipswich City councillors (some current and some former) did not accept that a seconded police officer would or could, in practice, go against a recommendation from a senior CCC officer to charge despite there being no lawful duty upon them to comply. In their submission:

‘The absurdity of the CCC claiming that seconded police are effectively at arm’s length from the rest of the organisation in relation to decisions to prosecute alleged offenders belies the actual operational integrity of the CCC. In practice, it is not a genuinely arguable position that a serving junior police officer, anxious to protect and preserve their position at the CCC by not forming a view contrary to that of their superiors — who had effectively or impliedly directed the commencement of a prosecution — would do other than what they were, in a practical day-to-day sense “directed” to do.’⁶⁸⁰

There are two propositions inherent in these submissions. The first is that it is essential that the decision of a police officer seconded to the CCC to charge arising from a corruption investigation must be completely independent; the second, that a seconded police officer’s decision to charge fails that test if (a) the officer will be, or might have been, involved in the relevant investigation; or (b) their decision might be influenced by the opinion of other CCC personnel, including the Chairperson.

The propositions conflate two distinct elements of a corruption investigation: the process for determining whether a charge should be laid, and the actual act of charging. The first involves — almost inevitably, in our estimation — consultation and consensus between investigators, their superiors and other CCC officers; it must only very rarely occur in a vacuum, as a purely individual decision. The second is a procedural step that follows from the first. The remedy for any possible error in the taking of the second step lies in ensuring the first step involves a proper and appropriate decision-making exercise.

Equally important is ensuring that the charging decision is sound. To make certain of this, a review of the evidence, undertaken externally to the CCC, must occur to determine its sufficiency to satisfy the test for the exercise of the prosecutorial discretion, before charges are laid. The reasons supporting the DPP in performing this review function are compelling (as later detailed) — ensuring, for corruption investigations, a *‘process for decision-making, focused on the objective and dispassionate assessment of the evidence with the interests of justice firmly in mind, free from investment in any particular outcome, the potential influence of emotions and the interests of any particular person.’*⁶⁸¹

Sound charging decisions

As the Commissioner of the NSW Crime Commission (and former Queensland State Coroner), Michael Barnes⁶⁸² observed in his submission to this Inquiry:⁶⁸³ ‘The cases the CCC investigates are frequently more complex than those investigated by the QPS and the status of defendants in CCC cases will inevitably

ensure their protestations will have greater impact if charges are withdrawn. The harm done in that eventuality is not just to the defendant — the CCC suffers, and the justice system is brought into disrepute.’

The Logan City Council matter offers a salient example of the consequences of the decision to charge, including the harm to mental health and reputation that flowed from the decision. The consequences of charging, and the impact of section 175K of the LG Act in particular, were matters that received considerable attention during the PCCC Logan Council Inquiry.

Sound charging decisions are also essential to the reputation and continued good standing of the CCC. A former chair of the CMC, Professor Ross Martin, observed in his submission to this Inquiry: ‘A common unspoken position taken by some commentators and others with respect to the CCC seems to be that, because it watches the watchers, it has proclaimed to the world that it is perfect and inerrant. Thus, any departure from perfection is treated in some (vocal) quarters as an Icarian fall. When an ordinary prosecution brought by the QPS and prosecuted by the ODPP does not result in a conviction, there are no calls for the ODPP to be reviewed or for the Commissioner of Police to resign. Everyone seems to understand that the loss of a trial in that context is an ordinary event. But that is not so for the CCC. The loss of a trial is an existential threat to the CCC in the way that is not so for other institutions.’⁶⁸⁴

The performance of integrity bodies is constantly in the public eye. While a vocal or even critical citizenry can be a useful source of accountability and encourage transparency,⁶⁸⁵ public pressures can also have detrimental effects on the functioning of integrity bodies⁶⁸⁶ — leading them, for example, to prioritise cases with better prospects of success (greater conviction rates) and, by that means, persuade stakeholders of their ‘achievements’.⁶⁸⁷

Confidence in integrity bodies is an element in the trust and confidence reposed in the broader government and political system.⁶⁸⁸ Instilling confidence and ensuring trust in the current-day CCC has an impact on the actual and perceived integrity of the entire Queensland public sector.

For the CCC, improved confidence in its work is a key performance measure, identified by the organisation itself, in meeting its objective to reduce the incidence of major crime and corruption in Queensland.⁶⁸⁹

External oversight of decisions to charge in respect of matters arising out of a corruption investigation is essential to ensure that the decision is made without reference to any impermissible considerations. We refer below to a number of available options.

Option one: outsource the charging function — refer all corruption matters to the QPS

The PCC Commissioner, in his submission to this Inquiry, suggested that responsibility for charging could be returned to the QPS.⁶⁹⁰ He also suggested that the QPS seek the advice of the DPP before charging.

In practice, then, where the CCC considers that charges should be laid, the matter would be referred to the QPS — after which (as the WA experience suggests) the QPS will conduct its own investigations but using, of course, the evidence obtained by the CCC; and the QPS will then, independently, decide whether to charge.

An obvious, immediate disadvantage arises in investigations involving allegedly corrupt conduct by a QPS officer or employee; it vests charging responsibility in a decision-maker who is likely to be perceived as lacking independence and impartiality.

A question also arises in relation to expertise. While QPS officers have extensive expertise in the application of the criminal law they do not, generally, have experience, education or training in broader areas of law, such as administrative and general public law, public sector workplace and corporate governance law, and other relevant areas of law, like the PID Act — areas quite likely arising in the context of corruption investigations.⁶⁹¹ The QPS recognises this, acknowledging in the context of discussing the capabilities of seconded police that ‘there is opportunity for continuous improvement to enhance the investigatory capacity of detectives seconded to the CCC in other areas such as administrative law, public law, employment law and public sector corporate governance.’⁶⁹²

Additionally, outsourcing the decision to charge to QPS officers, separate to the CCC, might carry a risk of significant delays in the process. According to Professor Brown, history shows that if left to normal police processes for consideration of charges, corruption and official misconduct cases are at high risk of being jeopardised by delay or inaction. They are usually complex matters, he argues, but may often seem comparatively less serious than other offences when viewed as individual offences divorced from their wider implications for public integrity and trust. Wherever delay occurs between the conclusion of an anti-corruption investigation and the commencement of action there can, he argues, be a deleterious effect on public confidence that exposed misconduct will lead to formal consequences.⁶⁹³

Option two: brief members of the Queensland Bar before deciding to charge

Professor Martin supports the CCC seeking external advice and recommends the CCC utilise senior counsel at the Queensland Bar, and not the DPP, to maintain consistency with the practice, he says, of the QPS.⁶⁹⁴

This approach would require the CCC to seek advice from a senior barrister at the private bar before charging in the context of corruption investigations. The benefit of senior counsel is their significant expertise and experience in assessing the prospects of criminal proceedings and the independence their advice offers.

Queensland Council for Civil Liberties Vice-President, Terry O’Gorman, submitted that reliance on the Queensland Bar poses problems. For example, the CCC would decide who is briefed and could choose a barrister likely to recommend a prosecution. Further, the barrister may need to be senior and have a background in criminal law, which might limit available counsel.⁶⁹⁵

The approach also risks inconsistency of decision-making particularly in assessing the second limb of the two-tier test — whether the prosecution is in the public interest — given, it is reasonable to assume, that different barristers might be engaged to provide advice from time to time. There is also no guarantee that busy members of the Queensland Bar would be able to provide advice more quickly than the ODPP.

Option three: obtain advice from the Director of Public Prosecutions before deciding to charge

Under this approach seconded police would retain the charging function but the CCC would be required to seek the advice of the DPP prior to any charges being laid arising from corruption investigations. There was much support for this in the submissions received by the Inquiry.⁶⁹⁶

All other Australian jurisdictions (except SA)⁶⁹⁷ permit interaction between the DPP and the respective state or territory integrity body. The relationships are managed through MOUs or protocols developed to govern and formalise their interactions.

In NSW,⁶⁹⁸ there is a legislative basis for the referral of matters by ICAC to the ODPP and an MOU in place. The ODPP primarily provides advice to NSW ICAC before NSW ICAC commences a criminal prosecution in response to a specific referral on the question of the sufficiency of evidence to prosecute but it can also, on request, provide general advice and advice prior to the formal referral of a matter. Once advice as to the sufficiency of evidence has been provided and charges are laid by NSW ICAC, the ODPP assumes full responsibility for all prosecutorial decisions to be made (but will consult with NSW ICAC). The possibility of delay is addressed through the MOU.

The NSW referral system is not, however, without its difficulties. This Inquiry is advised that because the NSW ODPP can only provide advice as to the prospects of conviction on evidence that will be admissible in court, and because NSW ICAC investigations are inquisitorial in nature, a major and constant challenge is the identification, preparation, and provision of appropriately admissible evidence to the ODPP. This can, in practice, contribute to delays in the provision of legal advice by the ODPP to NSW ICAC, as can the length and complexity of the matters, and legal challenges to ICAC's use of powers and awaiting judicial outcomes.⁶⁹⁹ NSW ICAC also identifies resource limitations within the ODPP as having contributed to delays.⁷⁰⁰

In Victoria, if IBAC believes, after an investigation, that an indictable offence has been committed it can (and in most cases does) seek advice from the Victoria OPP on the appropriateness of charges. For indictable offences, the prosecution is taken over by the OPP after Victoria IBAC files charges and before the first hearing. Victoria IBAC usually prosecutes summary charges but can request the OPP to take over a prosecution. Referral powers are provided under the IBAC Act and referral protocols are contained in an agreement between Victoria IBAC and Victoria OPP.⁷⁰¹

When the WA CCC considers an investigation discloses the commission of an offence, it refers the matter to the State Solicitor's office (SSO).⁷⁰² It remains open to the CCC to refer allegations to the WA Police for investigation and charge, and a prosecution might thereafter be taken over by the ODPP from the WA Police in the same manner as other criminal prosecutions.

The SSO independently analyses the evidence and determines the charges arising from the brief, and whether a prosecution should be commenced. If the SSO concludes that there is a prima facie case against an accused, and that it is in the public interest to prosecute, it will commence proceedings. Simple offences are prosecuted by the SSO. For indictable offences, the SSO will commence prosecution and then liaise with the ODPP regarding which office will conduct the proceedings. Where it is agreed that the prosecution will proceed upon indictment, the ODPP takes over at the committal stage.

The WA ODPP does not accept briefs of evidence directly from the WA CCC. Advice was received indicating that, in some cases, the opinion of the DPP may be sought at an early stage by the WA CCC (or the SSO) regarding the availability of a charge or the appropriate charge. In those cases, formal correspondence is raised and the SSO is entitled to act on the DPP's recommendation.⁷⁰³

During his evidence at the PCCC Logan Council Inquiry, the current DPP Carl Heaton QC said:

‘...if we were given the responsibility of considering matters before charge, then at that point we could develop a clear understanding of what evidence was admissible, what the appropriate charge was, what our case theory was, how the matter would proceed. But bearing in mind at that point there is no contradictor so we do not have the benefit of defence making submissions to us — sometimes informally, sometimes formally — that might give some insight into where the vulnerabilities are in our case. So all we can do is look at the material on the face of the documents and, perhaps based on our experience, anticipate where the vulnerabilities might be in the evidence. It is necessarily going to be a flawed process, but that is a process that is undertaken now by others already.’⁷⁰⁴

In his submission to this Inquiry, Mr Heaton signified that he is not opposed to receiving reports from the CCC and providing advice regarding the sufficiency of evidence before a charge is laid, and considers:

‘The decision to implement such a framework is really a matter of policy having regard to the practical implications of undertaking this review function, the funding implications on the DPP and the concerns raised [previously] by DPP Leanne Clare SC and DPP Michael Byrne QC in relation to the structure and capacity of the [CCC].’⁷⁰⁵

Mr Heaton confirmed that he and his office are now accustomed to dealing with CCC briefs, including the challenge posed by the receipt of coerced evidence, as discussed earlier in the context of *X7, Lee (No. 1)* and *Lee (No. 2)*. He referred to a protocol ‘concerning Briefs Referred by the CCC pursuant to section 49(2)(a) CC Act’, and a draft protocol reflecting the practice of DPP in relation to receiving coerced evidence *after* a prosecution has been commenced.⁷⁰⁶ That draft protocol provides, among other things, that the CCC *will not* include the ‘compelled evidence’ of an accused in the brief of evidence to the DPP for an accused, but *will* provide a copy of such evidence directly to the accused or their lawyers to comply with the prosecution’s disclosure requirements. (As noted above, an explanation of the legal issues regarding access to, and use of, coerced materials by a ‘prosecuting authority’ is found in **Appendix H** of this report.)

On one view, provision of coerced evidence to the charging entity complicates the application of the two-tier test in the Director’s Guidelines. Under the first tier, a prosecution should only be commenced or continued if there is ‘sufficient evidence’. The Director’s Guidelines explain that this means more than a *prima facie* case; there must be a reasonable prospect of conviction, having regard to the persuasive strength of the admissible evidence. Subject to the specific exceptions in section 197 of the CC Act, much coerced evidence is inadmissible.

The DPP acknowledges there may be times when coerced material, sourced pre-charge, benefits a person because, for example, it raises an issue of credit that diminishes the value of other evidence relied upon to sustain the charge or it gives rise to a defence not otherwise disclosed in the admissible evidence, which renders the proposed charge unsustainable.⁷⁰⁷ Coerced evidence may need to be considered by a charging entity to form a proper view about whether discretionary factors dictate that the matter should not proceed.

In his submission, Mr Heaton informed us that, notwithstanding section 49, in mid-2018 a specialist team was established within the ODPP to prosecute CCC investigation matters. This work had to be absorbed

within existing staffing allocations and resources, and because the DPP did not have advance notice of the work likely generated by these CCC prosecutions, it was necessary at times to engage other senior staff to assist the specialist team and for people to be taken offline for a period of time to consider material and provide advice about matters.⁷⁰⁸ In July 2021, the specialist team was transferred back into mainstream ODPP operations in the face of an increasing workload in the organisation, and to provide the team with a greater variety of work.⁷⁰⁹

The matters highlight the major objection to the CCC referring matters arising out of corruption investigations to the DPP for advice concerning whether a charge should be laid. Put bluntly, the material before us persuades us that the DPP requires significant additional funding to carry out this task in a timely fashion.

Advantages of seeking the advice of the DPP before charging in corruption investigations

A fundamental advantage of reinstating a DPP oversight mechanism for decisions to commence a prosecution arising from a corruption investigation is the additional independence, and impartiality, it brings to the decision to charge.⁷¹⁰

As the PCMC said in 2004 in its Report 64, discussing the operation of section 49 (as it then was): ‘It is true that the present process adopted by the CMC provides an added layer of protection, and a means of dispelling criticisms of a lack of impartiality on the part of the CMC in the decision to lay charges. The decision to prosecute is made by the DPP, an impartial office, independent of the CMC.’⁷¹¹

The corruption investigations by the CCC are often high profile or high value, complex, and attract significant media attention and public scrutiny. Their focus is often on conduct that strikes at the heart of public trust and confidence, and can involve key institutions like the QPS, local governments and large and important UPAs expending public monies. In these matters there is a risk that public trust and confidence will be eroded in circumstances where charges are brought but later withdrawn.

The need for confidence and trust in the current-day CCC lends weight to the use of the DPP as an external review mechanism prior to seconded officers at the CCC laying charges arising out of corruption investigations. It provides a layer of impartiality to the decision-making process, and an independent check and balance which continues throughout the court processes.

Early review of evidence by the DPP should also reduce lengthy delays in obtaining further materials while a matter is before the courts — adding to fairness considerations for an accused, whose matter could otherwise languish at the pre-committal stage pending the provision of more material. Early review by the DPP, from a public confidence perspective, enables resolution of any issues the DPP may identify before a matter enters the public arena.

In addition, the DPP and the ODPP have experience and expertise in dealing with CCC corruption investigation matters, and the additional complexities associated with such cases brought about by the unique investigative powers of the CCC and the availability of coerced evidence.

Disadvantages

While there are significant apparent benefits in using the DPP as an external oversight mechanism, it is not without some challenges.

There is a risk of delay in the DPP's provision of advice to the CCC which, in turn, delays the administration of justice and can have a significant impact upon the person under investigation. Undue delay can create the perception within the public arena that the CCC has failed to deal with an investigation matter in a timely and efficient manner, undermining confidence in the institution.⁷¹²

Issues of delay can, it seems to us, be readily overcome and addressed by developing an effective and comprehensive MOU, and by ensuring the DPP is appropriately funded to perform this function.

Another disadvantage is duplication of work. Former CMC Chair, Brendan Butler, addressed this criticism in the context of the 2003 debate over section 49 when he said: 'There is no doubt there is duplication. We obviously have well-qualified lawyers who can advise on these things. When it goes to the DPP it has to be looked at again there. If we refer it to the Police Service, as we would be prepared to do in some of the more straightforward matters for a police officer there to charge, then there will be duplication. But I suppose the duplication is the price of the accountability that is provided by the separate step.'⁷¹³

8.4 Implementation — Director of Public Prosecutions to advise on charges

Notwithstanding the disadvantages we are firmly of the opinion that, exceptional circumstances aside, the DPP's advice should be required before a charge arising from a corruption investigation is laid.

The DPP, the body that ultimately holds the discretion about whether a charge proceeds or not, can provide genuine independent advice on whether a charge should be laid.⁷¹⁴ That discretion is also the subject of constant review as the DPP may exercise a discretion not to proceed with a matter at any time during criminal proceedings. We acknowledge that receipt of DPP advice that a charge is warranted does not necessarily mean that opinion will not change over time, for example, with changes in the evidence as a matter progresses through the criminal justice system. That said, the DPP is best placed to identify gaps in evidence and to have the CCC follow up evidentiary issues; assess the sufficiency of evidence; and scrutinise potential defences open on the material to hand.

The feasibility of this course requires that the DPP receive adequate additional funding to carry out the extra work associated with this role expeditiously.

We recommend that:

- Seconded police retain their charging function in relation to corruption investigations.
- Other than in exceptional circumstances (for example, in emergent situations where an arrest is essential), before a charge is laid by a seconded police officer during or following a corruption investigation, the CCC must seek the opinion of (as distinct from the consent of) the DPP concerning whether a charge may properly be brought having regard to the two-tier test under

the Director's Guidelines. That is, the opinion will be about the sufficiency of the evidence and the public interest in the prosecution proceeding.

- Notwithstanding any other law⁷¹⁵ or any other provision of the CC Act,⁷¹⁶ if the DPP advises that a charge should not be brought, the seconded police officer must not charge contrary to that advice.
- If the DPP advises a charge may properly be brought and a decision is made by the seconded police officer not to charge, the CCC must report to the PCC Commissioner and the PCCC about the decision made.
- If, because of exceptional circumstances, charges are laid without the DPP having first provided its opinion on whether charges may properly be brought, the CCC must, as soon as reasonably practicable, report to the DPP in relation to the charge laid and obtain the DPP's opinion about the soundness of the decision to charge.
- The CC Act, including section 49, should be amended as necessary to give to give effect to these recommended changes.
- An effective and comprehensive MOU be developed between the CCC and DPP to formalise the relationship between them, and to outline agreed practices and procedures for the referral of matters and the provision of advice. This is consistent with the approach in other jurisdictions (in particular, NSW).

The MOU should address matters such as, but not limited to:

- briefing requirements and expectations, including an indication of the charge/s identified by the CCC as being open on the evidence, and identification of relevant legal and evidential issues arising
- mechanisms to ensure against unreasonable delays both in the provision of briefing materials to the DPP and in the provision of advice by the DPP, including timeframes and a timetable of steps to be done in order to ensure advice is received as expeditiously as possible so as to mitigate the risks identified under option three (above) and ensure public confidence in the CCC
- communication and liaison between the parties, including where contrary views arise between the DPP and CCC, the resolution process to be followed;⁷¹⁷ and requisition processes for additional evidence
- requirements and expectations regarding the advice from the DPP to the CCC, including the provision of reasons to explain the opinion reached.
- The CCC must report at regular intervals to the PCC Commissioner and PCCC on the effectiveness and utility of the MOU, including timeframes and timeliness of advice provided.
- The CCC must report at regular intervals to the minister regarding this arrangement for the provision of advice by the DPP to the CCC, including about the effectiveness and utility of the MOU (and timeframes and timeliness of advice provided).

- The PCCC, as part of its next five-yearly review of the activities of the CCC (under section 292 of the CC Act), review and report on this arrangement for the provision of advice by the DPP to the CCC, including an examination of the effectiveness and utility of the MOU — thereafter the PCCC should monitor this arrangement between the CCC and DPP as part of future five-yearly reviews.

Endnotes

⁵⁷⁷ Fitzgerald Report, p 314.

⁵⁷⁸ PCCC Logan Council Report, p 147.

⁵⁷⁹ s 2.24 of the CJ Act was renumbered to become s 33 in accordance with *Reprints Act 1992*, s 43 (for the CJ Act this was achieved via the *Criminal Justice Amendment Act 1993*, s 7.12); PCJC Report No.13 — *Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission* (3 December 1991) (Recommendation 13 proposed amendments to s 33); *Criminal Justice Legislation Amendment Act 1997* amended s 33, including implementing recommendation 13; CM Act 2001, s 49 (Act as passed) replicated s 33 of the CJ Act but absent the 1997 changes except for those implementing recommendation 13 of the PCJC.

⁵⁸⁰ PCMC Report No. 64, 'Three Year Review of the Crime and Misconduct Commission' (2004), p 37–43.

⁵⁸¹ PCMC Report No. 64, 'Three Year Review of the Crime and Misconduct Commission' (2004), p 37, para 4.10.1.

⁵⁸² PCMC Report No. 64, 'Three Year Review of the Crime and Misconduct Commission' (2004), p 38, referring to the submission from the Department of Justice and Attorney-General, which incorporated the DPP's views.

⁵⁸³ PCMC Report No. 64, 'Three Year Review of the Crime and Misconduct Commission' (2004), pp 37–38.

⁵⁸⁴ PCMC, Transcript of Public Hearing, 19–20 June 2003, p 31.

⁵⁸⁵ PCMC, Transcript of Public Hearing, 19–20 June 2003, p 59.

⁵⁸⁶ The CM Act established two, non-voting Commission members; both were statutory appointments, needed to be qualified to be appointed as the Chairperson and were full-time roles (ss 239, 240, 244). The Assistant Commissioner, Crime was responsible to the Chair for the proper performance of the crime function; and the Assistant Commissioner, Misconduct was responsible to the Chair for the proper performance of the misconduct function (ss 252, 253). The term of the appointment contract was no more than five years but could extend total time up to eight years (s 247).

⁵⁸⁷ PCMC, Transcript of Public Hearing, 19–20 June 2003, p 33.

⁵⁸⁸ PCMC Report No. 64, 'Three Year Review of the Crime and Misconduct Commission' (2004), pp 39–40.

⁵⁸⁹ CMC supplementary submission to the PCMC, 18 August 2003, p 3.

⁵⁹⁰ PCMC, Transcript of Public Hearing, 19–20 June 2003, p 31.

⁵⁹¹ PCMC Report No. 64, 'Three Year Review of the Crime and Misconduct Commission' (2004), p 43 (Recommendations 14, 15).

⁵⁹² Queensland Government response to PCMC Report No. 64, 'Three Year Review of the Crime and Misconduct Commission' (2004), 10 September 2004, p 8.

⁵⁹³ PCMC Report No. 71, 'Three Year Review of the Crime and Misconduct Commission' (2006), pp 55–56.

⁵⁹⁴ PCMC Report No. 79, 'Three Year Review of the Crime and Misconduct Commission' (2009), p 42.

⁵⁹⁵ 2018 Amendment Act, s 12.

⁵⁹⁶ 2018 Amendment Act (*Explanatory Notes*), p 15.

⁵⁹⁷ (2013) 248 CLR 92.

⁵⁹⁸ (2013) 251 CLR 196.

⁵⁹⁹ (2014) 253 CLR 455.

⁶⁰⁰ DPP Submission, 8 April 2022, Attachment 4, *Letter from Mr Michael Byrne QC to the Acting Chair of the PCCC, Mr P Russo MP, dated 28 July 2015*, pp 2–3; PCCC Report No. 97, 'Review of the Crime and Corruption Commission' (2016), pp 33–34.

⁶⁰¹ PCCC Report No. 97, 'Review of the Crime and Corruption Commission' (2016), p 34.

⁶⁰² PCCC Report No. 97, 'Review of the Crime and Corruption Commission' (2016), p vii (Recommendation 5).

⁶⁰³ Queensland Government response to PCCC Report No. 97, 'Review of the Crime and Corruption Commission' (2016), 16 December 2016, p 3.

⁶⁰⁴ X7 at [97].

⁶⁰⁵ *Construction, Forestry, Mining and Energy Union v Boral Resources (Vic) Pty Ltd* [2015] 256 CLR 375 at [36] and [37], per French CJ, Kiefel, Bell, Gageler and Keane JJ.

⁶⁰⁶ *Construction, Forestry, Mining and Energy Union v Boral Resources (Vic) Pty Ltd* [2015] 256 CLR 375 at [36] and [37], per French CJ, Kiefel, Bell, Gageler and Keane JJ.

⁶⁰⁷ *Construction, Forestry, Mining and Energy Union v Boral Resources (Vic) Pty Ltd* [2015] 256 CLR 375 at [36] and [37], per French CJ, Kiefel, Bell, Gageler and Keane JJ.

⁶⁰⁸ *Lee No. 2* at [46], per French CJ, Crennan, Kiefel, Bell and Keane JJ.

⁶⁰⁹ X7 at [102], per Hayne and Bell JJ.

⁶¹⁰ X7 at [40], per French CJ and Crennan J.

⁶¹¹ X7 at [41]–[42], per French CJ and Crennan J.

⁶¹² *Potter v Minahan* (1908) 7 CLR 277 at 304.

⁶¹³ Australian Law Reform Commission Report No. 129, 'Traditional Rights and Freedoms—encroachments by Commonwealth Laws' (2015), p 322, para 11.61.

⁶¹⁴ Queensland Law Reform Commission Report No. 59, 'The Abrogation of the Privilege Against Self-Incrimination' (2004), p 18, para 2.48.

⁶¹⁵ Queensland Law Reform Commission Report No. 59, 'The Abrogation of the Privilege Against Self-Incrimination' (2004), p 19, para 2.52.

⁶¹⁶ Queensland Law Reform Commission Report No. 59, 'The Abrogation of the Privilege Against Self-Incrimination' (2004), p 78, para 9.7.

⁶¹⁷ Queensland Law Reform Commission Report No. 59, 'The Abrogation of the Privilege Against Self-Incrimination' (2004), p 18, para 2.46.

⁶¹⁸ Queensland Law Reform Commission Report No. 59, 'The Abrogation of the Privilege Against Self-Incrimination' (2004), p 101, para 9.118.

⁶¹⁹ Queensland Law Reform Commission Report No. 59, 'The Abrogation of the Privilege Against Self-Incrimination' (2004), p 101, para 9.119.

⁶²⁰ X7 at [10] and *Lee No. 1* at [13].

⁶²¹ X7 at [10] and *Lee No. 1* at [13].

⁶²² *Lee No. 2* at [9]–[10], per French CJ, Crennan, Kiefel, Bell and Keane JJ.

⁶²³ *Lee No. 2* at [28], per French CJ, Crennan, Kiefel, Bell and Keane JJ.

⁶²⁴ *Lee No. 2* at [3], per French CJ, Crennan, Kiefel, Bell and Keane JJ.

⁶²⁵ *Lee No. 2* at [6], per French CJ, Crennan, Kiefel, Bell and Keane JJ.

⁶²⁶ *Lee No. 2* at [33], per French CJ, Crennan, Kiefel, Bell and Keane JJ.

⁶²⁷ *Lee No. 2* at [34], per French CJ, Crennan, Kiefel, Bell and Keane JJ.

⁶²⁸ *Lee No. 2* at [34], per French CJ, Crennan, Kiefel, Bell and Keane JJ.

⁶²⁹ *Lee No. 2* at [34], per French CJ, Crennan, Kiefel, Bell and Keane JJ.

⁶³⁰ *Lee No. 2* at [39], per French CJ, Crennan, Kiefel, Bell and Keane JJ.

⁶³¹ *Lee No. 2* at [39], per French CJ, Crennan, Kiefel, Bell and Keane JJ.

⁶³² *Lee No. 2* at [46], per French CJ, Crennan, Kiefel, Bell and Keane JJ.

⁶³³ Fitzgerald Report, p 313.

⁶³⁴ Fitzgerald Report, p 313.

⁶³⁵ Fitzgerald Report, p 173.

⁶³⁶ *Criminal Justice Act 1989*, Part 3.

⁶³⁷ CC Act, Chapters 3–4.

⁶³⁸ CC Act, ss 190, 192.

⁶³⁹ CC Act, s 331.

⁶⁴⁰ CC Act, s 192(2).

⁶⁴¹ CCC Submission, 1 April 2022, *Operations Manual — Part 3: Matter Practices: Section 9: Notices, orders, and additional powers*, pp 4–5.

⁶⁴² CC Act, s 72.

⁶⁴³ CC Act, s 73.

⁶⁴⁴ CC Act, ss 74–74A.

⁶⁴⁵ CC Act, s 75.

⁶⁴⁶ CC Act, s 119C.

⁶⁴⁷ CC Act, s 119I.

⁶⁴⁸ CC Act, s 165.

⁶⁴⁹ CC Act, Schedule 2, definition of 'privilege'.

⁶⁵⁰ CC Act, ss 185, 188.

⁶⁵¹ CC Act, ss 190, 192.

⁶⁵² CC Act ss 193–194; SQH v Scott [2022] QSC 16, [142].

⁶⁵³ CCC Submission, 1 April 2022, p 140, para 748.

⁶⁵⁴ CCC Submission, 1 April 2022, Attachment L, *Witnesses examined in CCC investigative hearings*, p L-1.

⁶⁵⁵ *NS v Scott* [2018] 2 Qd R 397, [33], per Holmes CJ, with whom the other members of the Court of Appeal agreed.

⁶⁵⁶ s 265(1) of that Act requires the Court's leave for such evidence to be admitted.

⁶⁵⁷ CC Act, s 202(2)(e).

⁶⁵⁸ *NS v Scott* [2018] 2 Qd R 397, [33].

⁶⁵⁹ CCC, 'Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government' (2017), pp 3–4.

⁶⁶⁰ CCC, 'Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government' (2017), pp xii–xviii.

⁶⁶¹ Hansard, 15 May 2018, p 1089.

⁶⁶² He was subsequently convicted in the Magistrates Court of those offences; however, the convictions were later set aside by the District Court and thereafter the Court of Appeal refused leave to appeal against the decision by the Commissioner of Police — *Commissioner of Police v Antonioli* [2021] QCA 237.

⁶⁶³ Mr Pisasale would thereafter go on to be convicted and sentenced to imprisonment for serious offences stemming from his time in office.

⁶⁶⁴ Hansard, 3 May 2018, p 950.

⁶⁶⁵ Hansard, 15 May 2018, pp 1106–1107.

⁶⁶⁶ The Belcarra Stage 1 Bill, in which the amendments were inserted, received assent on 21 May 2018 (the relevant sections were subsequently renumbered by the *Local Government Electoral (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*, section 115, on 30 October 2019, to reflect the current section numbering as referred to in PCCC Logan Council Report and as relating to the former councillors i.e. sections 175K–175Q of the LG Act.

⁶⁶⁷ PCCC Logan Council Report, pp 43–46.

⁶⁶⁸ CCC Submission to PCCC Logan Council Inquiry, 26 July 2021, p 39, para 210.

⁶⁶⁹ CCC Submission, 1 April 2022, p 110, para 575.

⁶⁷⁰ [2019] QSC 83, [52].

⁶⁷¹ *PRS v Crime and Corruption Commission* [2019] QCA 255, [81].

⁶⁷² CCC Submission, 1 April 2022, p 84, para 429.

⁶⁷³ CCC Submission, 1 April 2022, *Operations Manual — Part 2: Management of Matters: Section 2: Matter Briefs*, p 9.

⁶⁷⁴ QPS Submission, 28 March 2022, p 13.

⁶⁷⁵ Mayor Tom Tate Submission, 28 March 2022, p 2.

⁶⁷⁶ Bob Atkinson AO Submission, 31 March 2022, p 1.

⁶⁷⁷ Adrian Raedel Submission, 28 March 2022, p 2.

⁶⁷⁸ Mark Le Grand Submission, 27 March 2022, p 7.

⁶⁷⁹ McInnes Wilson Lawyers Submission on behalf of former councillors, 1 April 2022, p 3.

⁶⁸⁰ Current and former Ipswich City councillors Paul Tully, David Pahlke, Charlie Pisasale, Andrew Antonioli, David Morrison, Sheila Ireland, Cheryl Bromage, Kerry Silver, Kylie Stoneman, Wayne Wendt and David Martin Submission, 28 March 2022, pp 5–6.

⁶⁸¹ DPP Submission, 2 May 2022, p 1.

⁶⁸² Michael Barnes has extensive experience in the Queensland justice system — State Coroner (2003–2013); Head, School of Justice Studies, Queensland University of Technology (2000–03); Chief Officer, Complaints Section, CJC (1993–99); Principal Legal Officer, CJC (1990–93); Principal Solicitor, Aboriginal Legal Service (1987–1990); Solicitor in private practice (1982–87).

⁶⁸³ NSWCC Submission, 13 April 2022, p 1.

⁶⁸⁴ Professor Ross Martin QC Submission, 26 April 2022, p 2.

⁶⁸⁵ Zeger van der Wal, 'Singapore's corrupt practices investigations bureau: Guardian of public integrity', in Arjen Boin, Lauren A. Fahy, Paul 't Hart (eds), *Guardians of public value: How public organisations become and remain institutions* (Palgrave, 2021), pp 63–86.

⁶⁸⁶ Arjen Boin, Lauren A. Fahy, Paul 't Hart, *Guardians of public value: How public organisations become and remain institutions* (Palgrave, 2021).

⁶⁸⁷ Gabriel Kuris, 'Watchdog or guard dogs: Do anti-corruption agencies need strong teeth?' (2015) 34(2) *Policy and Society*, p 128.

⁶⁸⁸ Ting Gong, Ian Scott, Hanyu Xiao, 'Unpacking public perception of effectiveness in anti-corruption agencies: The case for Hong Kong' (2022), *Public Integrity* 1, 13.

⁶⁸⁹ CCC Strategic Plan 2022–2026, 1 June 2022.

⁶⁹⁰ PCC Commissioner Submission, 7 April 2022, p 7.

⁶⁹¹ QPS Submission, 28 March 2022, p 7.

⁶⁹² QPS Submission, 28 March 2022, p 7.

⁶⁹³ Professor A J Brown Submission, 11 April 2022, p 4, para 11.

⁶⁹⁴ Professor Ross Martin QC Submission, 26 April 2022, p 15.

⁶⁹⁵ Queensland Council for Civil Liberties Submission, 7 April 2022, p 4.

⁶⁹⁶ Mark Le Grand Submission, 27 March 2022, p 5; NSWCC Submission, 13 April 2022, p 1; Queensland Law Society Submission, 1 April 2022, p 2; LGAQ Submission, 1 April 2022, p 5 (Recommendation 2); Allan Sutherland Submission, 1 April 2022, p 13, para 7.10; Queensland Council for Civil Liberties Submission, 7 April 2022, p 3; Together ASU Submission, 11 April 2022; Cherie Dalley Submission, 1 April 2022; Current and former Ipswich City councillors Paul Tully, David Pahlke, Charlie Pisasale, Andrew Antoniolli, David Morrison, Sheila Ireland, Cheryl Bromage, Kerry Silver, Kylie Stoneman, Wayne Wendt and David Martin Submission, 28 March 2022.

⁶⁹⁷ SA ICAC Submission, 1 April 2022, p 3. Amendments to South Australian legislation in September 2021 removed the ability of SA ICAC to refer matters to the SA DPP for prosecution. SA ICAC advises that, in practice, while it continues to seek advice from the DPP in relation to specific matters, it can only refer matters for prosecution to a 'law enforcement agency'. The changes were not supported by SA ICAC and were publicly condemned by the integrity body. On 16 November 2021, the SA ICAC Commissioner, the Honourable Ann Vanstone QC, published a report in response to the amendments — *An Examination of the Changes effected by recent amendments to the Independent Commission Against Corruption Act 2012*, November 2021.

⁶⁹⁸ NSW ICAC Submission, 18 March 2022, pp 9–11; NSW DPP Submission, 29 April 2022, p 2.

⁶⁹⁹ NSW ICAC Submission, 21 April 2022, p 2.

⁷⁰⁰ NSW ICAC Submission, 21 April 2022, p 2.

⁷⁰¹ Victoria IBAC Submission, 1 April 2022, p 2.

⁷⁰² WA CCC Submission, 29 March 2022, p 2; WA DPP Submission, 14 April 2022, p 2.

⁷⁰³ WA DPP Submission, 14 April 2022, p 6.

⁷⁰⁴ PCCC Logan Council Inquiry Transcript, 3 September 2021, p 12.

⁷⁰⁵ DPP Submission, 2 May 2022, p 2.

⁷⁰⁶ DPP Submission, 8 April 2022, Attachment 1, *Directorate procedure concerning briefs referred by the Crime and Corruption Commission pursuant to s 49*; and Attachment 3, *Protocol for handling compelled evidence*.

⁷⁰⁷ DPP Submission, 8 April 2022, p 3.

⁷⁰⁸ DPP Submission, 8 April 2022, p 4.

⁷⁰⁹ DPP Submission, 8 April 2022, p 4.

⁷¹⁰ Mark Le Grand Submission, 27 March 2022 — outlined the arguments, he says, favours separating the prosecution and investigation roles i.e. involvement in an investigation, especially a lengthy and complex investigation, taints the whole review process: assessing witness credibility — involvement with witnesses overtime may lead to subjective opinions which overlook the weaknesses in their testimony, but which would be objectively obvious to a jury; expenditure of time and resources — there is a strong if subtle pressure to validate the investigation by proceeding to prosecution; and issues relating to compelled evidence (as discussed in Chapter 8 and **Appendix H**).

⁷¹¹ PCMC Report No. 64, 'Three Year Review of the Crime and Misconduct Commission' (2004), p 41.

⁷¹² PCMC Report No. 64, 'Three Year Review of the Crime and Misconduct Commission' (2004), p 40.

⁷¹³ PCMC, Transcript of Public Hearing, 19 June 2003, p 33.

⁷¹⁴ In stating 'the DPP ultimately holds the discretion about whether a charge proceeds or not', we acknowledge that the Attorney-General, as the first law officer of the State, has general powers to start and conduct litigation for the State, and has specific powers to present an indictment and discontinue an indictment should they decide to (*Attorney-General Act 1999* (Qld), ss 6, 7, 11) — but cannot direct or instruct the DPP to present an indictment or discontinue a matter (s 7(2)). Additionally, the role of the courts as the final arbiter, is also acknowledged.

⁷¹⁵ To remove any doubt as to potential inconsistency with the PPRA or a direction from the Commissioner of Police under the *Police Service Administration Act 1990* (Qld).

⁷¹⁶ To remove any doubt as to potential inconsistency with section 255 (and section 174) of the CC Act.

⁷¹⁷ It must be recognised that while the DPP and CCC may differ in their views, the DPP advice will ultimately prevail because although charges may nevertheless be laid, the DPP (in most instances) will have carriage of the matter throughout the criminal justice system and unless there is a material change in the state of the evidence the original opinion regarding the sufficiency of the evidence and the public interest in the matter proceeding is unlikely to change — leading to the discontinuance of charges. This is consistent with the NSW approach

when views differ between the DPP and NSW ICAC; once the processes in place for discussion and resolution of conflicting opinions have been exercised.



CHAPTER 9

Conclusions and recommendations

CHAPTER 9: CONCLUSIONS AND RECOMMENDATIONS

9.1 Conclusions

The PCCC Logan Council Inquiry into events involving a CCC investigation into Logan City councillors and the subsequent collapse of criminal proceedings brought against them, and the PCCC Logan Council Report on those events, adversely affected Queenslanders' perceptions of the CCC. The PCCC quite properly raised questions about the CCC's ability to 'maintain public confidence in what is a crucial institution in a modern, open and transparent system of government'.⁷¹⁸ The Chairperson resigned. This Inquiry was set up.

Since its creation after the 1989 Fitzgerald Report, the CCC has generally attracted and maintained the confidence of the Queensland populace as an independent and impartial body dedicated to the detection of crime and corruption, and one that can be entrusted to use its special powers in a fair and unbiased way. The PCCC Logan Council Report (again, quite properly) raised questions whether the CCC had acted in that way in its Logan Council investigation in a number of respects involving staff at various levels but including, in particular, its large contingent of police officers seconded from the QPS and the powers they bring with them to investigate and, also, to bring charges. The PCCC was also critical of the CCC's Chairperson and the organisation's internal processes and its checks and balances to ensure that all facets relevant to decisions about charging were fully and comprehensively considered before any charge was laid.

We accept that the success of an organisation like the CCC must involve public approval and respect and, critically, trust. Queenslanders must be confident that their concerns about crime and corruption can be brought to an institution that will respond appropriately. Our approach to the tasks given to us in our Terms of Reference has its foundations in that proposition. Our recommendations are all intended to improve the way the CCC operates, under the guiding principle that they should also serve to restore and cement public confidence.

We came to the conclusion that elements of the CCC's structure and organisation involving seconded police officers carried risks that manifested in the Logan Council matter. In particular, risks concerning an undue focus upon what might be called a 'law enforcement' approach in corruption matters at the expense of other responses like systemic or organisational changes intended to promote prevention; and what seemed to us to be uncertainty and ambiguity around the duties and responsibilities of seconded officers arising from their continued institutional connections, while at the CCC, to their primary employer, the QPS. The CCC lacks, in our view, both internal and external checks and balances that appropriately addressed these risks. We also concluded that section 49 of the CCC's governing legislation lacks utility in its present form, but can be amended to incorporate procedures which also address those risks.

The nature of those risks, as identified in the PCCC Logan Council Report, led us to the conclusion that our report should focus primarily upon the CCC's conduct of corruption investigations. Nothing in that report

or our own investigations or the submissions our Inquiry received suggested that similar concerns attached to the CCC's work in relation to crime.

This report is built around our Terms of Reference with, then, a particular focus upon corruption matters. Chapters 2, 3 and 4 address the evolution of the roles and responsibilities of the CCC and how the organisation has, over time, structured itself to meet them (including external oversight). Chapter 5 examines the way the investigation and charging aspects of the CCC's work have been undertaken, compares that with other integrity bodies, and analyses the many useful submissions we received on those matters. Chapters 6, 7 and 8 respond directly to the three principal matters raised in the Terms: the engagement and work of seconded police officers at the CCC and the organisation's structure in relation to their use; the CCC's internal procedures, practices and processes relating to the charging and prosecution of criminal offences for, in particular, corruption matters; and, the utility of section 49 of the CCC's governing legislation and the ways in which errors identified in the PCCC Logan Council Report might be mitigated by external oversight. We have concluded that seconded police officers remain a valuable asset in the CCC's work but their skills and experience do not entirely meet the requirements of the CCC's corruption investigations.

Our findings and recommendations may also be grouped by reference to those matters. First, the CCC should be funded to create a new Corruption Strategy and Prevention Unit as part of an overarching restructure which introduces greater 'civilianisation' of, and less reliance upon seconded police officers in, corruption investigations and strengthens the organisation's oversight of those investigations. Those structural changes are to be accompanied by improvements in the flexibility of secondment arrangements between the CCC and the QPS and the provision of better training for corruption investigators. Their implementation will be complemented by an external review of the CCC's 'culture' vis-à-vis its high proportion of seconded police officers planned by the CCC.

Secondly, we have recommended changes to the CCC's governing legislation that involve external oversight and guidance, from the DPP, of CCC decisions to charge in corruption investigations. While seconded police should retain the power to charge, other than in exceptional circumstances charges may only be brought after the DPP has considered the evidence and concluded that it is proper to do so. A new MOU between the CCC and the DPP should address the technicalities of the advice-seeking exercise.

In Chapters 6, 7 and 8 of the report, we describe our recommendations in general terms. The recommendations are interrelated and must be implemented collectively as a suite of measures. No single recommendation, implemented in isolation, will achieve the goal of instilling confidence in the current-day CCC as a trusted institution equipped to effectively investigate major crime and public sector corruption. These measures must also be funded appropriately to ensure their effectiveness.

Our detailed recommendations follow.

9.2 Recommendations

Seconded police and their powers

1. The use of seconded police officers by the Crime and Corruption Commission is appropriate and should continue (subject to recommendations below).
2. Police officers who are seconded to the Crime and Corruption Commission retain their police powers as per section 174 and 255 of the *Crime and Corruption Act 2001*.

Improved flexibility of police secondment arrangements

3. The current secondment arrangements between the Queensland Police Service and the Crime and Corruption Commission be amended to provide the Crime and Corruption Commission with adequate and appropriate flexibility over the mix of job positions, skills and experience within the 'Crime and Corruption Commission Police Group'.
4. The Crime and Corruption Commission and the Queensland Police Service jointly review the mix of job positions, skills and experience within the Crime and Corruption Commission Police Group at least once every two years with a view to ensuring the composition of the Crime and Corruption Commission Police Group reflects the Crime and Corruption Commission's operational needs and priorities.
5. The Memorandum of Understanding between the Crime and Corruption Commission and the Queensland Police Service be amended to reflect the need for the Crime and Corruption Commission to have adequate and appropriate flexibility over the mix of job positions, skills and experience within the Crime and Corruption Commission Police Group.

The forthcoming review of the Crime and Corruption Commission's organisational culture

6. The adequacy of the Crime and Corruption Commission's current organisational culture in safeguarding against the risk of institutional capture form part of the external review planned by the Crime and Corruption Commission in response to Recommendation 4 of Report No. 108 of the Parliamentary Crime and Corruption Committee.

Greater civilianisation of the Corruption Division

7. The Crime and Corruption Commission transition to a predominantly civilianised model for its Corruption Division and only retain the number of seconded police officers required at and below director-level to ensure there are effective and efficient corruption investigations.
8. The Executive Director Corruption Operations be transitioned to a civilian position as soon as possible.
9. With a view to implementing recommendation 7 over the next five years, the Crime and Corruption Commission and the Queensland Police Service jointly review each seconded police

officer position within the Corruption Division at or before the conclusion of the secondment period for each of these positions.

10. The joint review process be documented in the existing Memorandum of Understanding between the Crime and Corruption Commission and the Queensland Police Service and include principles to guide the review process, including:
 - a. the need for the Crime and Corruption Commission to increase its civilian investigator capability, and
 - b. the benefits of retaining a proportion of seconded police officers in the division for the purpose of exercising policing powers and contributing to investigations where criminal investigation expertise is required.

Equipping corruption investigators

11. The Crime and Corruption Commission ensure investigators assigned to corruption matters are adequately and appropriately inducted on commencement at the Crime and Corruption Commission and are provided with ongoing training to equip them to investigate corruption effectively.
12. A dedicated position — a Training and Development Officer — be created by the Crime and Corruption Commission to coordinate enhanced induction and ongoing training activities.
13. The Crime and Corruption Commission devise and implement a Training Strategy and Plan to enhance the skills of all investigators assigned to corruption investigations which includes, where necessary, external training.
14. The Queensland Government adequately resource the Crime and Corruption Commission to implement the Training Strategy and Plan and to employ a Training and Development Officer on a permanent basis.

Building the corruption prevention and policy capability

15. The current Corruption Strategy, Prevention and Legal unit of the Corruption Division be split into two separate units — Corruption Legal; and Corruption Strategy and Prevention — and each unit be led by an executive director.
16. The new Corruption Strategy and Prevention unit is to ensure a corruption prevention and policy perspective informs all corruption investigations.
17. The executive director of the Corruption Strategy and Prevention unit have the appropriate skills and experience to deliver the functions of the new unit including proven experience or expertise in the public sector, particularly in public administration and integrity.
18. The Queensland Government adequately resource the Crime and Corruption Commission to establish the new Corruption Strategy and Prevention unit.

Enhanced operational oversight of corruption investigations

19. The Crime and Corruption Commission establish an executive director-level governance group within the Corruption Division to oversee corruption investigations. The governance group will report to the Executive Leadership Team, be chaired by the Senior Executive Officer (Corruption) and include (at a minimum) the executive directors of the four business units of the Corruption Division.
20. The Crime and Corruption Commission enhance the role of the current director-level governance group within the Corruption Division in overseeing corruption investigations and ensure it reports to the executive director-level governance group.

Improved quality of, and compliance with, policies and procedures

21. The Crime and Corruption Commission continue to review and improve its operational policies and procedures to ensure they are clear, concise, consistent and easy to understand.
22. A dedicated position — a Policy and Procedure Officer — be created by the Crime and Corruption Commission to centralise, coordinate and implement the continued review and improvement of the Crime and Corruption Commission's operational policies and procedures.
23. The Queensland Government adequately resource the Crime and Corruption Commission to employ a Policy and Procedure Officer on a permanent basis.

Ensuring post-prosecution reviews

24. The Crime and Corruption Commission work with the Director of Public Prosecutions to develop a process for conducting post-prosecution reviews.

Advice about potential charges arising from corruption investigations

25. The *Crime and Corruption Act 2001* be amended as necessary to give effect to the following changes:
 - a. Other than in exceptional circumstances, before a charge is laid by a seconded police officer during, or following, a corruption investigation, the Crime and Corruption Commission must seek the opinion of the Director of Public Prosecutions concerning whether a charge may properly be brought having regard to the two-tier test in the Director's Guidelines.
 - b. Notwithstanding any other law or any other provision of the *Crime and Corruption Act 2001*, if the Director of Public Prosecutions advises that a charge should not be brought, the seconded police officer must not charge contrary to that advice.
 - c. If the Director of Public Prosecutions advises a charge may properly be brought and a decision is made by the seconded police officer not to charge, the Crime and Corruption Commission must report to the Parliamentary Crime and Corruption Committee and the Parliamentary Crime and Corruption Commissioner about the decision made.

- d. If, because of exceptional circumstances, charges are laid without the Director of Public Prosecutions having first provided its opinion on whether charges may properly be brought, the Crime and Corruption Commission must, as soon as reasonably practicable, report to the Director of Public Prosecutions in relation to the charge laid and obtain the Director of Public Prosecutions' opinion about the soundness of the decision to charge.⁷¹⁹
26. The Crime and Corruption Commission and the Director of Public Prosecutions develop a Memorandum of Understanding outlining the practices and procedures for the referral of matters and the provision of advice, including timeframes.
27. The Crime and Corruption Commission report to the Minister regarding the arrangement for the provision of advice by the Director of Public Prosecutions to the Crime and Corruption Commission, and about the effectiveness and utility of the Memorandum of Understanding, including timeframes and timeliness of the advice provided by the Director of Public Prosecutions.
28. The Crime and Corruption Commission report to the Parliamentary Crime and Corruption Committee and the Parliamentary Crime and Corruption Commissioner on the effectiveness and utility of the Memorandum of Understanding, including timeframes and timeliness of the advice provided by the Director of Public Prosecutions.
29. The Parliamentary Crime and Corruption Committee, as part of its next five-yearly review of the activities of the Crime and Corruption Commission under section 292 of the *Crime and Corruption Act 2001*, review the arrangement for the provision of advice by the Director of Public Prosecutions to the Crime and Corruption Commission, and examine the effectiveness and utility of the Memorandum of Understanding — thereafter, the Parliamentary Crime and Corruption Committee continue to monitor the arrangement as part of its future five-yearly reviews.
30. The Queensland Government provide adequate additional resources to the Director of Public Prosecutions to enable it to provide its advice to the Crime and Corruption Commission in a timely manner.

Monitoring

31. The Crime and Corruption Commission must report regularly and progressively to the Minister about the implementation and delivery of the recommendations.
32. The Crime and Corruption Commission must report regularly and progressively to the Parliamentary Crime and Corruption Committee and the Parliamentary Crime and Corruption Commissioner about the implementation and delivery of the recommendations.

Endnotes

⁷¹⁸ PCCC Logan Council Report, p 140.

⁷¹⁹ The problems which were identified by the PCCC Logan Council Report and have been the subject of major discussions in this report concern the CCC's corruption investigations and charges. There has been limited discussion of its other major remit, complex, serious crime investigations and charges, and there is no direct basis for a conclusion that the CCC must obtain advice from the DPP in connection with those charges. Moreover, there are practical difficulties with such a requirement, including issues concerning resources and time considerations. Accordingly, we do not recommend at this point that charges arising out of complex serious crime investigations by the CCC should not be brought except on the basis of advice from the DPP. The subject of those charges should initially be covered in the memorandum of understanding between the CCC and the DPP which is provided for elsewhere in these recommendations and the position should be monitored by the PCCC in its periodic reviews. If problems are encountered in connection with charges arising out of complex, serious crime investigation which are brought by the CCC without the advice of the DPP a requirement should be legislated that the CCC obtain advice from the DPP before bringing such charges and appropriate additional resources provided.



APPENDICES

APPENDIX A: ORDER IN COUNCIL AND TERMS OF REFERENCE

Commissions of Inquiry Order (No. 1) 2022

Short title

1. This Order in Council may be cited as the *Commissions of Inquiry Order (No.1) 2022*.

Commencement

2. This Order in Council commences on 7 February 2022.

Appointment of Commission

3. UNDER the provisions of the *Commissions of Inquiry Act 1950*, the Governor in Council hereby appoints the Honourable Gerald Edward (Tony) Fitzgerald AC QC as Chairperson and Commissioner and the Honourable Alan Wilson QC, as Commissioner, from 7 February 2022, to make careful inquiry, in a transparent and independent manner with respect to the following matters:
 - a. noting the findings of Parliamentary Crime and Corruption Committee's (PCCC) Report No. 108, *'Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters'*, the adequacy and appropriateness of the structure of the Crime and Corruption Commission (CCC) in relation to use of seconded police officers, including having regard to:
 - i. the views and recommendations of Tony Fitzgerald QC, as expressed in the report of the 'Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct' (the Fitzgerald Inquiry Report) in respect of the establishment of a Criminal Justice Commission (CJC)
 - ii. the structure of other Australian State and Territory integrity bodies, with a particular emphasis on the use of seconded police officers, including the tenure, qualifications and training of such personnel.
 - b. the adequacy and appropriateness of legislation, procedures, practices and processes relating to the charging and prosecution of criminal offences for serious crime and corruption in the context of CCC investigations, including having regard to:
 - i. relevant findings and recommendations of the PCCC Report No. 108, *'Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters'* and other previous relevant reports of the PCCC

- ii. the use and role of seconded police officers and the retention of their powers pursuant to sections 174 and 255 of the *Crime and Corruption Act 2001*
 - iii. the extraordinary nature of the CCC's powers and functions under the *Crime and Corruption Act 2001* and differences from police powers in the investigation, charging and prosecution of criminal offences, including provisions of the *Police Powers and Responsibilities Act 2000*
 - iv. the consequences arising from the laying of criminal charges as a result of a CCC investigation, including the provisions under section 175K of the *Local Government Act 2009* for a person to be automatically suspended as a councillor when the person is charged with a 'disqualifying offence'.
- c. the adequacy and appropriateness of section 49 of the *Crime and Corruption Act 2001*, including consideration of:
- i. relevant findings and recommendations of the Parliamentary Crime and Corruption Committee's (PCCC) Report No. 108, *'Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters'* and other previous relevant reports of the PCCC
 - ii. the evolution of section 49, including the nature and purpose of amendments made in the *Crime and Corruption and Other Legislation Amendment Act 2018*
 - iii. current and proposed policy, procedure and practice relating to the obtaining of independent advice by the CCC on complex prosecutions
 - iv. the approach to review by, and the obtaining of advice from, respective Directors of Public Prosecutions in other jurisdictions of charges arising out of investigations by serious crime and corruption integrity bodies
 - v. the CCC's interaction with the Director of Public Prosecutions (DPP), including existing information sharing and other processes that facilitate interaction
 - vi. whether there should be a requirement that the CCC obtain a recommendation from the DPP, or a senior independent legal advisor, before police officers use their discretion to charge serious criminal offences and implications for agencies associated with such a requirement.
4. AND the Commission may carry out its inquiry by calling on relevant agencies, including the CCC, Queensland Police Service and the DPP, academics and individuals and entities considered relevant; and reviewing any other relevant case law, literature, research and data.
5. AND in receiving evidence or information pursuant to clauses 3 and 4 on a matter that is the subject of a covert investigation, or proceeding, or an investigation or intelligence operation of a law enforcement agency, or may expose a witness to risk of harm, the Commission will receive such evidence in camera and ensure anonymity of the relevant parties.

6. AND the Commission will ensure that it does not publicly expose details of current or anticipated intelligence collection strategies and investigation methods where such detail is not already in the public domain.
7. AND the Commission will ensure that it has regard to the need to protect and promote human rights protected under the *Human Rights Act 2019*.
8. EXCEPT that, while the inquiry may consider processes and procedures in relation to current and past CCC investigations and judicial proceedings arising from CCC related investigations and charges, the inquiry is not to make any findings with respect to the allegations in relation to the conduct of persons the subject of those investigations, charges and judicial proceedings.

Commission to report

9. AND directs that the Commission make faithful report and recommendations on the aforesaid subject matter of inquiry, and transmit the same to the Honourable the Premier and Minister for the Olympics and the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence by 9 August 2022.

Commission to make recommendations

10. IN making recommendations the Commission should consider any recommended legislative, structural, procedural or organisational changes to promote the ability of the CCC to carry out its statutory functions in a way that is efficient, effective, objective, fair and impartial and meets the public interest in ensuring Queensland has an independent crime and corruption body that meets the highest standards of integrity and impartiality and the need to protect and promote human rights, including the rights protected under the *Human Rights Act 2019*.

Application of Act

11. Pursuant to section 4(2) of the *Commissions of Inquiry Act 1950*, it is declared that all of the provisions of the *Commissions of Inquiry Act 1950* shall be applicable for the purposes of this inquiry, except for section 19C — Authority to use listening devices.

Conduct of Inquiry

12. The Commission may receive submissions and hold public and private hearings in such a manner and in such locations as determined by the Commission as appropriate and convenient and in a way that protects and promotes the rights protected under the *Human Rights Act 2018*, subject to the considerations identified in clauses 5 and 6.
13. Whenever the Honourable Gerald Edward (Tony) Fitzgerald AC QC is absent from duty or unable for any other reason to perform the duties of Chairperson, the Chairperson of the inquiry shall be the Honourable Alan Wilson QC.

Endnotes

1. Made by the Governor in Council on 31 January 2022.
2. Notified in the Gazette on 31 January 2022.

3. Not required to be laid before the Legislative Assembly.
4. The administering agency is the Department of Justice and Attorney-General.

APPENDIX B: COMMISSION STAFF

The Honourable Gerald Edward (Tony) Fitzgerald AC QC was appointed Chairperson and retired Supreme Court Judge, the Honourable Alan Wilson QC, as Commissioner for the Inquiry. Barristers Gim Del Villar QC and Angus Scott were appointed counsel assisting.

The Commission of Inquiry was supported by a secretariat comprising 14 staff, including an executive director and legal, policy, research and administrative staff.

Commissioners

The Honourable Gerald Edward (Tony) Fitzgerald
AC QC

The Honourable Alan Wilson QC

Counsel Assisting

Mr Gim Del Villar QC

Mr Angus Scott

Executive Director

Ms Brigita Cunnington

Director

Ms Carolyn McAnally

Projects and Policy Manager

Ms Ruth Butler

Principal Legal Officer

Mr James Marxson

Senior Legal Officers

Ms Emma Hislop

Ms Malinda Ralph

Legal Officers

Ms Kate Bannister

Ms Cecelia Redfern

Business Manager

Ms Jessica Lisec

Senior Communications Officer

Ms Adelle Rynne

Administration Officers

Ms Eleanor Galbraith

Ms Jan Hazlewood

Ms Claudia Porter

Ms Asha Varghese

APPENDIX C: LIST OF SUBMISSIONS

The below list details the submissions made to the Commission of Inquiry, except for submissions determined to be confidential.

Key Queensland agencies

Crime and Corruption Commission

Queensland Police Service

Queensland Office of the Director of Public Prosecutions

Queensland Office of the Parliamentary Crime and Corruption Commissioner

Queensland Human Rights Commission

Queensland Council for Civil Liberties

Queensland Law Society

Legal Aid Queensland

Queensland Police Union

Queensland Police Commissioned Officers' Union of Employees

Together

Local councils, and current and former mayors and councillors

Adrian Raedel

Allan Sutherland

Andrew Antonioli

Cherie Dalley

Chris Loft

Gold Coast City Council — CEO

Gold Coast City Council — Mayor

David Pahlke

Laurence Smith

Local Government Association Queensland

McInnes Wilson Lawyers on behalf of Cherie Dalley, Trevina Schwarz, Russell Lutton, Phil Pidgeon, Stephen Swenson, Laurence Smith and Jennifer Breene

Paul Tully, David Pahlke, Charlie Pisasale, Andrew Antonioli, David Morrison, Sheila Ireland, Cheryl Bromage, Kerry Silver, Kylie Stoneman, Wayne Wendt and David Martin

Interstate agencies

Australian Commission for Law Enforcement Integrity
Independent Broad-based Anti-corruption Commission
Independent Commission Against Corruption in New South Wales
Independent Commissioner Against Corruption in the Northern Territory
Integrity Commission Tasmania
New South Wales Crime Commission
Northern Territory Police, Fire and Emergency Services
Office of the Director of Public Prosecutions (New South Wales)
Office of the Director of Public Prosecutions (Western Australia)
South Australia Independent Commission Against Corruption
South Australia Police
Tasmania Police
Victoria Police
Western Australia Corruption and Crime Commission
Western Australia Police Force

Universities

Professor A J Brown, Professor of Public Policy and Law, Griffith University

Individuals

Aaron Emery	Kathy Ahern
Adam Budrodeen	Kay Williams
Alan MacSporran QC, Former Chairperson CCC	Marc Bromet
Bernard Corden	Mario Menso
Cheryl Byrne	Mark Le Grand
Craig and Shirley Nichol	Mark McGovern
Damian McDonald	Michael O'Keeffe
Dave Barrowcliffe	Michelle Stenner
David Ettridge	Narelle Dawson-Wells
David Kenny	Paul Gleeson
David McNamara	Professor Ross Martin QC
Dominic McHugh	Raymond 'Ray' Mead
Don Magin	Richard Rudd
Gerald Soley	Robert (Bob) Atkinson AO APM
Glen Patullo	Shane Clegg
Grant Fitzgerald	Shaun McCrystal
Gwenda Bright	Wayne Faulkner
Ian Crossman	
Kath Down	

APPENDIX D: LEGISLATIVE HISTORY — CRIME AND CORRUPTION COMMISSION

The legislative changes made to the Criminal Justice Commission (CJC) from 1989 through to the current-day Crime and Corruption Commission (CCC).

Year	Act as passed	Summary of key amendments
1989	<p><i>Criminal Justice Act 1989</i> (CJ Act)</p> <p>Introduced: 18 Oct 1989</p> <p>Assent: 31 Oct 1989</p> <p>Repealed: 1 Jan 2002</p>	<p>Establishment of the Criminal Justice Commission</p> <p>The CJC was a permanent body to:</p> <ul style="list-style-type: none"> • advise on the administration of the criminal justice system with a view to ensuring its efficiency and impartiality • continue investigations commenced by the 1989 Fitzgerald Inquiry • investigate the incidence of organised or major crime; and to take measures to combat organised or major crime for the interim period • investigate complaints of official misconduct referred to the body and to secure the taking of appropriate action in respect of official misconduct • hear and determine disciplinary charges of official misconduct in prescribed cases (section 1.3). <p><u>Functions</u> (section 2.14): To continually monitor, review, coordinate and, if the CJC considered it necessary, initiate reform of the administration of criminal justice; and discharge the functions in the administration of criminal justice as, in the CJC’s opinion, were not appropriate to be discharged or could not be effectively discharged, by the police. In discharging its functions wherever practicable, the CJC was to consult widely with people or agencies known to have special competence or knowledge in the area of administration of criminal justice and seek submissions from the public.</p> <p><u>Structure and governance:</u></p>

Year	Act as passed	Summary of key amendments
		<ul style="list-style-type: none"> • <i>Composition</i>: Chairman (who had served, or was qualified for appointment, as a Supreme, Federal or High Court judge) and four others: one, a practicing lawyer with a demonstrated interest and ability in civil liberties, and three others who have demonstrated interest and ability in community affairs, of which at least one of has proven senior managerial experience in a large organisation (sections 2.1 to 2.6). • <i>Structure</i>: Divided into the following organisational units: Official Misconduct Division (Part 2 Division 4) which was the investigative unit of the CJC and had under its remit, a Complaints Section (Part 2 Division 4A) and from time to time, Misconduct Tribunals (Part 2 Division 5); Research and Coordination Division (Part 2 Division 6); Intelligence Division (Part 2 Division 7); and Witness Protection Division (Part 2 Division 8). • <i>Governance</i>: The Chairman was also the Chief Executive Officer (CEO). The executive director reported to the Chairman (sections 2.53, 2.55). The directors — each division was under the control and direction of a director, who reported to the Chairman (section 2.12). All other officers of the CJC reported to the executive director and the director of their respective unit (section 2.56). <p><u>Hearings</u> (section 2.17): As a general rule, hearings were to be open to the public but if, having regard to the subject matter of the investigation or the nature of the evidence expected to be given, the CJC considered it preferable, in the public interest, it could conduct a closed hearing.</p> <p><u>Not bound by rule or practice</u> (section 3.21): The CJC was not bound by rules or the practice of any court or tribunal as to evidence or procedure in the exercise of its functions and responsibilities, or the exercise of its powers or authorities, and could inform itself on any matter and conduct its proceedings as it thought proper. At all times the CJC was to act independently, impartially, fairly, and in the public interest; and act openly, except where to do so would be unfair to any person or contrary to the public interest.</p> <p><u>Use of incriminating evidence obtained</u> (section 3.24): Compelled evidence that was self- incriminating was not admissible against the person in a civil or criminal case involving them; however, evidence flowing from the inadmissible evidence was able to be used (derivative use).</p>

Year	Act as passed	Summary of key amendments
		<p><u>Use of seconded police officers</u>: The CJC could, with the approval of the minister responsible for the unit of public administration (UPA) concerned, arrange for use (by secondment or otherwise) by it of the services of staff of any unit or office of public administration, which included the police service (section 2.54). A seconded police officer remained a member of the police service and retained all powers and authorities had by the person as such a member (section 2.56).</p> <p><u>Relationship with the Director of Public Prosecutions (DPP)</u>: The Official Misconduct Division was to report on every investigation carried out by the division; and every matter of complaint, or information, submitted by the Complaints Section. With the authority of the Chairman, the report had to be made to, inter alia, the DPP or other appropriate prosecuting authority, with a view to such prosecution proceeding as the DPP or other authority considered warranted (section 2.24). The report must contain, or be accompanied by, all relevant information known to the division, whether the information supported a charge that may be brought against any person in consequence of the report or supported a defence that may be available to any person liable to be charged in consequence of the report.</p> <p><u>External oversight</u> (Part 4):</p> <ul style="list-style-type: none"> • The Act provided for the establishment, as soon as practicable, of a Parliamentary body to inform Parliament about the activities of the CJC — the Parliamentary Criminal Justice Committee (section 1.3). • The CJC reported to the committee on a regular basis about its activities and, when instructed by the committee or when the CJC considered it appropriate, about particular matters concerning the administration of criminal justice (section 2.14 and 2.18, 2.19). • The committee then reported to Parliament about the CJC (section 4.8).
1992	<p><i>Criminal Justice Amendment Act 1992</i></p> <p>Assent: 13 May 1992</p>	<p>The Official Misconduct Division and a new Complaints Section</p> <p>Amendments to the functions of the <u>Official Misconduct Division</u> (section 2.20):</p> <ul style="list-style-type: none"> • To omit the word ‘all’ in the context of its function: <i>to investigate <u>all</u> cases of alleged or suspected misconduct by police or persons holding appointment in other units of public</i>

Year	Act as passed	Summary of key amendments
		<p><i>administration.</i> (The CJC therefore no longer required to investigate ALL such cases.)</p> <ul style="list-style-type: none"> Removal of the function to ‘<i>investigate all matters of complaint or information concerning suspected misconduct submitted to the Director by the Complaints Section</i>’ (consequential to the changes below). <p>Amendment to the <u>Complaints Section</u> of the Official Misconduct Division:</p> <ul style="list-style-type: none"> To establish a new Chief Officer to run the Complaints Section and report to the Director of the Official Misconduct Division. To provide that the Chief Officer was to refer a complaint to the Director where the available evidence shows a prima facie case to support a charge. <p>To omit and replace the functions of the Complaints Section to incorporate the role and responsibility of the new Chief Officer and to better facilitate decisions to investigate complaints, information or matters communicated to the section and/or discontinue investigations.</p>
	<p><i>Criminal Justice Amendment Act 1992 (No. 2)</i></p> <p>Assent: 22 May 1992</p>	<p>Appeal rights</p> <p>Omit and replace existing section 2.38 (which enabled a person aggrieved by a decision of a Misconduct Tribunal exercising original jurisdiction to appeal against the decision to the Supreme Court) to provide greater detail and clarity regarding the process.</p>
1993	<p><i>Criminal Justice Amendment Act 1993</i></p> <p>Assent: 10 Dec 1993</p>	<p>Technical amendments following establishment of the CJC</p> <p>A series of technical amendments as recommended by the Parliamentary Committee and the CJC, since enactment, to clarify the CJ Act and facilitate its administration; and relating to the operations of the CJC.</p> <p>Amendments to:</p> <ul style="list-style-type: none"> expressly provide (under new section 2.14A) that the CJC must always act independently, impartially, fairly and in the public interest in the exercise of <u>all its</u> functions (formerly embedded within existing section 3.21)

Year	Act as passed	Summary of key amendments
		<ul style="list-style-type: none"> • better ensure the confidentiality of the CJC’s investigations and that the identities of informants are not compromised or prejudiced. Also, to extend the powers of the CJC to enable it to prohibit the publication of matters if the publication would be unfair to a person or contrary to the public interest including information that may help to identify a person who has given, or may give evidence before the CJC, or the fact that a person has given or may give evidence before the CJC (replace section 3.20) • extend the confidentiality provision to former Commissioners and officers of the CJC and former members of the Parliamentary Committee. <p><u>NOTE:</u> The entire Act was also renumbered to reflect changes in drafting practices and numbering style (per section 43 of the <i>Reprints Act 1992</i>).</p>
1994	<p><i>Criminal Justice Amendment Act 1994</i></p> <p>Assent: 4 Nov 1994</p>	<p>The reappointment of incumbent commissioners</p> <p>Technical amendments to enable greater flexibility in the reappointment of incumbent commissioners, including the Chairman, while ensuring the restriction on the aggregated term of appointments remained unchanged (the change eliminated the need to rely upon ‘acting’ arrangements for the reappointment of an incumbent office holder where the length of the reappointment was less than two years).</p>
1996	<p><i>Criminal Justice Legislation Amendment Act 1996</i></p> <p>Assent: 15 Oct 1996</p>	<p>Amendments stemming from the establishment of the ‘Connolly-Ryan Commission of Inquiry’</p> <p>To provide that the CJC and its staff are compellable to give evidence before commissions of inquiry and to ensure access to information and documents held by the CJC in this context. Implemented the recommendations of the Solicitor-General and of senior counsel assisting in ‘The Connolly-Ryan Inquiry’.</p>
1997	<p><i>Misconduct Tribunals Act 1997</i></p> <p>Introduced: 7 Oct 1997</p> <p>Assent: 5 Nov 1997</p>	<p>Establishment of independent misconduct tribunals; no longer part of the CJC</p> <p>To remove from the CJC its function to determine allegations of official misconduct against police by removing misconduct tribunals from the remit of the CJC.</p>

Year	Act as passed	Summary of key amendments
	<p>Proclamation: 8 Dec 1997</p> <p>Repealed: 1 Dec 2009 — Following the establishment of the Queensland Civil and Administrative Tribunal in 2009 (see below)</p>	<p>To establish misconduct tribunals under their own legislation as independent entities. The change implemented the recommendation of the Parliamentary Committee/s in its reports of 1991, 1992 and 1995 (Hansard, 7 October 1997, p 3602) and was done with bipartisan support. To recognise, <i>‘the difference between the role of the CJC as a body to investigate alleged misconduct and the role of the tribunal to determine whether such misconduct has occurred and to take appropriate action in response to a finding of such misconduct’</i> (Hansard, 28 October 1997, p3872).</p> <p><u>Functions:</u></p> <ul style="list-style-type: none"> • Original jurisdiction: To hear and decide charges, of a disciplinary nature, of official misconduct made against police and, with the approval of the Executive Council, other public officials. • Appellate jurisdiction: To hear and decide an appeal against decisions made regarding disciplinary charges of misconduct (other than made by a court or the tribunal). Appeal was by rehearing on the evidence before the original decision maker. Tribunal could confirm or set aside the original decision, substitute another decision, or remit the matter back to the original decision maker. <p><u>Structure and governance:</u> A panel of tribunal members comprises six part-time members appointed by the Governor-in-Council on the nomination of the minister for three years (and eligible for reappointment for up to a further three years); and who must be admitted as a barrister/solicitor with at least five years post admission experience (Part 2 Division 1). Also, a registrar and staff to support the tribunals in performing their functions (section 40).</p> <p><u>Use of seconded police officers:</u> Nil provision.</p> <p><u>Relationship with the DPP:</u> Nil provision. The process was that the tribunal could refer a matter for investigation, or further investigation, to the CJC or the public administration unit in which the person worked, with a view to the taking of a criminal proceeding or for another purpose (section 27).</p> <p><u>External oversight:</u> The Parliamentary Committee could review the misconduct tribunal when it reviewed the activities of the CJC but was not authorised to inquire into a particular proceeding (section 38).</p>

Year	Act as passed	Summary of key amendments
	<p><i>Criminal Justice Legislation Amendment Act 1997</i></p> <p>Introduced: 7 Oct 1997</p> <p>Assent: 5 Nov 1997</p> <p>Proclamation: 8 Dec 1997</p>	<p>Bolstered accountability measures for the CJC — establishment of a Parliamentary Commissioner</p> <p>Amendments to <i>‘introduce new measures for, and heighten existing processes of, accountability of the Criminal Justice Commission’</i> (Explanatory Notes).</p> <ul style="list-style-type: none"> • To enhance the accountability of the CJC to the Parliamentary Committee, including: <ul style="list-style-type: none"> – additional objects to the CJ Act about the role of the committee in overseeing the operations of the CJC, dealing with complaints about the CJC and requesting the committee exercise certain powers – to permit the disclosure of confidential information to the committee, the minister or the Speaker to enhance accountability and the capacity of the committee to review the CJC (new section 28A) – to confer on the committee the capacity to issue guidelines on the operation of the CJC (new sections 118A–118D) and to direct the CJC to undertake an investigation (but not stop one) (new section 118E) – responsibility to the committee to deal with complaints or concerns about the conduct or activities of the CJC (new section 118F). • To provide greater judicial scrutiny of the CJC by altering the existing procedure for judicial review of the activities of the Official Misconduct Division. <p><u>Functions:</u> To remove the ‘coordination’ role from the Research and Coordination Division, as per a Parliamentary Committee recommendation (the role was not reassigned to a different division at the CJC).</p> <p><u>Structure and governance:</u> Amendments to a number of provisions to replace ‘chairperson’ with ‘commission’ across the CJ Act, which had the practical effect of requiring decisions previously able to be made by the Chair to instead require the decision be made by the CJC has a collective.</p> <p><u>Use of seconded police officers:</u> Nil changes.</p>

Year	Act as passed	Summary of key amendments
		<p><u>Relationship with the DPP:</u> Existing section 33 included: a report of the Official Misconduct Division on their investigations to be sent to DPP, or other appropriate prosecuting authority, with a view to such prosecution proceeding as the DPP or other authority considers warranted.</p> <ul style="list-style-type: none"> • New subsection (7) was added — if the DPP requires the CJC to make further investigation or supply further information relevant to a prosecution, whether started or not, to which the content of a report made to the DPP relates, the Director of the Official Misconduct Division must take all reasonable steps to further investigate the matter or provide the further information. <p><u>External oversight:</u> Insertion of new Part 4A to establish the Office of the Parliamentary Commissioner; ‘a creature of Parliament’ and subject to the instruction and direction of the Parliamentary Committee.</p> <p>The new Parliamentary Commissioner had the powers of a Commission of Inquiry (new section 118W) and wide functions including (new section 118R) to:</p> <ul style="list-style-type: none"> • conduct audits of records kept by the CJC and operational files and accompanying documentary material held by the CJC, including current sensitive operations — including for the purpose of deciding: whether the way the CJC had exercised power was appropriate, whether matters under investigation were appropriate for investigation by the CJC or more appropriately the responsibility of another law enforcement agency • investigate, including by access to operational files of the CJC to which the Parliamentary Committee is denied access, complaints made against, or concerns expressed about, the conduct or activities of the CJC, a commissioner or an officer of the CJC. <p>The CJC was not entitled to privilege in relation to an investigation by the Parliamentary Commissioner (new section 118Y). Investigations closed to the public unless allowed by the Parliamentary Committee (new section 118Z). The capacity to challenge the actions of the Parliamentary Commissioner confined to acts done negligently and in bad faith, and only by leave of the Supreme Court (new section 118ZA).</p>

Year	Act as passed	Summary of key amendments
	<p><i>Crime Commission Act 1997</i></p> <p>Introduced: 30 Oct 1997</p> <p>Assent: 1 Dec 1997</p> <p>Proclamation: 2 Mar 1998, 3 April 1998, 15 May 1998</p> <p>Repealed: 1 Jan 2002</p>	<p>Establishment of a Crime Commission — removal of the crime and intelligence functions from the CJC</p> <p>To remove from the CJC its crime function and its intelligence function; and to establish the new Queensland Crime Commission (QCC) to investigate organised and major crime, and paedophilia.</p> <p>The object was to establish a law enforcement body with greater powers than would normally be available to law enforcement and to have strict accountability mechanisms to control the use of those extraordinary powers. The intention was to create an environment of cooperation in law enforcement in Queensland (Explanatory Notes).</p> <p>When conducting investigations, the QCC's function was to gather evidence for the prosecution of persons for offences and for the recovery of crime; and to refer evidence of official misconduct to the CJC. Also, to maintain an intelligence service to support its own functions and forecast trends in criminal activity — separate to its investigation function and not reference driven (section 28 and 33).</p> <p><u>Structure and governance:</u></p> <ul style="list-style-type: none"> • <i>Membership:</i> The Crime Commissioner was Chair and CEO (a position of equivalent standing to a Supreme Court judge), an essential position and appointed for up to five years. There <i>may</i> also be one or more assistant crime commissioners as nominated by the minister (sections 12 to 14 and 17). Supported by staff and could engage counsel assisting (sections 25–27). • <i>The Management Committee</i> (Part 3): To oversee the activities of the QCC and refer matters to the QCC for investigation. <ul style="list-style-type: none"> – <i>Composition:</i> Crime Commissioner (as Chair), the Police Commissioner, the CJC Chairperson, the National Crime Authority Chair, the Chair and Deputy Chair of the Parliamentary Committee, the Queensland Children's Commissioner and two community representatives (one of whom must be female and one of whom must have a demonstrated interest in civil liberties). – It was said that: <i>The composition of the committee is intended to strike a balance between law enforcement on the one hand and bipartisan parliamentary, community and civil liberties</i>

Year	Act as passed	Summary of key amendments
		<p><i>representation on the other</i> (Hansard, 30 October 1997, p4110).</p> <ul style="list-style-type: none"> – <i>The role of the Parliamentary Committee</i>: A different role with regards to the QCC. Not an oversight function analogous to that for the CJC but instead the Chair and Deputy Chair of the Parliamentary Committee were part of the Management Committee. <p><i>Referrals</i> (section 46): The QCC to operate on a referral basis from its Management Committee, which could only refer matters where it was satisfied that an investigation using ordinary police powers would not be effective and that it was in the public interest for the QCC to investigate. A standing reference to allow the QCC to investigate paedophilia.</p> <ul style="list-style-type: none"> • Public interest criteria: where the seriousness, extent and consequences of the activity warrant a QCC investigation in the public interest. • Public interest test (section 46): a non-exhaustive list of matters to be considered: <ul style="list-style-type: none"> – the number of persons that may be involved – the degree of planning and organisation likely to be involved – the seriousness of or the consequences involved – the person or persons likely to be responsible for planning and organising – the likely involvement of those persons in similar activities – the financial or other benefits likely to be derived by those or other persons – whether investigation by QCC is a justifiable use of resources. <p>The Management Committee had authority and the power to place limits on a QCC investigation, including placing limits on what powers may be exercised.</p> <p><u>Powers</u>: QCC could compel a witness at a hearing to answer a question, even if the answer may be self-incriminatory. When a witness claimed privilege against self-incrimination, any answer then given under</p>

Year	Act as passed	Summary of key amendments
		<p>compulsion may not be used in any subsequent civil, criminal or administrative proceedings against the person (section 110).</p> <p><u>Hearings</u> (section 102): A QCC investigative hearing was not open to the public unless the Management Committee granted its express approval following consideration of several factors specified in the Act, including whether closing the hearing would be unfair to a person or contrary to the public interest. A witness at an investigative hearing was entitled to be legally represented but any other persons could only be present by direction of the person conducting the hearing.</p> <p><u>Use of seconded police/police</u> (section 30): The Management Committee could arrange with the Police Commissioner for a taskforce to be established to assist the QCC with an investigation. The conduct of the taskforce remained under the control of the Police Commissioner. Any police officer who was attached to a police taskforce assisting the QCC was an ‘authorised QCC officer’ which enabled them to exercise certain powers of the QCC (section 36). QCC could pass evidence of an offence on to the appropriate law enforcement agency — does not affect the right of a police officer to commence a prosecution (section 32).</p> <p><u>External/internal oversight:</u></p> <ul style="list-style-type: none"> • <i>The Management Committee</i> — as above. • <i>Parliamentary Commissioner</i> (Part 4): to undertake an annual intelligence data review held by the QCC, the Queensland Police Service (QPS) and the CJC to establish the appropriateness of data held, reveal unnecessary duplication, and determine whether agencies are working cooperatively with regards to their intelligence management; and to review decisions of QCC to refuse CJC access to QCC information. Advise the Management Committee of these reviews. Does not have the powers of a commission of inquiry when it comes to its role regarding the QCC (section 118W CC Act). <p>A new position in Queensland — the Public Interest Monitor (Part 5): to provide critical and independent probity of the use of invasive warrants by the QCC including appearing at applications for surveillance warrants and covert search warrants by the QCC to allow an independent person to test the validity of those applications. Also to: gather statistical information, report non-compliance to the Management Committee</p>

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		and must present an annual report to the minister, who must in turn report to the Parliament.
2001	<p><i>Crime and Misconduct Act 2001</i></p> <p>Introduced: 16 Oct 2001</p> <p>Assent: 8 Nov 2001</p> <p>Proclamation: 22 Nov 2001, 1 Jan 2002</p> <p>Renamed: 21 May 2014 — Crime and Corruption Commission</p>	<p>Combining the CJC and QCC into a single agency — the Crime and Misconduct Commission</p> <p>To repeal the CJ Act and the Crime and Corruption Act:</p> <p>To replace them with new, updated legislation merging the CJC and the QCC <i>into a new, refocussed Commission aimed at corruption prevention and enhancing the integrity of the public sector, as well as the previous major and organised crime and paedophilia functions of the QCC.</i></p> <p><i>Also, to recognise long standing arrangements for the resolution of police misconduct, giving the QPS more responsibility, but maintaining a strong monitoring role for the Commission, including powers to take over and complete investigations, if required</i> (Explanatory Notes).</p> <p>To establish the Crime and Misconduct Commission (CMC) with the duty to at all times act independently, impartially and fairly, but having regard to the need to achieve the purposes of the Act and the importance of protecting the public interest (section 57; recast section 22 of CJ Act).</p> <p><u>Powers:</u> Equivalent to the CJC and QCC, respectively (the Explanatory Notes stated that great care was taken in drafting to ensure where powers were updated, they did not result in an increase in power regarding crime or misconduct investigations).</p> <p><u>Structure and governance:</u></p> <ul style="list-style-type: none"> • <i>The CMC:</i> Like the CJC, it consisted of five commissioners — one full-time Chairperson and four part time commissioners (section 223), who could hold office for a term not longer than five years and not more than five years in total (section 231). <ul style="list-style-type: none"> – <i>Chairperson:</i> to be qualified for appointment as a Supreme Court or High Court judge and the appointment required bipartisan support of the Parliamentary Committee. The Chair was the CEO and financially accountable (section 251) and, subject to the Act and CMC, was responsible for the administration of the CMC and the proper performance of its functions. Presided at the CMC meetings (section 265). Also,

Year	Act as passed	Summary of key amendments
		<p>some of the Chair’s powers to undertake normal managerial functions without reference to the full CMC were returned under the Act.</p> <ul style="list-style-type: none"> – <i>The four other commissioners</i> (community representatives): (section 225) had to have a demonstrated interest in civil liberties, or qualifications or expertise in public sector management and review, criminology, sociology, research related to crime or crime prevention, or community service. Appointment involved consultation with the Chair, and bipartisan support of the Parliamentary Committee. • <i>Assistant Commissioner, Crime</i> and <i>Assistant Commissioner, Misconduct</i> — Non-voting commission members. Both were statutory appointments, needed to be qualified to be appointed as the Chairperson and were full-time roles (sections 239, 240, 244). The Assistant Commissioner, Crime was responsible to the Chair for the proper performance of the crime function; and the Assistant Commissioner, Misconduct was responsible to the Chair for the proper performance of the misconduct function (section 252, 253). The term of the appointment contract was no more than five years but could extend total time in the role up to eight years (section 247). • <i>Crime Reference Committee (CRC)</i>: Similar to the Management Committee of the QCC but changed to remove management and oversight role (these were matters for the CMC itself; section 277). Responsibility for referring major crime to the CMC for investigation and had a coordinating role for joint investigations (sections 8 and 275). Key composition change — representatives of the Parliamentary Committee were removed from the CRC given the Parliamentary Committee was again the accountability mechanism for the CMC i.e. not only the misconduct function but also the crime function, therefore representation on the CRC was no longer necessary (section 278). <p><u>Functions</u>: Prevention; Crime; Misconduct; Research; Intelligence; and Witness Protection functions:</p> <ul style="list-style-type: none"> • <i>Prevention function</i> (Chapter 2 Part 1) — to help prevent misconduct and major crime, the CMC could analyse its intelligence and the results of its investigations and information gathered from any source; could analyse prevention systems within UPAs, provide information to, consult with and make recommendations to UPAs;

Year	Act as passed	Summary of key amendments
		<p>and could provide information relevant to its prevention function to the general community.</p> <ul style="list-style-type: none"> • <i>Crime function</i> (Chapter 2 Part 2) — to investigate major crime referred to it by the CRC. Essentially replicated the QCC crime function and remained ‘reference’ based. Key change was that paedophilia became reference based also, like major and organised crime, to reflect the CMC’s role in concentrating its efforts on significant criminal activity to supplement the work of police. • <i>Misconduct function</i> (Chapter 2 Part 3) — bolstered as compared to the CJC to provide <i>greater emphasis on corruption prevention and the role in raising the standard of integrity and conduct in public administration</i> (section 33). <p>Enshrined principles for carrying out the misconduct function, in:</p> <ul style="list-style-type: none"> – recognition of the public benefit in the CMC and units of public administration working cooperatively to prevent, investigate and deal with misconduct – acknowledgment that the CMC had a lead role in building capacity to investigate and deal with misconduct in a way that promoted public confidence in the process – recognition that, subject to the other principles, misconduct should generally be investigated and dealt with within the unit where it happened, and – recognition that the CMC should exercise its power to investigate and deal with particular cases of misconduct itself when it was appropriate; and in considering when it is appropriate, regard had to: <ul style="list-style-type: none"> ○ the capacity and the resources available to the unit to effectively investigate the misconduct ○ the nature and seriousness of the misconduct, particularly if the misconduct was prevalent or systemic, and ○ the public interest in having the misconduct investigated/dealt with by the CMC (section 34). <ul style="list-style-type: none"> • For <u>police misconduct</u> — a major shift, said to ensure duplication of complaint handling was minimised. Police Commissioner had primary responsibility for dealing with police misconduct complaints whereas the CMC had primary responsibility for

Year	Act as passed	Summary of key amendments
		<p>investigating and dealing with official misconduct complaints; and for monitoring the Police Commissioner’s handling of the misconduct matters and for monitoring investigations of official misconduct referred to other public officials to investigate (sections 41, 44 to 47).</p> <ul style="list-style-type: none"> • <i>Research function</i> (Chapter 2 Part 4 Division 1) — retained from the CJC but with changes to reformulate the focus more clearly on providing support for the CMC’s core functions, which included major crime; and to undertake research into any other matter relating to the administration of criminal justice or misconduct that was referred by the minister. <p><u>NOTE:</u> The ability to conduct research on broader criminal justice system issues was relocated to a unit within government to inform whole-of-government decision-making on criminal justice issues and to facilitate justice coordination.</p> <ul style="list-style-type: none"> • <i>Intelligence function</i> (Chapter 2 Part 4 Division 2) — retained from both the CJC and QCC with emphasis to minimise unnecessary duplication of intelligence data; and the <i>witness protection function</i> (Chapter 2 Part 4 Division 3 — retained. <p><u>Hearings:</u> Generally, hearings were not open to the public (section 177). The Chair conducted all public (as distinct from private) hearings.</p> <p><u>Use of incriminating evidence:</u> When a witness is compelled to answer a question or produce a document, and a ground of privilege against self-incrimination would otherwise apply, the answer may not be used against the person at a later criminal or civil proceeding if, before being compelled, the person claims that answering the question or producing the document or thing might tend to incriminate them. There were a number of exceptions to the protection, such as if there was consent or if the proceeding was about the falsity of the answer (section 197).</p> <p><u>Use of seconded police officers</u> (section 255; modelled on section 65 CJ Act): seconded officers were subject to the direction and control of the Chairperson. <i>However, if police officers were seconded to the CMC, their efficient deployment was the joint responsibility of the Chairperson and any senior commanding police officer seconded to the CMC.</i> The clause did not apply to the establishment of a police taskforce or to police officers who were part of a police taskforce. (Section 257) Further, seconded officers remained a member of the office from which they</p>

Year	Act as passed	Summary of key amendments
		<p>were seconded apart from the ability of the Chairperson and CMC to issue directions.</p> <p><u>Relationship with the DPP</u>: mirrored the relationship between the QCC and the DPP. This is section 49. Provided the CMC with an ability to report if it investigated or took over the investigation of a complaint. It may report, inter alia, to the, DPP. Reports had to contain or be accompanied by all relevant information known to the CMC that supported a charge and provided a defence to a charge. The DPP could require the CMC to make further investigation or supply further information relevant to a prosecution.</p> <p><u>External oversight</u>:</p> <ul style="list-style-type: none"> • <i>Parliamentary Crime and Misconduct Committee</i> (PCMC) (section 9 and Chapter 6 Part 3) — a standing committee of Parliament responsible for monitoring and reviewing the CMC’s performance. The same accountability measure as the CJC but with emphasis also on CMC efficiency and effectiveness. CMC again accountable to Parliament for its crime functions through the Parliamentary Committee (unlike QCC). • <i>Parliamentary Commissioner</i> (section 10 and Chapter 6 Pt 4) — refocused the role to make it clear that the Parliamentary Commissioner was an agent of the PCMC who acted on directions from the PCMC. The primary purpose of the role was to improve the level of accountability of the CMC to the PCMC. Reports by the Parliamentary Commissioner, at the request of the PCMC, were subject to parliamentary privilege. The powers of the role were substantially retained; however, its commission of inquiry powers were instead codified and tailored to suit the oversight role. <p><i>Public Interest Monitor</i> (section 11 and Chapter 6 Part 5) — as applied to the QCC.</p>
2002	<p><i>Criminal Proceeds Confiscations Act 2002</i> (Confiscation Act)</p> <p>Introduced: 22 Oct 2002</p> <p>Assent: 29 Nov 2002</p>	<p>Responsibility for the administration of a civil proceeds of crime confiscation scheme</p> <p>The Confiscation Act aimed to deter criminal activity and confiscate the ill-gotten gains. It established two separate schemes; a conviction-based scheme administered by the DPP and a non-conviction-based scheme (not dependent on the prosecution or conviction for a criminal offence) administered by the CMC. Each scheme distinctly separate and neither limiting the other. Therefore, amendment to facilitate the</p>

Year	Act as passed	Summary of key amendments
		<p>CMC's involvement in the investigation of any confiscation related activity for the enforcement of the Confiscation Act and the powers for investigations into confiscation related activities for supporting its role under the Confiscation Act.</p>
2004	<p><i>Terrorism (Community Safety) Amendment Act 2004</i></p> <p>Introduced: 20 April 2004</p> <p>Assent: 20 May 2004</p>	<p>Extending the 'crime function' to include terrorism-related major crime</p> <p>The terrorist attacks across the world in early 2000 prompted Australian jurisdictions to examine their counter terrorism arrangements including prevention, preparedness, response and recovery capabilities. On 5 April 2002, at a Leaders' Summit on Terrorism and Multi-jurisdictional Crime, all Australian jurisdictions agreed to a new national framework. Queensland began reviewing its statutes to assess legislation to be strengthened.</p> <p>Therefore, amendment to expand the definition of <i>major crime</i> to include terrorism, something preparatory to the commission of terrorism; and something undertaken to avoid detection of, or prosecution for terrorism; thereby enabling its coercive powers to be applied for terrorism-related major crime, including investigative hearings.</p>
2005	<p><i>Cross Border Law Enforcement Legislation Amendment Act 2005</i></p> <p>Introduced: 7 June 2005</p> <p>Assent: 14 Oct 2005</p>	<p>Extending the 'crime function' to operate multi-jurisdictionally</p> <p>The Amending Act implemented the agreement of the April 2002 Leaders' Summit on Terrorism and Multi-jurisdictional Crime to develop model laws covering: controlled operations; surveillance devices; assumed identities; and witness anonymity. At the time, Queensland legislation applied only in Queensland. Therefore, it provided a legislative scheme to enable seamless cross-border investigation by law enforcement agencies of serious offences through the conferral of powers on the QPS, CMC (for its crime function only) and the Australian Crime Commission. The model laws did not cover corruption commissions therefore, the CMC's powers for its misconduct function were not changed and not extended to operate across borders.</p>
2006	<p><i>Police Powers and Responsibilities and Other Acts Amendment Act 2006</i></p>	<p>Enable use of 'Assumed Identities' for investigation and intelligence gathering for misconduct offences</p> <p>To insert new Part 6B (Assumed Identities) into the CM Act to provide for the lawful acquisition of (e.g. the need to obtain evidence such as, driver licence, birth certificate, credit card, proof of identification etc.)</p>

Year	Act as passed	Summary of key amendments
	<p>Introduced: 21 April 2006</p> <p>Assent: 1 June 2006</p> <p>Proclamation: 21 July 2006</p>	<p>and use of assumed identities by a commission officer to facilitate investigation and intelligence gathering in relation to misconduct offences; including consequential provisions arising, such as protections and indemnities for the officers, consequences for misuse of their assumed identities, and reporting and record keeping obligations etc.</p>
	<p><i>Crime and Misconduct and Other Legislation Amendment Act 2006</i></p> <p>Introduced: 19 April 2006</p> <p>Assent: 11 August 2006</p>	<p>Witness protection and other miscellaneous amendments</p> <p>The amending Act implemented outstanding government-endorsed recommendations for legislative change made in March 2004 (Report No. 64 of the Parliamentary Committee on its three-year review of the CMC) and other miscellaneous amendments to:</p> <ul style="list-style-type: none"> • provide the CMC with a new power to require the production of documents or things to help protect a protected person or the integrity of its witness protection activities i.e. this power may be used by the CMC to require banks to provide information on where a protected person last transacted to determine their location and their safety • insert a new part allowing for short-term protection arrangements where a person, or an associate of the person, has helped or is helping a law enforcement agency; not limited to court protection situations. The chairperson can enter these arrangements whenever the chairperson considers it appropriate to do so • allow an assistant commissioner to conduct <u>public</u> hearings • relax the limit on the tenure of senior officers and assistant commissioners — 10 years instead of eight years and allowing for extension for not more than 15 years in total • allow self-incriminating evidence that a person was compelled to give at a CMC hearing to be used in proceedings against that person for the falsity of other compelled evidence • clarify that the CMC can only compel persons to attend hearings for its crime or misconduct functions and witness protection function, but not for its research and intelligence functions

Year	Act as passed	Summary of key amendments
		<ul style="list-style-type: none"> clarify that a person is required to comply with a requirement of the CMC to produce documents or things for a misconduct investigation, and clarify that CMC officers and other persons can only be required to produce or disclose confidential documents or information relevant to the work of the CMC that is necessary for a prosecution started because of an investigation conducted by the CMC (not just for any investigation).
2008	<p><i>Justice Legislation Amendment Act 2008</i></p> <p>Introduced: 15 April 2008</p> <p>Assent: 23 Oct 2008</p>	<p>Clarification that local governments fall within the definition of ‘unit of public administration’</p> <p>Amendment to the definition of <i>unit of public administration</i> (a pivotal provision) to include ‘a local government’ <i>to make it clear that local government is, and always has been, subject to the Crime and Misconduct Commission’s jurisdiction</i> (Explanatory Notes). [A consequential amendment following an unintended effect of a change under the <i>Local Government and Industrial Relations Amendment Act 2008</i> that provided local governments, with the exception of the Brisbane City Council, were not corporations; this arguably removed local government from the definition due to the loss of corporate status]</p>
2009	<p><i>Crime and Misconduct and Summary Offences Amendment Act 2009</i></p> <p>Introduced: 23 April 2009</p> <p>Assent: 28 May 2009</p>	<p>Ensuring the operation of the crime referral mechanism includes specific and general referrals</p> <p>The CMC investigates major crime referred to it by the CRC. This mechanism effectively replicated the crime referral arrangement between the QCC and its Management Committee (repealed).</p> <p>Both the former QCC and the CMC operated under two types of crime referrals:</p> <ul style="list-style-type: none"> ‘<i>specific (stand-alone) referrals</i>’ that specify the particular activity being investigated and/or persons suspected of being involved in that criminal activity, and ‘<i>general (umbrella) referrals</i>’ that broadly describe the major crime activity to be investigated without having to specify individuals, groups or events i.e. classes of major crime (as opposed to particularised incidents).

Year	Act as passed	Summary of key amendments
		<p>The decision in <i>Scott v Witness C</i> (2009) QSC 35 (4 March 2009) effectively limited the CMC's major crime function to specific referrals only. The Act, inter alia, remedied the impact of the Scott case by:</p> <ul style="list-style-type: none"> • reframing the crime referral provisions to deal expressly with 'specific' and 'general' referrals • subjecting general referrals to periodic review by the CRC to ensure their ongoing appropriateness, and • retrospectively validating: general referrals made by the former Management Committee and the CRC prior to commencement; crime investigations conducted under general referrals; and the use of information and evidence obtained by a crime investigation conducted under general referrals.
2009	<p><i>Queensland Civil and Administrative Tribunal (Jurisdiction Provision) Amendment Act 2009</i></p> <p>Introduced: 18 May 2009</p> <p>Assent: 26 June 2009</p> <p>Proclamation: 1 Dec 2009</p>	<p>Abolition of the misconduct tribunals and conferral of jurisdiction</p> <p>The <i>Queensland Civil and Administrative Tribunal [QCAT] Act 2009</i> established QCAT and the Amendment Act conferred jurisdiction on QCAT through amendments to over 200 pieces of legislation; they were introduced and debated together. The range of jurisdiction conferred on QCAT encompassed the existing jurisdictions of 18 tribunals, which were then abolished as a result, including jurisdiction to conduct disciplinary proceedings previously held by misconduct tribunals. Consequential amendments were made to the CM Act to replicate the relevant provisions from the repealed Misconduct Tribunals Act.</p> <p>The opportunity was also taken to clarify the policy purpose of disciplinary proceedings and distinguish them from criminal prosecutions. It was expressly provided that the purposes of providing for disciplinary proceedings are to: protect the public; to uphold ethical standards within units of public administration and the police service and to promote and maintain public confidence in the public sector.</p> <p>NB. The <i>State Penalties Enforcement and Other Legislation Amendment Act 2009</i> (assent 19 Nov 2009) made minor and technical amendments to the CM Act, including all residual references to the misconduct tribunals changed to the new QCAT.</p>

Year	Act as passed	Summary of key amendments
2012	<p><i>Criminal Law (False Evidence Before Parliament) Amendment Act 2012</i></p> <p>Introduced: 19 June 2012</p> <p>Assent: 14 Aug 2012</p>	<p>An amendment to section 49 of the Crime and Misconduct Act</p> <p>The Amendment Act reintroduced, with amendment, the repealed offence under section 57 of the Criminal Code of knowingly giving false evidence to Parliament or to its committees. Thereafter, by amendment during the Bill’s debate, other repealed offences under section 56 (prohibiting disturbing the Legislative Assembly while in session) and section 58 (applying to witnesses who refuse to attend or give evidence before Parliament or a Parliamentary Committee) were also reintroduced under the Criminal Code. A consequential amendment was made to section 49 of the CM Act to provide that: <i>if the CMC decides that prosecution proceedings for an offence under the Criminal Code, section 57 should be considered, the CMC must report on the investigation to the Attorney-General.</i></p>
2013	<p><i>Crime and Misconduct Commission (Administrative Negligence Rectification) Amendment Act 2013</i></p> <p>Introduced: 7 March 2013</p> <p>Assent: 14 March 2013</p>	<p>Remediate the release of restricted documents due to administrative error by CMC</p> <p>An amendment (introduced and passed on the same day) following the discovery that between 1 February 2012 and 5 March 2013 documents from the 1989 Fitzgerald Inquiry were released due to an administrative error by the CMC. The media reported that a reclassification of the documents’ restricted access status, from 65 years to 25 years, by the CMC under the <i>Public Records Act 2002</i>, meant that documents potentially containing sensitive information were publicly available and accessible. The urgent amendment prevented the use and dissemination of that information by creating a specific offence prohibiting this.</p>
2013	<p><i>Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Act 2013</i></p> <p>Introduced: 28 Nov 2012</p> <p>Assent: 14 May 2013</p> <p>Proclamation: 6 Sept 2013</p>	<p>Unexplained wealth orders and serious drug offender confiscation order, administered by the CMC</p> <p>New Part 5A was inserted into Chapter 2 of the <i>Criminal Proceeds Confiscation Act 2002</i> (Confiscation Act) to introduce unexplained wealth orders to be administered by the CMC. Chapter 2 is the non-conviction-based chapter of the Confiscation Act and already administered by the CMC. The DPP is the solicitor on the record for all proceeding under the Confiscation Act. An unexplained wealth order is a debt payable by the person to the state.</p> <p>Additionally, new Chapter 2A was inserted into the Confiscation Act to create the ‘serious drug offender confiscation scheme’ to also be administered by the CMC. The DPP to be the solicitor on the record.</p>

Year	Act as passed	Summary of key amendments
		<p>The Supreme Court, as a preliminary step, can make restraining orders over property so that the property is preserved for possible future forfeiture under a new serious drug offender confiscation order. The effect of the order is that it forfeits all property of the person and all property that was gifted by the person in the six years before the person was charged with the qualifying offence, to the state.</p> <p>Consequential amendments to the CM Act arising; and to clarify that when performing its crime function, the CMC may gather evidence for the recovery of property under a serious drug offender confiscation order or an unexplained wealth order.</p>
	<p><i>Criminal Law (Criminal Organisations Disruption) Amendment Act 2013</i></p> <p>Introduced: 15 Oct 2013</p> <p>Assent: 17 Oct 2013</p>	<p>CMC as ‘Queensland’s major crime-fighting body’ and to investigate criminal motorcycle gangs</p> <p>On 28 September 2013, following violence at Broadbeach involving outlaw motorcycle gangs, a zero-tolerance crackdown on criminal organisations was announced. Three Bills were introduced, declared urgent and together, proposed wide ranging amendments to various Acts to deliver a package of anti-criminal-organisation reforms (the laws were known as the ‘VLAD laws’).</p> <p>Amendment to the CM Act to:</p> <ul style="list-style-type: none"> • Expand the crime function to provide additional powers to the CMC to allow hearings to gather intelligence, and to investigate or hold hearings to respond to an immediate threat to public safety, in particular: <ul style="list-style-type: none"> – (insert new Chapter 2 Part 4 Division 2A) to enable the CMC, upon reference from the CRC on its own initiative or if asked by the Assistant Commissioner, Crime or the Assistant Commissioner, Misconduct, to undertake a specific intelligence operation, including holding intelligence hearings, about ‘<i>criminal organisations</i>’ or ‘<i>participants in a criminal organisations</i>’ who have engaged in or are planning to engage in criminal activity; or for a person who has, is or is going to engage in misconduct to support or help a criminal organisation or participant in a criminal organisation, and – (insert new Chapter 2 Part 4 Division 2B) to establish a new <i>immediate response function</i> for the CMC to enable a crime investigation or hold an intelligence function hearing

Year	Act as passed	Summary of key amendments
		<p>about an incident that has threatened or may threaten public safety and that involves a criminal organisation or a participant in a criminal organisation, upon the authorisation of the Chairperson (not the CRC).</p> <ul style="list-style-type: none"> • Expand the exceptions to the ‘use immunity’ in section 197 to allow the use of information (i.e. information that tends to incriminate the person) from <i>any CMC investigation or hearing</i> to be used in confiscation proceedings to enhance the CMC’s ability to confiscate assets and combat major crime. The change was not confined to criminal organisations. • Clarify that a ‘reasonable excuse’ (i.e. to refuse to produce information or answer a question) does not include the person’s fear (whether genuinely held or not) of retribution to the person (or someone else) or to property of the person (or to someone else’s property), where that person is a participant in a criminal organisation and the crime investigation or intelligence hearing is about a criminal organisation or participant in a criminal organisation. • Impose mandatory imprisonment as the punishment for contempt, when the contempt involves a refusal to take an oath, answer a question or produce a stated document or thing at <i>any CMC hearing</i> (not confined to criminal organisations), namely: <ul style="list-style-type: none"> – a term of actual jail to be decided by the court for the first contempt – two and a half years actual imprisonment for the second contempt, and – five years actual imprisonment for the third and any subsequent contempt. • Authorise the CMC to request a police officer to detain a <i>witness</i> in contempt (not confined to participants in criminal organisations) of the presiding officer pending the issue of a warrant of apprehension and the bringing of the person to court to deal with the contempt. • Prevent a person charged with a criminal offence from accessing evidence obtained in an intelligence hearing for the purposes of a criminal prosecution under section 201. The

Year	Act as passed	Summary of key amendments
		<p>effect of the amendment is that it allows the CCC to withhold information that may be of an exculpatory nature and that could potentially assist a person in their defence of a criminal charge.</p> <ul style="list-style-type: none"> Clarify that financial help to obtain legal assistance for crime investigations (as per section 205) does not apply to a crime investigation authorised under the new immediate response function.
2013	<p><i>Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013</i></p> <p>Introduced: 19 Nov 2013</p> <p>Assent: 27 Nov 2013</p>	<p>Further amendments to combat criminal motorcycle gangs</p> <p>The amending Act further aimed to combat the threat of criminal motorcycle gangs to public safety and the threat posed to certain licensed industries and authorised activities, through enhanced information-sharing, licensing, interrogatory and correctional powers.</p> <p>Further amendments to the CM Act:</p> <ul style="list-style-type: none"> clarifying the powers of the CMC to hold intelligence hearings about criminal organisations i.e. to clarify that the CMC may continue to investigate into the affairs of a person, including requiring the person to provide answers, when that person has been charged with a criminal offence; require that the CMC must take certain action to prevent unfairness to a charged person in their criminal trial; and that (for the purposes of the section) a criminal proceeding commences from when the person is charged expanding the definition of ‘<i>participant in a criminal organisation</i>’ to a person who was a participant at any time in the preceding two years providing for confidentiality of CMC operations and investigations, and including safeguards to ensure no unfairness is caused to a person who is a defendant in later criminal proceedings as a result of the use in a confiscation proceeding of any compelled self-incriminating evidence given by the person in a CMC hearing or investigation.

Year	Act as passed	Summary of key amendments
2014	<p><i>Crime and Misconduct and Other Legislation Amendment Act 2014</i></p> <p>(<i>Crime and Corruption Act 2001</i>) (renamed)</p> <p>Introduced: 19 March 2014</p> <p>Assent: 21 May 2014</p> <p>Proclamation: 20 June 2014</p>	<p>Substantial changes to the CMC following delivery of the Callinan/Aroney Report to Government</p> <p>Renamed the CMC as the Crime and Corruption Commission.</p> <p>Additionally, the ‘misconduct function’ was renamed the ‘corruption function’, ‘official misconduct’ was renamed ‘corrupt conduct’ and the ‘chairperson’ to be known as the ‘chairman’.</p> <p><u>Functions and powers:</u></p> <ul style="list-style-type: none"> • Narrowed the definition of <i>official misconduct</i> (renamed corrupt conduct): The Callinan/Aroney report found that the definition of ‘official misconduct’ had a wider application when compared with the definitions in other interstate anti-corruption legislation; and that the threshold for what constituted official misconduct should be narrowed. <p>Further, Callinan/Aroney were of the view the CCC’s focus should be on investigating serious cases of corrupt conduct. In addition to changing the definition of ‘official misconduct’, Callinan/Aroney recommended a number of other strategies designed to reduce the number of matters referred to, and investigated by the CCC, which were implemented:</p> <ul style="list-style-type: none"> – raised the threshold of when public officials were to notify the CCC of corrupt conduct so that notification was only required when the public official <i>reasonably suspects</i> corrupt conduct (as compared to <i>suspects</i>) – required the CCC to only investigate the more serious cases of corrupt conduct – expanded the grounds upon which the CCC may dismiss or take no action in relation to a complaint to also include when the complaint was: not made in good faith; made for a mischievous purpose; made recklessly or maliciously; not within the commission’s jurisdiction; not in the public interest or had been dealt with by another entity – required a complaint to be made by way of a statutory declaration, except if the CCC determined exceptional circumstances existed (such as: a fear of retaliation; literacy level or competency in English; a disability that affects the person’s ability to make the complaint by statutory

Year	Act as passed	Summary of key amendments
		<p>declaration; a child). A consequential impact was that complaints could no longer be anonymous.</p> <ul style="list-style-type: none"> • Removed the corruption prevention function of the CCC i.e. no longer responsible for the prevention of corruption and ensuring integrity of units of public administration (but retained its crime prevention function); and narrowed the research function of the CCC: <ul style="list-style-type: none"> – Callinan/Aroney recommended that the corruption prevention function for misconduct should cease and that this would allow the CCC to focus on investigating serious cases of corrupt conduct. The corruption function was to ensure complaints about corruption were dealt with in an appropriate way having regard to the amended principles (omitted references to the prevention of misconduct and integrity of public administration). CCC retained its crime prevention function. – Amendment to refocus responsibility of conduct in public sector agencies to line managers, and ultimately CEOs, to be dealt with promptly and with the Public Service Commission having a role in the monitoring and auditing of agency responses. – Callinan/Aroney were of the view that ‘non-specific research by the CCC was a distraction, and not such as to justify the expense and resources needed for it.’ (recommendation 12). To ensure research was focussed and relevant, CCC research was to be undertaken in accordance with a three-yearly research plan that had to be approved by the minister, who must consult with the Parliamentary Committee in this regard. <p><u>Structure and governance:</u> Significant changes to the upper governance structure of the CCC.</p> <ul style="list-style-type: none"> • <i>The CCC:</i> responsible for setting strategic direction and to provide strategic leadership to the CCC. <ul style="list-style-type: none"> – To comprise five commissioners — one full-time legally qualified Chairman; one a part-time legally qualified Deputy Chairman; two part-time Ordinary Commissioners with the qualifications, skills or standing appropriate to assist the CCC perform its functions; and one full-time CEO (not the Chairman) who is responsible to the CCC for its administration.

Year	Act as passed	Summary of key amendments
		<ul style="list-style-type: none"> – Commissioners appointed by the Governor in Council for a term of up to five years and may be reappointed for a total period of appointment (increased) up to ten years. – Bipartisan approval by the Parliamentary Committee for the appointment of a commissioner (including the Chairman) was removed. – Instead, the minister was required to consult with the Parliamentary Committee prior to the appointment or reappointment of any of the commissioners, and the Parliamentary Committee may veto the person’s nomination by giving the minister notice. <ul style="list-style-type: none"> • <i>The Chairman</i>: responsible for, and to report to the CCC on, all operational matters but not bound by directions from the CCC except in relation to strategic direction; responsible to the CCC for performing its functions and exercising powers. • <i>The CEO</i>: was a Commissioner and pivotal to the effective management of the CCC. Responsible for the proper administration of the CCC; the employment, management and discipline of CCC staff; the management of the CCC’s documents (including the 1989 Fitzgerald Inquiry documents); the preparation and compliance with the CCC’s budget, including financial responsibilities; and setting benchmarks for assessing and investigating complaints about corruption and ensuring the benchmarks are met by CCC staff. The CEO was to report to the CCC on these matters and bound by the directions from the CCC. <p>The CEO may also issue directions to CCC staff as to how they were to decide whether a complaint involved a more serious case of corrupt conduct or a case of systemic corrupt conduct within a unit of public administration. In issuing the direction, the CEO was subject to the direction and control of the Chairman.</p> <ul style="list-style-type: none"> • <i>Sessional commissioners (new)</i>: The Chairman may appoint sessional commissioners to help the Chairman perform the CCC’s functions or exercise the CCC’s powers by conducting hearings, examining witnesses or conducting specific investigations. • <i>Senior executive officers (Crime) and (Corruption)</i>: The role and powers of the former Assistant Commissioner, Crime and Assistant Commissioner, Misconduct were transferred to ‘Senior Executive

Year	Act as passed	Summary of key amendments
		<p>Officers' — no longer appointed by the Governor in Council but instead appointed by the CCC.</p> <p><u>Use of seconded police officers:</u> Nil changes.</p> <p><u>Relationship with the DPP:</u> Nil changes.</p> <p><u>External oversight:</u></p> <ul style="list-style-type: none"> Amendment to section 329 to require the Chairman, Deputy Chairman or CEO to notify the Parliamentary Commissioner and Parliamentary Committee, of any conduct by a CCC officer that involved or may involve 'improper conduct' (definition of 'improper conduct' was widened). <i>Parliamentary Committee</i> meetings with the CCC must be held in public, except where the committee considers the confidential and sensitive nature of the information being discussed needs protection or may jeopardise ongoing investigations. <p>Amendment, at the request of the committee in two of its reports (i.e. 2009 and 2012), to extend the interval at which its statutory review of the activities of the CCC was to be conducted, from three yearly to five yearly to allow sufficient time for recommendations to be implemented and monitored before the next review is to occur.</p> <ul style="list-style-type: none"> <i>Parliamentary Commissioner:</i> powers enlarged by allowing the Commissioner to investigate complaints on their own initiative; removing the requirement for the bipartisan approval by the Parliamentary Committee for the Parliamentary Commissioner to hold hearings; and allowing reports of the Parliamentary Commissioner to be used by the CCC's CEO in deciding whether to take disciplinary action, and what disciplinary action should be taken, against CCC officers.
2014	<p><i>Criminal Law Amendment Act 2014</i></p> <p>Introduced: 8 May 2014</p> <p>Assent: 15 Aug 2014</p>	<p>Reintroduction of the need for Parliamentary Committee support for particular CCC appointments</p> <p>The CC Act was amended to reintroduce the requirement for bipartisan Parliamentary Committee support for the appointment of the Chairman, Deputy Chairman and ordinary commissioners of the CCC. That is, the Parliamentary Committee assumed the same role it had regarding to the permanent appointment of these positions prior to the</p>

Year	Act as passed	Summary of key amendments
		<p>changes made under the <i>Crime and Misconduct and Other Legislation Amendment Act 2014</i> (see above).</p> <p>The change was an acknowledgement by government of stakeholder concern. However, as the CEO role was established by the 2014 Amendment Act, it was considered that there was no need to introduce a bipartisan appointment process; therefore, no change made.</p>
2015	<p><i>Electoral and Other Legislation Amendment Act 2015</i></p> <p>Introduced: 27 March 2015</p> <p>Assent: 14 May 2015</p>	<p>The remuneration package for the CCC Chair to include access to a (modified) judicial pension</p> <p>The amendments gave effect to the government’s election commitment that the CCC Chairman (CCC), for future appointments, would have access to a judicial pension as part of their remuneration package. The change to pension entitlements were similar, but not identical, to that paid to judges under the Judges Pensions Act; with modification to acknowledge the differences between the positions of Chairman and Supreme or District Court judge. The aim was to ensure the recruitment process for the new CCC Chairman would attract high-quality candidates; someone independent and non-politicised.</p>
2016	<p><i>Crime and Corruption Amendment Act 2016</i></p> <p>Introduced: 1 Dec 2015</p> <p>Assent: 5 May 2016</p>	<p>To unwind the 2014 Amendments to ‘restore the CCC’s independence and integrity’</p> <p>The amendments gave effect to the government’s election commitment to restore the CCC’s independence and integrity, and winding back changes under the 2014 Amendment Acts, namely by:</p> <ul style="list-style-type: none"> • providing that the CEO was no longer a ‘commissioner’ (an approach said to be consistent with best practice governance arrangements) • requiring bipartisan support of the Parliamentary Committee for the appointment of the CEO role • reinstating the ‘<i>corruption prevention function</i>’ to enable the CCC to build the capacity of UPAs to prevent corruption. The legislated principles were also amended to include: to the greatest extent practicable, the CCC and UPAs should work together to prevent corruption (under the <i>cooperation</i> principle); the CCC has a lead role in building the capacity of UPAs to prevent and deal with cases of corruption effectively and appropriately (new <i>capacity building</i> principle); and the CCC has an overriding responsibility to promote public

Year	Act as passed	Summary of key amendments
		<p>confidence in the integrity of units of public administration (under the <i>public interest</i> principle).</p> <p>The amendment also modified the devolution principle to provide that, subject to the cooperation and public interest principles and the capacity of the unit of public administration, action to prevent and deal with corruption in a unit of public administration should generally happen within that unit.</p> <ul style="list-style-type: none"> • returning the '<i>research function</i>' to the pre-2014 Amendment status i.e. to undertake research to support the proper performance of its functions; 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 CCC by the minister; and to undertake research into any other matter relevant to any of its functions • allowing complaints to be made anonymously to the CCC i.e. a statutory declaration no longer required, so as to foster a culture that encourages complaints about corruption to be made. <p>Amendments to restore gender neutral language to the title of the CCC Chair position.</p>
	<p><i>Serious and Organised Crime Legislation Amendment Act 2016</i></p> <p>Introduced: 13 Sept 2016</p> <p>Assent: 9 Dec 2016</p>	<p>To unwind the 2013 'VLAD laws' and establish a new Organised Crime Regime in Queensland</p> <p>The amending Act repealed the 2013 'VLAD laws' and implemented a new Organised Crime Regime in Queensland to tackle serious and organised crime in all its forms. The regime drew on the recommendations of the three reviews commissioned by the government into organised crime: the Queensland Organised Crime Commission of Inquiry; the Taskforce on Organised Crime Legislation; and the statutory review of the <i>Criminal Organisation Act 2009</i>.</p> <p>For the CCC, the amendments effectively repealed or wound back the 2013 changes, namely to:</p> <ul style="list-style-type: none"> • Provide the CRC an oversight role for the use of its immediate response function. The authorisation may be given by the CRC on its own initiative or if asked by the Senior Executive Officer (crime) or Senior Executive Officer (corruption).

Year	Act as passed	Summary of key amendments
		<ul style="list-style-type: none"> • Replace the fixed mandatory minimum sentencing regime for contempt with an escalating maximum penalty regime (noting the clear intention that, absent exceptional circumstances, each ‘repeated contempt’ must be punished to a greater extent than the previous). • Repeal the 2013 amendment: <ul style="list-style-type: none"> – removing fear of retribution as a reasonable excuse for not complying with the coercive powers – providing the CCC with an absolute discretion to refuse to disclose evidence to a person that could be used in a person’s defence of criminal charges, and – excluding a person’s right to apply for financial assistance for legal representation at a crime hearing under the immediate response function. <p>To enable CCC officers (a corresponding amendment for police officers also) to request an order requiring a person to provide access information to a computer or other storage device regarding information stored electronically i.e. passwords and passcodes.</p>
2018	<p><i>Crime and Corruption and Other Legislation Amendment Act 2018</i></p> <p>Introduced: 15 Feb 2018</p> <p>Assent: 9 Nov 2018</p> <p>Proclamation: 15 Feb 2019</p>	<p>Expanding ‘corrupt conduct’ and implementing Parliamentary Committee recommendations</p> <p>The amending Act largely replicated the Crime and Corruption and Other Legislation Amendment Bill 2017 which was introduced in March 2017 but lapsed when the October 2017 State Election was called.</p> <p>Implemented the recommendations from Report No. 97 of the Parliamentary Committee (Review of the CCC) as per the government response tabled in Parliament on 16 December 2016, and from Report No. 99 (Report on a complaint by Mr Darren Hall) as per the government response tabled in Parliament on 27 February 2017. Also, to deliver the election commitment to widen the definition of <i>corrupt conduct</i>.</p> <p><u>‘Corrupt conduct’</u>: Amendment to:</p> <ul style="list-style-type: none"> • Widen the definition to capture conduct of people outside the public sector that impairs or could impair public confidence in public administration. For example, this type of conduct might involve collusive tendering, fraud in relation to applications for

Year	Act as passed	Summary of key amendments
		<p>licences or permits issued by government, or where a person fraudulently obtains or retains an appointment within a UPA. The amendment recognised the increasing degree of outsourcing and public-private partnerships in the delivery of government services as well as the increased potential for private citizens engaged in these service delivery arrangements to engage in corrupt conduct.</p> <ul style="list-style-type: none"> • Broaden the investigative jurisdiction of the CCC by expanding its corruption functions to enable it to investigate or otherwise deal with conduct liable to allow, encourage or cause corrupt conduct; or conduct connected with corrupt conduct, as well as to investigate whether this may have happened, may be happening or may happen. <p><u>Report No. 97 of the Parliamentary Committee:</u> Amendment to, inter alia:</p> <ul style="list-style-type: none"> • provide that the Chair of the CCC is the Chair of the CRC and enabling delegation to the Senior Executive Officer (Crime) • (section 49) remove the power for the CCC to refer corruption investigation briefs to the Office of the Director of Public Prosecutions (ODPP) for the purposes of considering prosecution proceedings (Recommendation 5). It was said that the amendment would not affect the ability for evidence gathered by the CCC during the course of its corruption investigation to be provided to the QPS and consequentially to the ODPP as a part of the usual prosecutorial process • (section 197) provide express authorisation for the derivative use of compelled evidence obtained under the CC Act (Recommendation 4) <p><i>‘However, the amendment to section 197 does no more than confirm the existing position that evidence of a compelled witness cannot be used directly against them in a civil, criminal or administrative proceeding, but it may be used indirectly or derivatively against them. It is also important to note that this amendment merely clarifies that the direct use immunity under section 197(2) does not prevent derivative evidence from being admissible in subsequent proceedings. The result of the amendment does not mean that such derivative evidence will be automatically admissible. The [Act] in no way affects or</i></p>

Year	Act as passed	Summary of key amendments
		<p><i>restricts a court's inherent jurisdiction to supervise and control its own processes and determine the admissibility of evidence in a proceeding.</i></p> <p><i>Further, in a criminal proceeding the courts will continue to have the ability under section 130 of the Evidence Act 1977 to exclude evidence if satisfied that it would be unfair to the person charged to admit that evidence. Fundamentally, if the commission were unable to derive evidence from answers provided by individuals under compulsion, this would significantly undermine the effectiveness of the coercive powers under the Crime and Corruption Act and the commission's objective of combating and reducing the incidence of major crime and corruption in Queensland. As a result, this is an important clarifying amendment that reflects the existing law and practices employed by the commission' (Hansard, 31 October 2018, p3230)</i></p> <ul style="list-style-type: none"> • require UPAs to keep accurate records of any decision by a public official not to notify the CCC of a complaint, or information or matter, which alleges corrupt conduct but does not meet the reasonable suspicion notification threshold under section 38 of the CC Act (Recommendation 12). It was said that the amendment would enhance the CCC's ability to effectively assess the appropriateness of systems and procedures adopted by units of public administration when dealing with complaints about corrupt conduct. <p><u>Report No. 99 of the Parliamentary Committee:</u> Amendment to stipulate that the CCC must not include adverse information about a person in a report which is to be tabled in the Legislative Assembly, or published to the public under the CC Act, unless, before the report is prepared, the CCC gives the person an opportunity to make submissions about the information. This procedural fairness requirement does not extend to the covert reporting of the CCC, for example, criminal intelligence reports the CCC provides to other law enforcement agencies; reports prepared by the CCC under section 49; or media statements published on the CCC's website.</p>

APPENDIX E: AN ANALYSIS OF AUSTRALIA'S COMPARABLE CORRUPTION BODIES

Overview

All Australian jurisdictions, except for the Commonwealth, have an integrity body with a corruption function, namely:

- **Queensland** (Qld) — the *Crime and Corruption Act 2001* establishes the Crime and Corruption Commission (CCC)
- **New South Wales** (NSW) — the *Independent Commission Against Corruption Act 1988* establishes the Independent Commission Against Corruption (NSW ICAC)
- **Victoria** (Vic) — the *Independent Broad-based Anti-Corruption Commission Act 2011* establishes the Independent Broad-based Anti-Corruption Commission (Vic IBAC)
- **Western Australia** (WA) — the *Corruption, Crime and Misconduct Act 2003* establishes the Corruption and Crime Commission (WA CCC)
- **South Australia** (SA) — the *Independent Commission Against Corruption Act 2012* establishes the Independent Commission Against Corruption (SA ICAC)
- **Tasmania** (Tas) — the *Integrity Commission Act 2009* establishes the Integrity Commission
- **Northern Territory** (NT) — the *Independent Commissioner Against Corruption Act 2017* establishes the Independent Commissioner Against Corruption (NT ICAC)
- **Australian Capital Territory** (ACT) — the *Integrity Commission Act 2018* establishes the Integrity Commission

The tables below provide a targeted analysis of the Australian integrity bodies with a comparable corruption function to the CCC (noting, in Qld and WA the integrity body also has a crime function; and in NSW, its Crime Commission is separately tasked with a comparable crime function).⁷²⁰

Table 1 provides a comparative overview of the corruption bodies — focusing on the use of seconded police, the charging powers of the integrity body itself, whether advice can be sought from the Director of Public Prosecution (DPP), and the external oversight mechanisms applicable.

Table 2 provides a jurisdiction-by-jurisdiction examination of each of the corruption bodies (except for Qld) — again, with focus on the use of seconded police, the relationship with the DPP and the external oversight mechanisms in place.

Table 1: An overview of Australia's corruption bodies

	Qld	NSW	Vic	WA	SA	Tas	NT	ACT
Year of commencement	1989	1988	2012	2004	2013	2010	2018	2019
Dual crime and corruption function	✓	✗	✗	✓	✗	✗	✗	✗
Corruption function only	✗	✓	✓	✗	✓	✓	✓	✓
Seconded police officers:								
<ul style="list-style-type: none"> • Legislation provides for use of seconded police 	✓	✓	✓	✓	✓	✓	✓	–
<ul style="list-style-type: none"> • In practice, seconded police are used 	✓	✗	✗	✓	✓	✓	✗	✓
<ul style="list-style-type: none"> • Retain their police powers 	✓	✓	–	✗	✓	✓	✓	✗
Commission has charging powers	✗	✓	✓	✓ ⁷²¹	✗	✗	✗	✗
Commission is legislatively permitted to seek advice from and/or refer to the DPP	✗	✓	✓	✓	✗	✓	✓	✓
Commission can conduct prosecutions	✗	✗	✓	✗	✗	✗	✗	✗
Oversight mechanisms:								
<ul style="list-style-type: none"> • Parliamentary Committee 	✓	✓	✓	✓	✓	✓	✓	✓
<ul style="list-style-type: none"> • Independent inspector or reviewer; Parliamentary inspector/commissioner 	✓	✓	✓	✓	✓	✗	✓	✓

Table 2: A jurisdiction-by-jurisdiction examination of Australia's corruption bodies**New South Wales — NSW ICAC — *Independent Commission Against Corruption Act 1988***

Use of seconded police: NSW ICAC may arrange for one or more police officers to be made available (through secondment or otherwise) to perform services for it (s 104A(2)). A seconded police officer, who is an NSW ICAC investigator has, and may exercise, all functions that a police officer of the rank of constable has (s 101B). A member of the NSW Police Force working for the NSW ICAC may continue to act as a constable (s 105). They retain their rank, seniority and remuneration as a police officer (s 104, Schedule 3). The ICAC has not engaged seconded NSW police officers since 2008.⁷²²

Relationship with DPP: A function of NSW ICAC is 'to gather and assemble, during or after the discontinuance or completion of its investigations, evidence that may be admissible in the prosecution of a person for a criminal offence against a law of the State in connection with corrupt conduct and to furnish such evidence to the Director of Public Prosecutions' (s 14). Briefs of evidence are usually furnished to the DPP after NSW ICAC has completed its investigation and its report on the investigation (required under s 74) is public.

The decision on whether to commence criminal proceedings because of the NSW ICAC investigation is a matter for the DPP.⁷²³ A Memorandum of Understanding (MOU) exists between NSW ICAC and the Office of the Director of Public Prosecutions (ODPP). Criminal proceedings are generally commenced by a court attendance notice (CAN). NSW ICAC prepares the CAN in accordance with ODPP advice and serves the CAN. ODPP is named in all CANs as the prosecutor; no NSW ICAC officer is named as prosecutor. All prosecution proceedings are conducted by the ODPP.⁷²⁴

After completion of an investigation, the DPP may request NSW ICAC (s 52A) to obtain information, obtain documents, enter public premises and issue a search warrant.

External oversight: NSW ICAC is overseen by an inspector and a Parliamentary Committee.

Inspector: The inspector and assistant inspector are appointed by the Governor (ss 57A, 57AA). The principal functions of the inspector are to: audit operations of NSW ICAC to monitor compliance with the state laws; deal with complaints of abuse of power, impropriety, and other forms of misconduct and to deal with conduct amounting to maladministration by NSW ICAC or its officers (by reports and recommendations); and assess the effectiveness and appropriateness of the procedures of NSW ICAC, relating to the legality or propriety of its activities (s 57B). Their powers include to: investigate any aspect of NSW ICAC's operations or any conduct of its officers; require NSW ICAC officers to supply information or produce documents or other things; require NSW ICAC officers to attend before the inspector to answer questions or produce documents or other things; investigate and assess complaints about NSW ICAC or its officers; and recommend disciplinary action or prosecution (s57C).

Parliamentary Committee: The functions of the committee on the ICAC include to: monitor and review the exercise of NSW ICAC and inspector functions; examine trends and changes in corrupt conduct; report to both Houses on any recommended changes to the functions, structure, or procedures of NSW ICAC (s 64).

Victoria — Vic IBAC — *Independent Broad-based Anti-Corruption Commission Act 2011*

Use of seconded police: Vic IBAC may enter into agreements for the use of services of any staff of a department, statutory authority, or other public body (s 35(2)). Persons employed under section 35(2) is considered an 'IBAC officer' (s 3). Vic IBAC does not use seconded police officers (although it can).⁷²⁵

Relationship with DPP: Vic IBAC can make referrals to other persons and bodies and may refer complaints for investigation (s 15). It can refer any matter to a prosecutorial body that it considers relevant to the performance of the prosecutorial duties and functions or exercise of the prosecutorial powers of that body (s 74). Vic IBAC may also consult with the body when deciding whether to make a referral to that body (s 76). When any matter is referred to a prosecutorial body, Vic IBAC must notify the Chief Commissioner of Police and of the advice received from the prosecutorial body (s 75).

Vic IBAC's in-house prosecutors appear in matters in the summary jurisdiction involving corrupt conduct. It works with the Office of Public Prosecutions in the prosecution of indictable offences. Vic IBAC has the power to commence proceedings (ss 189, 190) for any offence under the IBAC Act or for any offence relating to any matter arising out of a Vic IBAC investigation. For indictable offences, Vic IBAC will usually seek advice from the DPP on charges, and where charges are filed, the DPP takes over the prosecution from first hearing.⁷²⁶ The procedure for referrals is governed by a protocol agreement between the two agencies.⁷²⁷

External oversight: Vic IBAC is overseen by an inspector and a Parliamentary Committee.

Inspector: The Victorian Inspectorate, inter alia, provides oversight of Vic IBAC (*Victorian Inspectorate Act 2011*, s1); it does not represent the Crown (s 8) and is a body corporate with perpetual succession (s 9). It is an independent officer of the Parliament (s 17). Its functions are to: monitor the compliance of Vic IBAC with its Act and other laws; oversee Vic IBAC's performance of its functions under the *Public Interest Disclosure Act 2012*; assess the effectiveness and appropriateness of Vic IBAC's policies and procedures; receive complaints about the conduct of Vic IBAC; investigate and assess Vic IBAC's conduct; and monitor Vic IBAC's interactions with other integrity bodies.

Parliamentary Committee: The Integrity and Oversight Committee oversees Vic IBAC, the Victorian Inspectorate and other bodies. Its functions include to: monitor and review the performance and functions of the Inspectorate and Vic IBAC; report to both Houses; examine any reports made by the Inspectorate or Vic IBAC; and consider the appointment of the Inspectorate and the Commissioner of Vic IBAC and exercise the power of veto (*Parliamentary Committees Act 2003*, s 7).

Western Australia — WA CCC — *Corruption, Crime and Misconduct Act 2003*

Use of seconded police: WA CCC may arrange for the secondment/engagement of any officer or employee from a public service or state agency, a member of the Australian Federal Police, or a member of the police force of another state, territory, or country (s 181). An arrangement regarding staff or facilities of the police force is made with the Commissioner of Police on terms agreed by the parties (s 181). A term must not exceed five years but there can be reappointment (s 179).

A person seconded or engaged with the WA CCC is subject to the control and direction of WA CCC and not to any other employing authority (s 181). Seconded police officers do not retain their police powers for the period of the secondment.⁷²⁸ Police are, instead, 'authorised officers' of the WA CCC (s 184). An authorised officer of the WA CCC may exercise the powers of a police officer (s 184); and may perform all functions that a police officer has, but only when acting in their capacity as a WA CCC authorised officer (s 184). Seconded police play no role in the processes connected with decisions to commence prosecutions arising from WA CCC investigations.

Relationship with DPP: WA CCC has the power to commence prosecutions.⁷²⁹ In performing its serious misconduct function, WA CCC may refer an allegation or matter to an independent agency or an appropriate authority for action (s 18(2)(c)) and may assemble evidence and furnish it to the DPP or another authority, such as the State Solicitor's Office (SSO) (ss 18(2)(h), 152(4)(b)). The referral must be accompanied by a recommendation as to whether consideration should be given to prosecution or disciplinary action, and information WA CCC considers will assist the agency to act (s 37). The DPP does not currently accept briefs of evidence directly from WA CCC — it does so via the SSO.⁷³⁰ WA CCC, SSO and ODPP are in the process of developing an MOU to govern matters associated with prosecutions arising from WA CCC investigations.⁷³¹

External oversight: WA CCC is overseen by an inspector and a Parliamentary Committee.

Inspector: The Parliamentary Inspector is an officer of Parliament (s 189), appointed on the recommendation of the Premier (s 189), to assist the Parliamentary Committee in the performance of its functions (s 188). Its functions (s 195) include to: audit the operations of WA CCC for compliance with state laws; deal with matters of misconduct on the part of WA CCC and WA CCC officers, and its officers; assess the effectiveness and appropriateness of WA CCC's procedures; and make recommendations to WA CCC, either House of Parliament and the Parliamentary Committee.

Parliamentary Committee: The Joint Standing Committee on the Anti-Corruption Commission is established by Parliament, comprising an equal number of members from each House (s 216A(1)). The functions and powers of the Joint Standing Committee are determined by agreement between the Houses and are not justiciable (s 216A(2)).

South Australia — SA ICAC — *Independent Commission Against Corruption Act 2012*

Use of seconded police: SA ICAC may use members of SA Police and special constables, or the services of the SA Police, under an arrangement established by the Commissioner of Police (s 13). A police officer seconded to assist SA ICAC is an 'investigator' (s 14(4)), and retains all powers and authority vested in them by the *Police Act 1988* (s 14(4a)).

A Memorandum of Agreement between SA Police and SA ICAC establishes arrangements for the secondment of police officers, including a provision for up to eight officers to be seconded at any one time.⁷³² Seconded police are required to take leave without pay from SA Police and to be employed by SA ICAC on the same terms as other SA ICAC staff.⁷³³

Relationship with DPP: SA ICAC is to identify corruption in public administration and investigate and refer (or simply refer) matters to 'law enforcement agencies' for further investigation and prosecution

(s 7). If a matter is assessed as raising a potential issue of corruption in public administration that could be subject to prosecution, the matter must be investigated by SA ICAC or referred to the SA Police or another law enforcement agency (s 24). During or after an investigation, SA ICAC may refer a matter to a law enforcement agency for further investigation and potential prosecution (s 36) — it must not refer a matter directly to a prosecution authority but may only refer it to a law enforcement agency (this may not, however, preclude SA ICAC from seeking advice from the DPP in relation to a matter⁷³⁴).

External oversight: SA ICAC is overseen by a reviewer and a Parliamentary Committee.

Reviewer: A reviewer is appointed by the Attorney-General to annually review SA ICAC's exercise of powers (Schedule 4). The review must consider whether powers were exercised in an appropriate manner, including whether undue prejudice to the reputation of any person was caused (Schedule 4). The review must also consider whether SA ICAC's practices and procedures are effective and efficient, and whether operations made an appreciable difference to the prevention/minimisation of corruption (Schedule 4).

Parliamentary Committee: The Crime and Public Integrity Policy Committee has six members, comprising three from each House (*Parliamentary Committees Act 1991*, s 15N). Its functions include, to: inquire into and consider (at least every five years) the operation of the ICAC Act, particularly the performance of functions by SA ICAC; and to inquire into and consider whether the operation of the Act has adversely affected persons not involved in corruption to an unreasonable extent; and to examine each report prepared by the SA ICAC, and report to both Houses on any matter of public policy arising out of an examination of a report or inquiry (s 15O).

Tasmania — Integrity Commission — *Integrity Commission Act 2009*

Use of seconded police: The Chief Executive Officer (CEO) of the Integrity Commission may request the Commissioner of Police make available police officers to undertake investigations and assist with inquiries on behalf of the Integrity Commission (s 21(4)). Where appointed, the CEO is to authorise the person to perform functions or exercise powers of an 'investigator' or 'inquiry officer' (s 21(6)). There are no powers in the Act for an investigator or inquiry officer to lay criminal charges on behalf of the Integrity Commission. A police officer continues to have powers and functions of a police officer while working at the Integrity Commission but reports to the CEO (s 21(7)). Seconded police are not required to provide information to, or take direction from, the Commissioner of Police or any senior officer (s 21(8)).

In practice, the Integrity Commission only uses seconded police officers 'from time to time', and secondment arrangements are established in a Letter of Understanding between the Integrity Commission and Tasmania Police.⁷³⁵ Seconded police have not been involved in prosecutions or been part of any decision-making process to seek advice on potential breaches of the law. Instead, police are seconded to the Integrity Commission to conduct inquisitorial fact-finding misconduct investigations — they are not seconded to conduct criminal investigations.⁷³⁶

Relationship with DPP: The Integrity Commission does not have dedicated functions to investigate or prosecute criminal matters. A function of the Integrity Commission is to refer complaints or potential breaches of law to the Commissioner of Police, DPP or other appropriate persons, which referral may

be made at any stage of dealing with a matter (s 8(1)(h)). The Integrity Commission seeks advice from the police, DPP or Local Government Division (which investigates potential breaches of the *Local Government Act 1993*) when it identifies potential breaches of the law. If the Integrity Commission has evidence that an offence may have been committed, it seeks advice from the police or DPP before proceeding with its assessment and/or investigation. Advice is sought from the DPP at the earliest opportunity so that any investigation by the Integrity Commission does not prejudice a potential prosecution.⁷³⁷

External oversight: The Integrity Commission is overseen by a Parliamentary Committee.

Parliamentary Committee: The Joint Standing Committee on Integrity (s 23) consists of six members of Parliament and its functions include to: monitor and review the performance of the functions of an integrity entity; report to both Houses where appropriate on relevant matters; examine reports of an integrity entity and report to both Houses on any matter appearing in such reports; report to either House on any matter relevant to an integrity entity's functions; review the functions, powers and operations of the Integrity Commission every three years and table a report to both Houses regarding any action that should be taken; provide guidance and advice relating to the functions of an integrity entity; refer any matter of the Integrity Commission for investigation or advice; and comment on proposed appointments to be made (s 24).

Northern Territory — NT ICAC — *Independent Commissioner Against Corruption Act 2017*

Use of seconded police: NT ICAC's staff may include police officers made available by the Commissioner of Police, who continue to have the duties, obligations, powers, and privileges conferred on the police officer (s 123). In performing functions, NT ICAC staff are subject only to the direction of the NT ICAC or NT ICAC member (s 124). However, in practice, NT ICAC does not use seconded police and advised that it has no plans to change that approach.⁷³⁸

Relationship with DPP: NT ICAC's functions include referring matters to a 'referral entity' (such as, the DPP) for investigation, disciplinary action or prosecution (s 18). NT ICAC may, at any time, refer a matter to the DPP to seek the Director's opinion or advice (s 25(5)(b)). NT ICAC may, at any time, make recommendations to a public body or public officer in relation to preventing, detecting, investigating, prosecuting, or otherwise dealing with improper conduct (s 56(1)). An MOU governs the relationship between NT ICAC and the ODPP.⁷³⁹ NT ICAC does not have the function of initiating prosecutions, and so far, no ICAC investigations have resulted in a prosecution.⁷⁴⁰

External oversight: NT ICAC is overseen by an inspector and a Parliamentary Committee.

Inspector: NT ICAC is overseen by an inspector, with functions including to: evaluate and report on the NT ICAC's performance; receive and deal with complaints about NT ICAC and staff; and make recommendations to NT ICAC or public bodies regarding practices and procedures relating to the performance of functions under the Act (s 135). The inspector must evaluate NT ICAC's performance annually and consider whether NT ICAC and staff acted within power and in compliance with legislation; whether NT ICAC implemented previous recommendations; and any other relevant matters (s 136).

Parliamentary Committee: The Standing Committee on the ICAC examines NT ICAC and the inspector's annual reports, and reports to the Legislative Assembly on relevant matters.⁷⁴¹ It may also examine trends across similar bodies in other jurisdictions to ensure NT ICAC remains up to standard.

Australian Capital Territory — Integrity Commission — *Integrity Commission Act 2018*

Use of seconded police: The use of seconded police is not specified under the Act, however in the annual report of 2019-20, one police officer was seconded to the Integrity Commission following an agreement between the Integrity Commission and ACT Policing.⁷⁴² In 2021, the Integrity Commission stated it may continue to supplement its workforce by seconding staff from external agencies, and as of June 2021, the Integrity Commission's staff included seconded police officers, although it did not specify the number.⁷⁴³

Relationship with DPP: The functions of the Integrity Commission include to: investigate alleged corrupt conduct, and refer suspected instances of criminality or wrongdoing to the appropriate authority for further investigation and action (s 23). If the Integrity Commission is notified of corrupt conduct it must dismiss, refer or investigate the allegation (s 70). For referrals — the Integrity Commission may refer a matter to a prosecutorial body if the matter is relevant to that body's functions and the Integrity Commission considers it appropriate to do so (s 111). In deciding whether to refer, the Integrity Commission must consult the prosecutorial body (s 111). For investigations — upon completion of an investigation the Integrity Commission must prepare an investigation report that includes its findings, opinions and recommendations, and provides reasons. The report is given to the Legislative Assembly and thereafter published (unless classified as a confidential investigative report) (Part 3.9). The Integrity Commission does not have charging powers.

External oversight: The Integrity Commission is overseen by an inspector and a Parliamentary Committee.

Inspector: The inspector is an independent officer (s 225) and has complete discretion in the exercise of their functions (s 226). The functions are to: assess and report the Integrity Commission's compliance with the Act, memorandums of understanding and agreements; receive, investigate, and assess complaints about the Integrity Commission and staff; and make recommendations to the Integrity Commission or public bodies about practices and procedures relating to performance of functions (s 227). The inspector must conduct an annual operational review of the Integrity Commission and consider its management of conflicts of interest, whether the Integrity Commission and staff acted within power and in compliance with the Act, and implementation of previous recommendations (s 280).

Parliamentary Committee: The Standing Committee on the Integrity Commission has three members — with each, the ACT Government, the Opposition and the Crossbench, nominating one. Its functions include to: examine matters related to corruption and integrity in public administration; inquire into a report on matters referred to it by the Legislative Assembly, or matters consider to be a concern to the community; monitor, review, and report on the performance of the Integrity Commission and the inspector and their exercise of powers and functions; and examine annual and other reports made by the Integrity Commission and the inspector.⁷⁴⁴

Endnotes

⁷²⁰ *Crime Commission Act 2012* (NSW).

⁷²¹ *A v Maughan* 2016 [WASCA] 128; WA Joint Standing Committee on the Corruption and Crime Commission Report 33, 'The ability of the Corruption and Crime Commission to charge and prosecute' (2016); WA Department of Justice Report, 'Review into Prosecutions arising from Corruption and Crime Commission Investigations' (2020).

⁷²² NSW ICAC Submission, 18 March 2022, p 7.

⁷²³ NSW ICAC Submission, 18 March 2022, p 6.

⁷²⁴ NSW ICAC Submission, 18 March 2022, p 11.

⁷²⁵ Victoria IBAC Submission, 1 April 2022, p 1.

⁷²⁶ Victoria IBAC Submission, 1 April 2022, p 2.

⁷²⁷ Victoria IBAC Submission, 1 April 2022, p 2.

⁷²⁸ WA CCC Submission, 29 March 2022, p 1.

⁷²⁹ *A v Maughan* 2016 [WASCA] 128; WA Joint Standing Committee on the Corruption and Crime Commission Report 33, 'The ability of the Corruption and Crime Commission to charge and prosecute' (2016); WA Department of Justice Report, 'Review into Prosecutions arising from Corruption and Crime Commission Investigations' (2020).

⁷³⁰ WA Joint Standing Committee on the Corruption and Crime Commission Report 33, 'The ability of the Corruption and Crime Commission to charge and prosecute' (2016); WA Department of Justice Report, 'Review into Prosecutions arising from Corruption and Crime Commission Investigations' (2020).

⁷³¹ As recommended in the WA Department of Justice Report, 'Review into Prosecutions arising from Corruption and Crime Commission Investigations' (2020).

⁷³² SA ICAC Submission, 21 March 2022, p 1.

⁷³³ SA ICAC Submission, 21 March 2022, p 2.

⁷³⁴ SA ICAC Submission, 21 March 2022, p 4.

⁷³⁵ Tasmania Integrity Commission Submission, 1 April 2022, p 2.

⁷³⁶ Tasmania Integrity Commission Submission, 1 April 2022, p 2.

⁷³⁷ The Commission specifically references the recent case law to have come from *Lee, X7* and *Strickland* regarding coercively obtained interview evidence being shared with prosecuting authorities.

⁷³⁸ NT ICAC Submission, 7 April 2022, p 1.

⁷³⁹ NT ICAC Submission, 7 April 2022, p 1.

⁷⁴⁰ NT ICAC Submission, 7 April 2022, p 1.

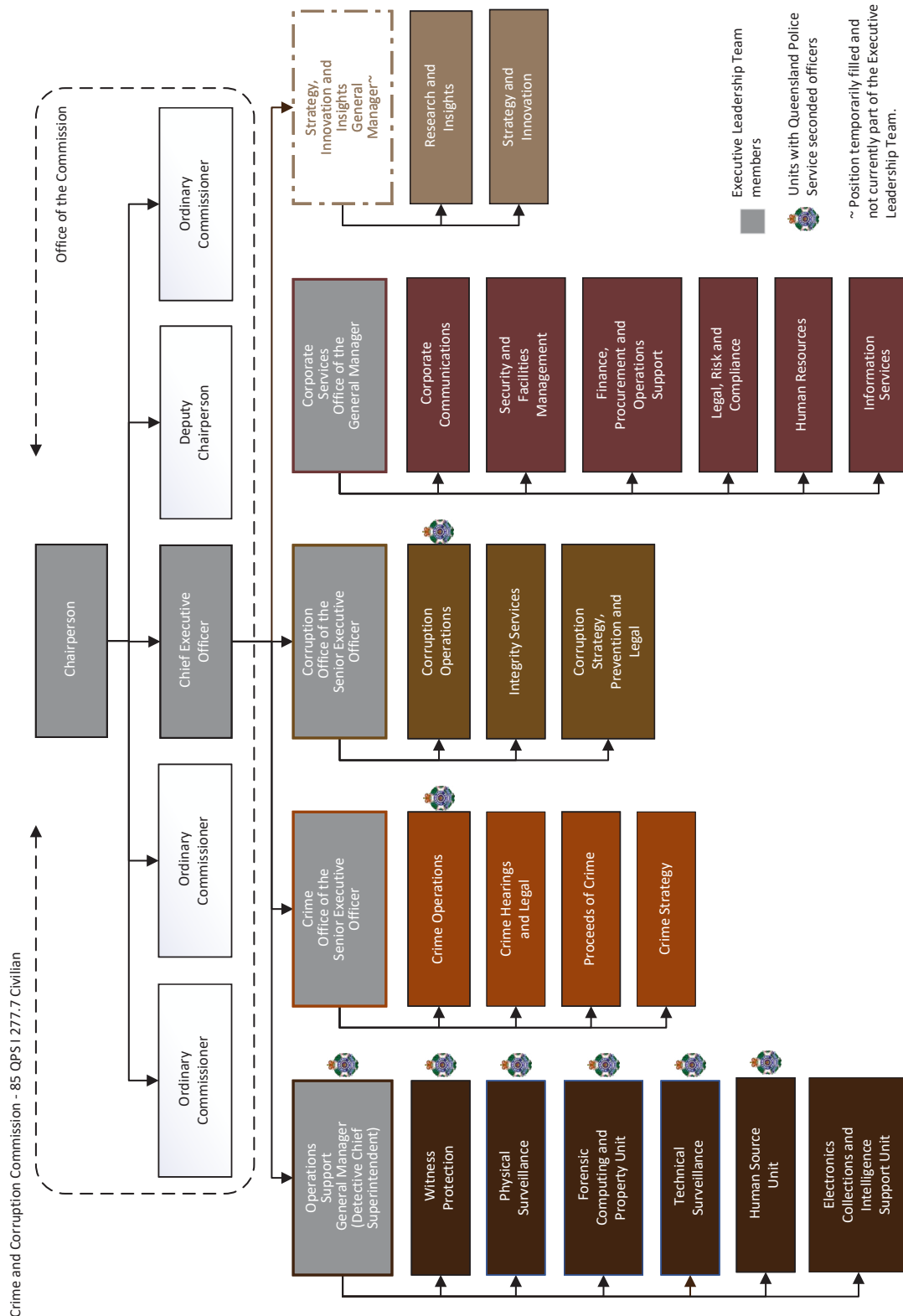
⁷⁴¹ NT ICAC Submission, 7 April 2022, p 2.

⁷⁴² ACT Integrity Commission Annual Report 2019–20, p 23.

⁷⁴³ ACT Integrity Commission Annual Report 2020–21, p 61.

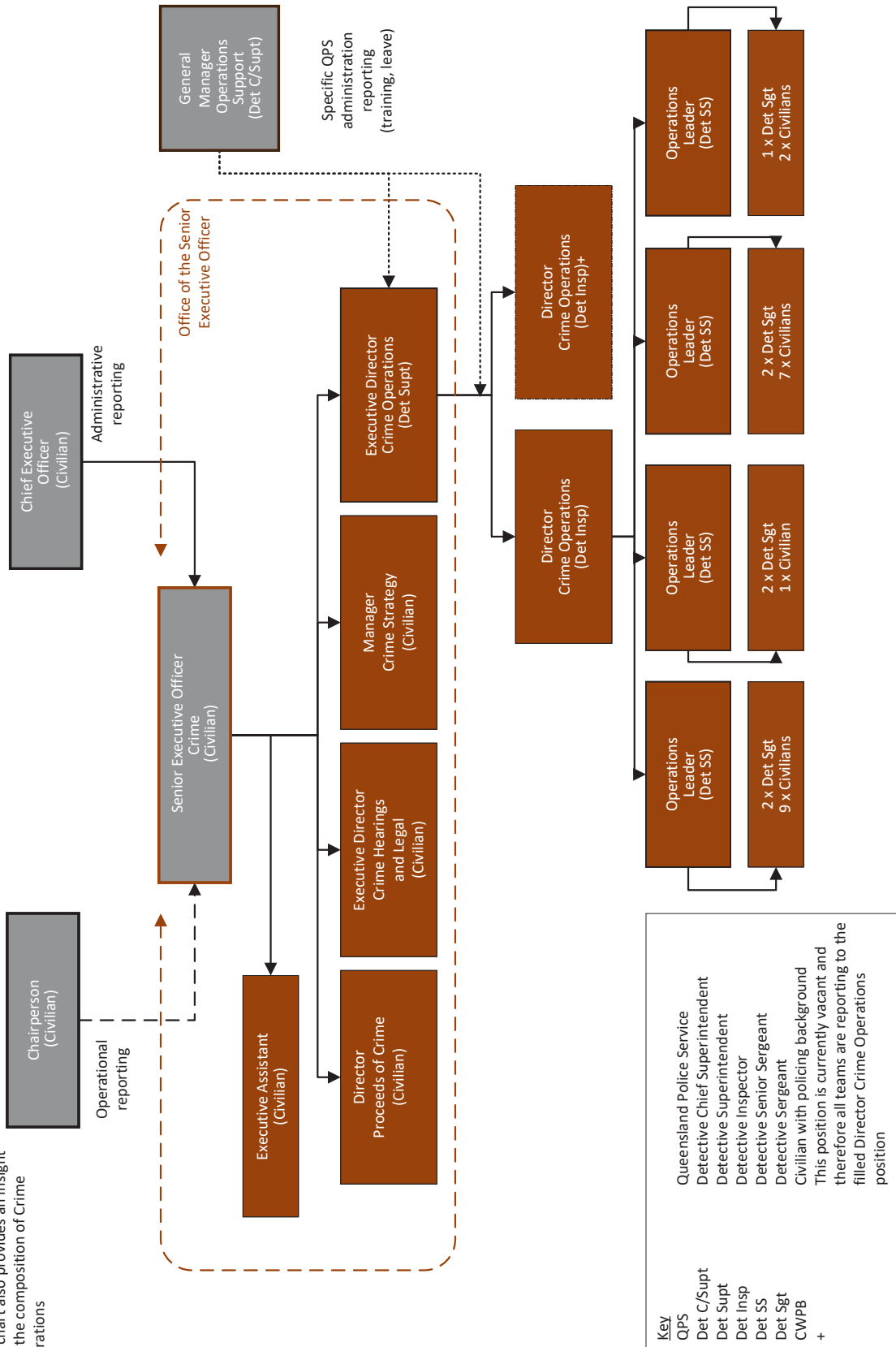
⁷⁴⁴ Legislative Assembly for the ACT, *Standing Committee on Integrity Commission* (Web Page) <<https://www.parliament.act.gov.au/parliamentary-business/in-committees/previous-assemblies/standing-committees-ninth-assembly/the-integrity-commission>>.

APPENDIX F: CRIME AND CORRUPTION COMMISSION ORGANISATIONAL CHARTS



Crime Division - 14 QPS | 55 Civilian

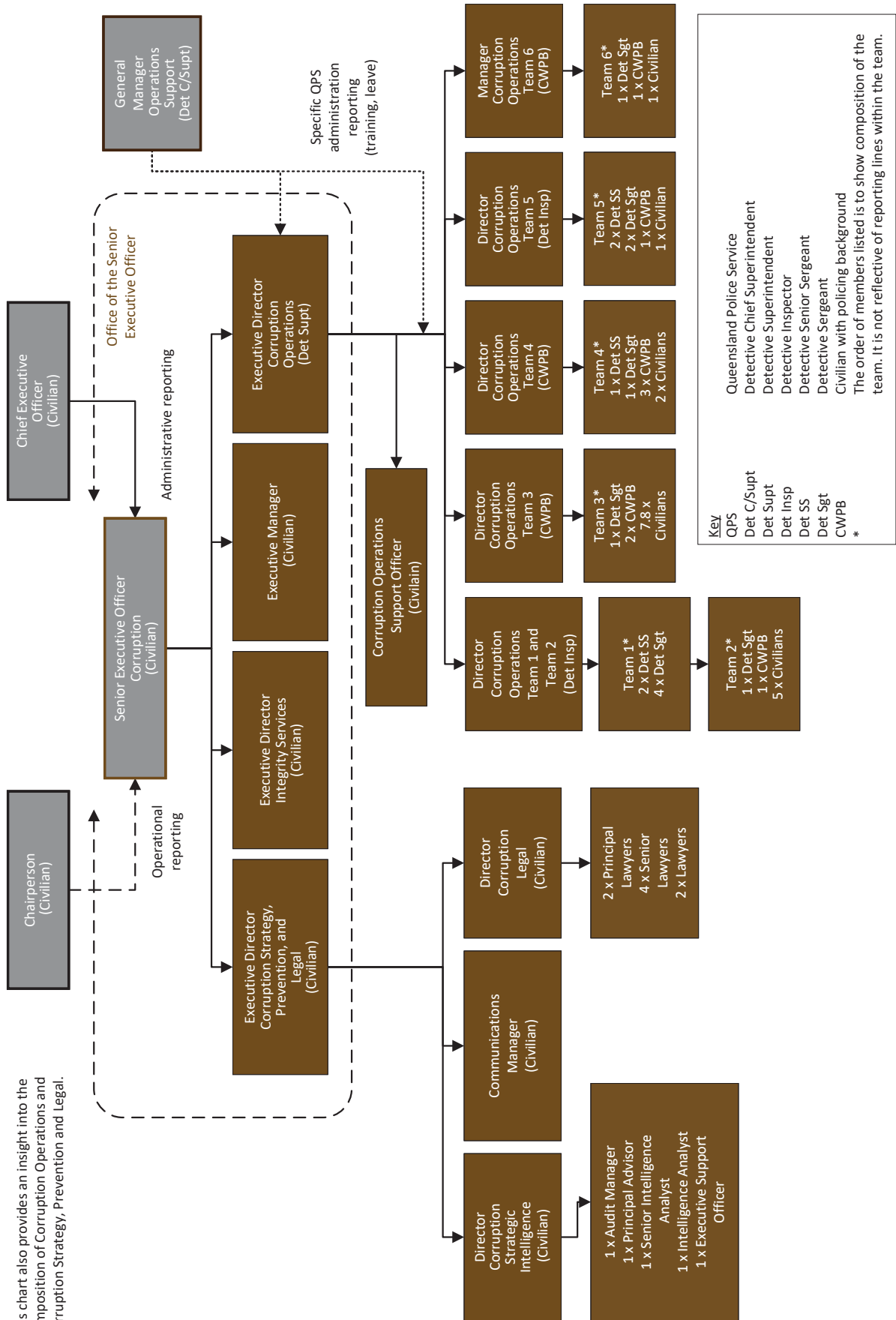
This chart also provides an insight into the composition of Crime Operations



Key
 QPS Queensland Police Service
 Det C/Supt Detective Chief Superintendent
 Det Supt Detective Superintendent
 Det Insp Detective Inspector
 Det SS Detective Senior Sergeant
 Det Sgt Detective Sergeant
 CWPB Civilian with policing background
 + This position is currently vacant and therefore all teams are reporting to the filled Director Crime Operations position

Corruption Division - 18 QPS 179.8 Civilian

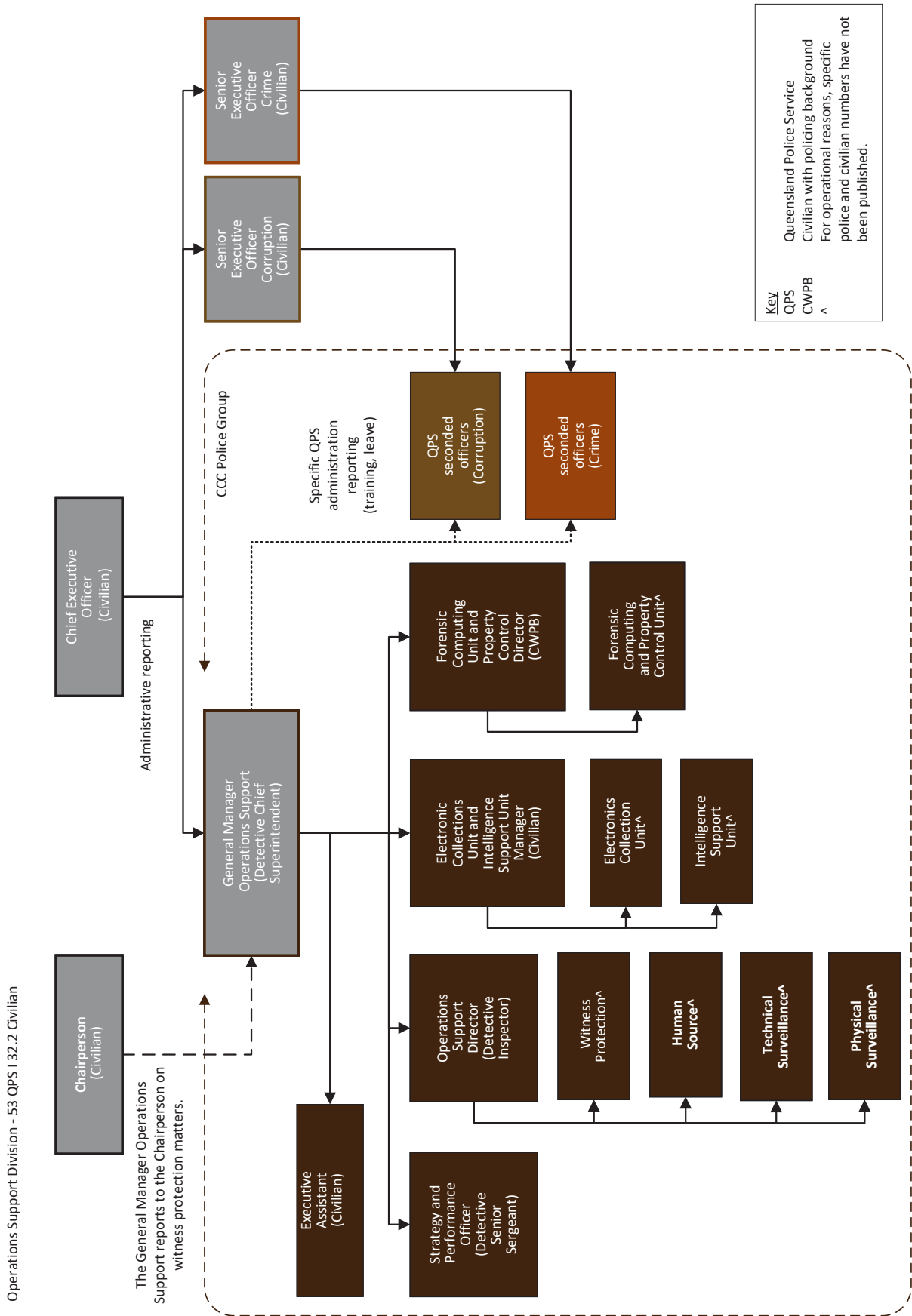
This chart also provides an insight into the composition of Corruption Operations and Corruption Strategy, Prevention and Legal.



Key

- QPS
- Det C/Supt
- Det Supt
- Det Insp
- Det SS
- Det Sgt
- CWPB
- *

Queensland Police Service
 Detective Chief Superintendent
 Detective Superintendent
 Detective Inspector
 Detective Senior Sergeant
 Detective Sergeant
 Civilian with policing background
 The order of members listed is to show composition of the team. It is not reflective of reporting lines within the team.



APPENDIX G: LEGISLATIVE HISTORY OF SECTION 49 AND ITS PREDECESSORS

Criminal Justice Act 1989 assented to 31 October 1989

2.24. Reports of Division

- (1) The Director of the Official Misconduct Division shall report on-
 - (a) every investigation carried out by the Division;
 - (b) every matter of complaint, or information, submitted to him by the Complaints Section of the Division.
- (2) A report shall be made to the Chairman with a view to such action by the Commission as he considers desirable and, with the authority of the Chairman, to such one or more of the following as the Chairman considers appropriate-
 - (a) the Director of Prosecutions, or other appropriate prosecuting authority, with a view to such prosecution proceedings as the Director of Prosecutions or other authority considers warranted;
 - (b) the Executive Director of the Commission with a view to a Misconduct Tribunal exercising jurisdiction in respect of the matter to which the report relates;
 - (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 Chairman of District Courts, if the report relates to conduct of a judge of District Courts;
 - (e) the Chief Stipendiary Magistrate, if the report relates to conduct of a person holding judicial office in the system of Magistrates Courts or Children 's Courts;
 - (f) in a case to which paragraphs (c), (d) and (e) 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.
- (3) A report made to the Director of Prosecutions or the Executive Director of the Commission must contain, or be accompanied by, all relevant information known to the Official Misconduct Division, whether the information-
 - (a) supports a charge that may be brought against any person in consequence of the report; or
 - (b) supports a defence that may be available to any person liable to be charged in consequence of the report.

- (4) Where a complaint of official misconduct or of misconduct has been furnished to the Complaints Section of the Division, the Director shall cause a response to be given to the complainant (if his identity and whereabouts are known to the Commission) that states-
- (a) if no action has been taken on the complaint, the reason for inaction;
 - (b) if action has been taken on the complaint, what that action is, the reason that action is appropriate in the circumstances of the case and the result of that action, if it be known at the time of making the response.

Criminal Justice Act 1989 in force on 28 January 1994

Section 2.24 was moved to section 33

33. Reports of division

- (1) The director of the Official Misconduct Division shall report on—
- (a) every investigation carried out by the division (other than by or on behalf of the Complaints Section);
 - (b) every matter of complaint, or information, submitted to the director by the Complaints Section of the division.
- (2) A report shall be made to the chairperson with a view to such action by the Commission as the chairperson considers desirable and, with the authority of the chairperson, to such 1 or more of the following as the chairperson considers appropriate—
- (a) the Director of Prosecutions, or other appropriate prosecuting authority, with a view to such prosecution proceedings as the Director of Prosecutions or other authority considers warranted; and
 - (b) the executive director of the Commission with a view to a Misconduct Tribunal exercising jurisdiction in respect of the matter to which the report relates; and
 - (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; and
 - (d) the Chief Judge of District Courts, if the report relates to conduct of a Judge of District Courts; and
 - (e) the President of the Childrens Court, if the report relates to a person holding judicial office in the Childrens Court; and
 - (f) the Chief Stipendiary Magistrate, if the report relates to conduct of a person holding judicial office in the system of Magistrates Courts; and
 - (g) in a case to which paragraphs (c), (d) 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.

- (3) A report made to the Director of Prosecutions or the executive director of the Commission must contain, or be accompanied by, all relevant information known to the Official Misconduct Division, whether the information—
 - (a) supports a charge that may be brought against any person in consequence of the report; or
 - (b) supports a defence that may be available to any person liable to be charged in consequence of the report.
- (4) If a person makes a complaint of misconduct or official misconduct to the Complaints Sections, the director must give to the person a response stating—
 - (a) if no action has been taken on the complaint—the reason for inaction; or
 - (b) if action has been taken on the complaint—
 - (i) the action taken; and
 - (ii) the reason the director considers the action to be appropriate in the circumstances; and
 - (iii) any results of the action that are known at the time of the response.
- (5) However, the director is not required to give a response to the person if—
 - (a) the person has not given his or her name and address to the Commission; or
 - (b) the Complaints Section, acting under section 38(2), does not investigate the complaint.
- (6) The director must not disclose, in a response under subsection (4), information the director considers should remain confidential.

Criminal Justice Act 1989 in force on 13 December 1994

Minor amendments made to section 33

33. Reports of division

- (1) The director of the Official Misconduct Division shall report on—
 - (a) every investigation carried out by the division (other than by or on behalf of the Complaints Section);
 - (b) every matter of complaint, or information, submitted to the director by the Complaints Section of the division.
- (2) A report shall be made to the chairperson with a view to such action by the Commission as the chairperson considers desirable and, with the authority of the chairperson, to such 1 or more of the following as the chairperson considers appropriate—

- (a) the Director of Prosecutions, or other appropriate prosecuting authority, with a view to such prosecution proceedings as the Director of Prosecutions or other authority considers warranted;
 - (b) the executive director of the Commission with a view to a Misconduct Tribunal exercising jurisdiction in respect of the matter to which the report relates;
 - (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.
- (3) A report made to the Director of Prosecutions or the executive director of the Commission must contain, or be accompanied by, all relevant information known to the Official Misconduct Division, whether the information—
- (a) supports a charge that may be brought against any person in consequence of the report; or
 - (b) supports a defence that may be available to any person liable to be charged in consequence of the report.
- (4) If a person makes a complaint of misconduct or official misconduct to the Complaints Sections, the director must give to the person a response stating—
- (a) if no action has been taken on the complaint—the reason for inaction; or
 - (b) if action has been taken on the complaint—
 - (i) the action taken; and
 - (ii) the reason the director considers the action to be appropriate in the circumstances; and
 - (iii) any results of the action that are known at the time of the response.
- (5) However, the director is not required to give a response to the person if—
- (a) the person has not given his or her name and address to the Commission; or
 - (b) the Complaints Section, acting under section 38(2), does not investigate the complaint.
- (6) The director must not disclose, in a response under subsection (4), information the director considers should remain confidential.

Criminal Justice Act 1989 in force on 1 April 1998

Insertion of subsection (7) to section 33

33. Reports of division

- (1) The director of the official misconduct division shall report on—
- (a) every investigation carried out by the division (other than by or on behalf of the complaints section);
 - (b) every matter of complaint, or information, submitted to the director by the complaints section of the division.
- (2) A report shall be made to the commission or, at the commission's direction, the chairperson.
- (2A) With the authority of the commission, the report must also be made to 1 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) (*sic*)⁷⁴⁵ 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.
- (3) A report made under subsection (2) must contain, or be accompanied by, all relevant information known to the official misconduct division, whether the information—
- (a) supports a charge that may be brought against any person in consequence of the report; or
 - (b) supports a defence that may be available to any person liable to be charged in consequence of the report.
- (4) If a person makes a complaint of misconduct or official misconduct to the complaints section, the director must give to the person a response stating—
- (a) if no action is taken on the complaint—the reason for the inaction; or

- (b) if action is taken on the complaint—
 - (i) the action taken; and
 - (ii) the reason the director considers the action to be appropriate in the circumstances; and
 - (iii) any results of the action that are known at the time of the response.
- (5) However, the director is not required to give a response to the person if—
 - (a) the person has not given his or her name and address to the commission; or
 - (b) the complaints section, acting under section 38(2), does not investigate the complaint.
- (6) The director must not disclose, in a response under subsection (4), information if disclosure would be contrary to the public interest.
- (7) If the director of public prosecutions requires the commission to make further investigation or supply further information relevant to a prosecution, whether started or not, to which the content of a report made to the director under subsection (2)(a) relates, the director of the official misconduct division must take all reasonable steps to further investigate the matter or provide the further information.
- (8) The commission may give directions to the director of the official misconduct division about the exercise of the director's powers under subsections (4), (5) or (6), including a direction that certain types of matter are to be responded to by the commission.

Crime and Misconduct Act 2001 assented to 8 November 2001

Substance of section 33 of the *Criminal Justice Act 1989* incorporated into section 49 of *Crime and Misconduct Act 2001*

49. Reports about complaints dealt with by the commission

- (1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, misconduct and decides that prosecution proceedings or disciplinary action should be considered.
- (2) The commission may report on the investigation to any of the following as appropriate—
 - (a) the director of public prosecutions, or other appropriate prosecuting authority, for the purposes of any prosecution proceedings the director or other authority considers warranted;
 - (b) the Chief Justice, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;
 - (c) the Chief Judge of the District Court, if the report relates to conduct of a District Court judge;

- (d) the President of the Childrens Court, if the report relates to conduct of a person holding judicial office in the Childrens Court;
 - (e) the Chief Magistrate, if the report relates to conduct of a magistrate;
 - (f) the chief executive officer of a relevant unit of public administration, for the purpose of taking disciplinary action, if the report does not relate to the conduct of a judge, magistrate or other holder of judicial office.
- (3) A report made under subsection (2) must contain, or be accompanied by, all relevant information known to the commission that—
- (a) supports a charge that may be brought against any person as a result of the report; and
 - (b) supports a defence that may be available to any person liable to be charged as a result of the report.
- (4) If the director of public prosecutions requires the commission to make further investigation or supply further information relevant to a prosecution, whether started or not, the commission must take all reasonable steps to further investigate the matter or provide the further information.

Crime and Corruption Act 2001 current as at 9 November 2018

Amendment to section 49

49. Reports about complaints dealt with by the commission

- (1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, corruption and decides that prosecution proceedings or disciplinary action should be considered.
- (2) The commission may report on the investigation to any of the following as appropriate—
- (a) a prosecuting authority, for the purposes of any prosecution proceedings the authority considers warranted;
 - (b) the Chief Justice, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;
 - (c) the Chief Judge of the District Court, if the report relates to conduct of a District Court judge;
 - (d) the President of the Childrens Court, if the report relates to conduct of a person holding judicial office in the Childrens Court;
 - (e) the Chief Magistrate, if the report relates to conduct of a magistrate;
 - (f) the chief executive officer of a relevant unit of public administration, for the purpose of taking disciplinary action, if the report does not relate to the conduct of a judge, magistrate or other holder of judicial office.

- (3) If the commission decides that prosecution proceedings for an offence under the Criminal Code, section 57 should be considered, the commission must report on the investigation to the Attorney-General.
- (4) A report made under subsection (2) or (3) must contain, or be accompanied by, all relevant information known to the commission that—
 - (a) supports a charge that may be brought against any person as a result of the report; or
 - (b) supports a defence that may be available to any person liable to be charged as a result of the report; or
 - (c) supports the start of a proceeding under section 219F or 219G against any person as a result of the report; or
 - (d) supports a defence that may be available to any person subject to a proceeding under section 219F or 219G as a result of the report.
- (5) In this section— *prosecuting authority* does not include the director of public prosecutions.

Endnotes

⁷⁴⁵ In 1997 s 33 was simultaneously amended by the *Criminal Justice Legislation Amendment Act 1997*, s 20 and the *Misconduct Tribunals Act 1997*, Schedule 1, item 9 (both were introduced 7 October 1997 and both commenced on 8 December 1997); the latter consequentially amended s 33 in the context of the removal of Misconduct Tribunals from the remit of the CJC i.e. to omit '(b) the Executive Director of the Commission with a view to Misconduct Tribunals exercising jurisdiction in respect of the matter to which the report relates' (without otherwise renumbering the section).

APPENDIX H: COERCIVE POWERS

Law relating to use of coerced evidence

The submissions and material before this Inquiry crystallised a number of legal issues regarding the lawfulness of the provision of coerced evidence to:

- a prosecuting authority under section 49 of the *Crime and Corruption Act 2001* (CC Act) for the consideration of possible criminal charges
- a prosecutor carrying out any prosecution.

A further matter relating to the use of coerced evidence in prosecutions was raised by the Parliamentary Commissioner. In particular, he submitted:⁷⁴⁶

- Present practice is that if an accused person makes a request to the Director of Public Prosecutions (DPP) for material concerning any compelled hearing conducted by the Crime and Corruption Commission (CCC), which may have some factual relevance to the subject matter of the charges, then that material is provided to the defendant.
- It is routine for one defendant to be cross-examined by one or more of the other co-defendants about inconsistent answers given by the defendant at a compelled hearing.
- Supplying defendants with coerced material from CCC hearings is ‘legally suspect’.

The following analysis considers these legal issues.

Analysis regarding use of coerced material by prosecuting authority under section 49 of the CC Act

It is strongly arguable that section 49 of the CC Act requires relevant coerced material to be provided to a prosecuting authority for consideration of possible criminal charges.⁷⁴⁷ This is so notwithstanding the companion principle. Because of the wording of section 49 of the CC Act, an alternative interpretation does not appear to be open.

That conclusion is supported by the reasoning of the Court of Appeal in *PRS v Crime and Corruption Commission (PRS)*⁷⁴⁸ Having regard to section 197 of the CC Act, particularly the express permission concerning admissibility of evidence obtained as a result of coerced evidence, Morrison JA doubted in *PRS*⁷⁴⁹ that a police officer who did have regard to evidence obtained under the CCC’s coercive powers could not exercise their powers to commence criminal proceedings as police officers. McMurdo JA, with whom Bradley J agreed on this issue, made similar comments to those of Morrison JA.⁷⁵⁰ However, the comments of all three Justices in *PRS* in this respect were strictly *obiter dicta*. Morrison JA held that there was no evidence that the seconded police officer in that case who had commenced the relevant proceeding had access to the coercively obtained evidence.⁷⁵¹ McMurdo JA found it unnecessary to reach a concluded view with respect to the issue because the amendment to the CC Act which added the

provision concerning admissibility of evidence derived from coerced evidence had not yet come into operation by the time of the events relevant in that case.⁷⁵²

Interpretation of section 49 of the CC Act also requires regard to the *Human Rights Act 2019* (HR Act). That Act recognises:

- the right of a person charged with a criminal offence to a fair hearing⁷⁵³
- the right of a person charged with a criminal offence ‘not be compelled to testify against themselves or confess their guilt’.⁷⁵⁴

While the latter right resembles the testimony immunity identified in *X7* as an incident to the companion principle, the Queensland Supreme Court has interpreted it as extending beyond criminal proceedings, and as having a ‘role in protecting rights at stages before a trial which have a likely and significant impact on the trial itself’.⁷⁵⁵

The HR Act requires that any provisions of the CC Act relating to the use of coerced evidence to be read, ‘to the extent possible that is consistent with their purpose’, in a way that is ‘compatible with human rights’.⁷⁵⁶ This requirement informs the process of interpretation of statutory provisions. The qualification that a reading of statutory words that is ‘compatible with human rights’ is only required ‘to the extent possible that is consistent with [a provision’s] purpose’ makes clear that the requirement does not operate to do violence to statutory text. Such a reading is only required when it is ‘possible’ in accordance with usual statutory interpretation principles.

Notwithstanding the provisions of the HR Act, it does not seem that an interpretation of section 49 of the HR Act, other than the one which is expounded above, is ‘possible’.

It seems therefore that it is lawful for material coerced pre-charge to be provided to an entity considering whether to charge the person from whom that material was coerced.

Provision of coerced evidence to entity carrying out a prosecution

The DPP and the CCC have adopted a particular practice to minimise the difficulties posed by compelled evidence. That practice is reflected in the CCC Operations Manual⁷⁵⁷ and a draft protocol prepared by the DPP.⁷⁵⁸ Among other things, the protocol provides that:

- the CCC will not include the ‘compelled evidence’ of an accused in the brief of evidence to the DPP for that accused
- the CCC will, however, include a description of the compelled evidence in an index to the brief (for example, transcript of a hearing)
- the CCC will provide a copy of the compelled evidence directly to the accused or their lawyers to comply with the prosecution’s disclosure requirements
- the CCC will advise the DPP in writing when copies of the compelled evidence have been so provided

- if the DPP wishes to access the compelled evidence, it can make a written request to the CCC to access it.⁷⁵⁹

In *R v IBAC*⁷⁶⁰ one of the primary issues was whether the Independent Broad-Based Anti-Corruption Commissioner had power to hold a statutory examination in relation to persons who had not been, but might subsequently be, charged and put on trial for an offence relating to the subject matter of the examination.⁷⁶¹ The High Court answered that question ‘no’, holding that the companion principle had no application because the proposed examination was to occur pre-charge and therefore prior to the engagement of the process of criminal justice, which is the point at which the companion rule is engaged.⁷⁶²

There is interstate appellate court authority that the effect of *R v IBAC* is that the companion principle:

- does not apply pre-charge
- does not operate to limit the power of disclosure of evidence coerced prior to any charges.⁷⁶³

Those interstate authorities suggest that the significance of *Lee No. 2* is confined to circumstances in which the disclosure of material coerced pre-charge is contrary to statutory prohibitions with respect to the subsequent use of that material.⁷⁶⁴

A different view has, however, been taken by the Queensland Court of Appeal in *R v Leach*⁷⁶⁵ and a single judge of the Supreme Court of Victoria in *Commission of Australian Federal Police v Wen (Wen)*.⁷⁶⁶ In *R v Leach*, Sofronoff P, with whom Philippides J agreed, said that:

- the provision to the prosecutor of the accused’s evidence, obtained under compulsion and without the protection of any privilege against self incrimination, is a departure in a fundamental respect from the requirements of a fair trial
- legislative authority for such a course of action requires the plainest manifestation in statute.⁷⁶⁷

Referring to the reasons in *Lee No. 2*, the Victorian Supreme Court in *Wen* stated:

‘The critical question was not whether the publication was unlawful and wrongful; but rather “whether, as a result of prosecution being armed with the appellant’s evidence, there has been a miscarriage of justice in the eyes of the law”. The court found that the disclosure to the prosecution of evidence obtained under compulsion constituted a fundamental departure from the criminal trials as comprehended by our system of justice. Accordingly, the unlawfulness and wrongfulness of the conduct was not relevant to the effect on the trial, although it did affect the appropriateness of a new trial being ordered, despite the finding no practical unfairness.’⁷⁶⁸

Despite these differences of judicial opinion, there does not seem to be any doubt that disclosure of material coerced pre-charge to prosecutors in breach of statutory protections aimed at preventing prejudice to the fair trial of a person from whom that material has been coerced may result in a miscarriage of justice.⁷⁶⁹ The protections in the CC Act in respect of coerced evidence would appear to be aimed at preventing that prejudice.

These protections are reinforced by the provisions of the HR Act, which, as discussed above, recognise the right of an accused person to a fair hearing and to not be compelled to testify against themselves. Prima

facie, section 58 of the HR Act requires that a public entity act and make decisions compatibly with those human rights unless required to the contrary by a statutory provision. Section 8 of that Act provides that an act or decision is compatible with a human right when it:

- does not limit a human right, or
- limits a human right only to the extent that it is reasonable and demonstrably justified in accordance with section 13.

Section 13 of the HR Act provides:

‘13 Human rights may be limited

- (1) 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.
- (2) In deciding whether a limit on a human right is reasonable and justifiable as mentioned in subsection (1), the following factors may be relevant:
 - (a) the nature of the human right;
 - (b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom;
 - (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose;
 - (d) whether there are any less restrictive and reasonably available ways to achieve the purpose;
 - (e) the importance of the purpose of the limitation;
 - (f) the importance of preserving the human right, taking into account the nature and extent of the limitation on the human right;
 - (g) the balance between the matters mentioned in paragraphs (e) and (f).’

There does not appear to be any statutory provision requiring evidence coerced in a CCC investigation to be provided to a prosecutor carrying out a prosecution. Applying the analysis required by section 13 of the HR Act, those rights are of fundamental significance and importance to our legal system. On the other hand, the material before this Inquiry has not identified a legitimate purpose for providing coerced material to an entity carrying out a prosecution.

In these circumstances, it would seem that the present practice of the CCC and DPP regarding restricting the access of prosecutors to coerced evidence is lawful.

Provision of coerced evidence to co-accused

In respect of this issue, the CCC referred to section 201 of the CC Act.⁷⁷⁰ That section provides:

‘201 Commission must give evidence to defence unless court certifies otherwise

- (1) This section applies if a person is charged with an offence before a court and anything stated at, or a document or thing produced at, a commission hearing (the evidence) is relevant evidence for the defence against the charge.
- (2) On being asked by the defendant or the defendant’s lawyer, the commission must give the evidence to the defendant or the defendant’s lawyer unless the court makes an order under subsection (4).
- (3) A request under subsection (2) may generally identify evidence to be given to the defendant or defendant’s lawyer.
- (4) On application by an authorised commission officer, the court must order that the evidence not be given to the defendant or defendant’s lawyer if the court considers that it would be unfair to a person or contrary to the public interest to do so.
- (5) Evidence given to a defendant or a defendant’s lawyer under subsection (2) may be used only for the defence to the charge.
- (6) A person who uses the evidence as permitted under subsection (5) does not contravene section 202.’

While any coerced evidence could not be admitted into evidence by a co-accused who has received that evidence under section 201 of the CC Act, the CCC stated that the coerced evidence may nevertheless be relevant to that co-accused’s evidence. The CCC referred to two decisions of the Court of Appeal:

- *R v Spizzirri*,⁷⁷¹ which concerned production under a subpoena, and in which it was said that the concept of disclosure in criminal proceedings was wider than the concept of admissibility and ‘it would have been sufficient that [the material sought] armed the defence with information it might fairly have pursued with the complainant towards that potentially significant forensic goal, the erosion of his credit’.⁷⁷²
- *R v Rollason and Jenkins; ex parte A-G (Qld)*,⁷⁷³ in which a broad approach to ‘relevance’ was taken, such that it encompassed material that would tend to help the case for the accused even if it did not tend directly to prove or disprove the material elements of the charge or a relevant defence.

The CCC also noted that disclosure to co-accused under section 201 of the CC Act is made by the CCC itself or investigating police as part of the disclosure process and it is not made to or through the DPP.

The CCC noted that section 201(4) permits an application by an authorised CCC officer to a court for an order that evidence not be given to a defendant or a defendant’s lawyer if the court considers that it would be unfair to a person or contrary to the public interest to do so. Only one order has to date been made under section 201(4).

The CCC submissions on this issue would appear to be correct. It therefore appears that:

- there are legitimate reasons why coerced evidence might be provided to a co-accused

- such disclosure is specifically authorised by section 201 of the CC Act
- there is no inconsistency with the companion principle by reason of that disclosure given that it is made to co-accused and not to or through the DPP⁷⁷⁴
- section 201(4) provides protection in respect of any unfairness that would be caused to a person by the disclosure under the section.

Conclusions regarding use of coerced material

Based on the above analysis:

- section 49 of the CC Act requires that relevant coerced material be provided to a prosecuting authority in a report made under that section for consideration of possible criminal charges
- the present practice of the CCC and DPP regarding restricting the access of prosecutors to coerced evidence accords with the present legal context
- the present practices and procedures regarding provision by the CCC of coerced material to co-accused accord with section 201 of the CC Act.

Endnotes

⁷⁴⁶ PCC Commissioner Submission, 7 April 2022.

⁷⁴⁷ Compare *R v OC* (2015) 90 NSWLR 134 at [21], [105] in respect of a similarly worded provision.

⁷⁴⁸ [2019] QCA 255.

⁷⁴⁹ *PRS* at [72]–[73].

⁷⁵⁰ *PRS* at [110], [113] per Bradley J.

⁷⁵¹ *PRS* at [68].

⁷⁵² *PRS* at [110].

⁷⁵³ HR Act, s 31(1).

⁷⁵⁴ HR Act, s 32(2)(k).

⁷⁵⁵ *SQH v Scott* [2022] QSC 16 at [325].

⁷⁵⁶ HR Act, s 48.

⁷⁵⁷ CCC Submission, 1 April 2022, paras 759–761.

⁷⁵⁸ DPP Submission, 8 April 2022, p 3; Attachment 3.

⁷⁵⁹ DPP Submission, 8 April 2022, Attachment 3, paras 17, 19.

⁷⁶⁰ [2016] HCA 8.

⁷⁶¹ *R v IBAC* at [1], per French CJ, Kiefel, Bell, Keane, Nettle and Gordon JJ.

⁷⁶² *R v IBAC* at [48]–[51], [58], per French CJ, Kiefel, Bell, Keane, Nettle and Gordon JJ.

⁷⁶³ *R v Kinghorn* (2021) 396 ALR 154 at [123], [137], [138], [152]–[154], Bathurst CJ and Payne JA, with whom the other members of the New South Wales Court of Appeal agreed (special leave refused, [2022] HCAT Trans 080); and *A v Maughan* (2016) 50 WAR 263 at [63]–[64], [163], [170], per Martin CJ, McClure P and Corby J, respectively.

⁷⁶⁴ There is some support for this view in the judgment of Bond J, with whom the other members of the Court of Appeal agreed, in *R v Leach; ex parte CDPP* [2022] QCA 23 at [86].

⁷⁶⁵ [2019] 1 Qd R 459 at [68].

⁷⁶⁶ (2017) 267 A Crim R 382 at [129].

⁷⁶⁷ *R v Leach* at [68],[70].

⁷⁶⁸ *Wen* at [130].

⁷⁶⁹ *Lee No. 2* at [34], [39], [46].

⁷⁷⁰ CCC Submission, 26 April 2022, pp 2–3.

⁷⁷¹ [2000] QCA 469.

⁷⁷² de Jersey CJ at [7].

⁷⁷³ [2007] QCA 65.

⁷⁷⁴ Given the terms of section 201 of the CC Act, there would seem to be no question of the CCC having to provide that material to the DPP and therefore no issue regarding compliance with section 58 of the HR Act would arise.

APPENDIX I: ADDITIONAL ISSUES

During this Inquiry issues were raised which did not fall within our Terms of Reference and are not included in our report. A number of those issues which might merit consideration by the Queensland Government are noted in this appendix:

1. The Crime and Corruption Commission (CCC) funding model: The question of budgetary security for the CCC, as a mechanism for ensuring its independence, was raised. The CCC does not presently control its budget allocation — the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, holds responsibility for the allocation of funds — and the CCC is obliged to make a submission to the Attorney-General which is then considered by the Cabinet Budget Review Committee. The CCC is not unique in this regard. A similar process applies for the other integrity agencies in Queensland.

During the 2021 Parliamentary Crime and Corruption Committee (PCCC) Review, the CCC recommended a review of its funding model to avoid the possibility, or perception, of political interference. This was not supported by the PCCC.

However, the recent Coaldrake Review (*Let the sunshine in*) adopted the recommendation, in terms that the independence of integrity bodies including the CCC be enhanced by aligning responsibility for financial arrangements and management practices with the Speaker of Parliament and the appropriate parliamentary committee, rather than the executive. This occurs in New Zealand and Victoria, and warrants consideration.

2. Qualifications for appointment as Chairperson of the CCC: The only requirement for appointment as CCC Chairperson is service as or qualification for appointment as a judge of a Supreme Court, the Federal Court or the High Court. The appointee is not infrequently a senior lawyer with significant experience in the criminal law. By way of contrast appointment to the role of Senior Executive Officer (Crime) requires the appointee to be a highly experienced lawyer with tertiary level credentials in business and management and experience at the executive level. We have recommended that the CCC move away from an overarching law enforcement approach. Consistently with that, a question arises whether it should be a requirement that an appointee as Chairperson have wider skills such as experience in public administration or expertise in public or administrative law.
3. The CCC's functions: Various submissions canvassed questions whether the breadth and focus of the CCC's functions is appropriate. A restructure of the CCC was suggested to prioritise its anti-corruption function. Some submitters went further, suggesting that there should be a separation of CCC functions, with a stand-alone body to be established to investigate complaints about police; or that the crime function be removed from the CCC and placed within the Queensland Police Service. There were also some submissions that advocated for bolstering the CCC's research function, or that it should be outsourced to universities.

4. The devolution principle: A matter that has been the subject of ongoing debate is the devolution principle, enshrined in the CC Act, that generally requires action to prevent and deal with corruption to happen within the unit in which it occurs. Some submitters in this Inquiry voiced their concerns with the devolution principle. In this context we note that the devolution principle has recently been considered by the Coaldrake Review which observed that ‘any single body responsible for the dual tasks of combating major crime and improving integrity in such a broad range of disparate organisations as those which comprise the public sector faces a nigh impossible task. It will not be successful if it is *singly* responsible for that endeavour. Rather, it must work with other integrity bodies and, critically, departments and agencies in recognition of the important principle that chief executives and senior executives have a core responsibility for the ethical standards of their agencies.’

The Coaldrake Review concluded that the current allocation of responsibilities between the CCC and units of public administration was ‘largely sound’ but recommended that a clearing house be established, to act as a first point of contact for complainants, to assess complaints and to determine whether the complaint should be referred to an integrity body or for departmental investigation. This ‘clearing house’ would ‘[reduce] the incidence of complaints being rebuffed as “out of jurisdiction”’, effectively allowing the CCC to be left to focus on more serious matters and encouraging agencies to manage the less serious ones.

5. The CCC’s role in relation to public interest disclosures: The CCC’s role in relation to public interest disclosures was a contentious issue in the PCCC Logan Council Inquiry, and, unsurprisingly, an issue raised in submissions to this Inquiry. It was also the subject of a finding and recommendations in the PCCC Logan Council Inquiry report: specifically, that the government review the effectiveness and appropriateness of protections afforded to public interest disclosers under the *Public Interest Disclosure Act 2010*. The Coaldrake Review reiterated that recommendation: that the government proceed with its promised review of public interest disclosure legislation as a matter of urgency.

A former CCC Chairperson, who resigned in the wake of the PCCC Logan Council Inquiry, provided a very late submission to this Inquiry asserting that, unless public interest disclosers can be confident they will be adequately protected, there is the risk of a public or institutional perception that reporting is actively discouraged. The submission echoed the position he had taken before the PCCC Logan Council Inquiry.

As is often the case, there are competing public interests. It is important, for example, that the CCC does not lose impartiality in its ‘protection’ of a public interest discloser (the finding of the PCCC in the Logan Council Inquiry). The particular role of CCC in the context of complaints about corruption was usefully explored in the Coaldrake Review and it made recommendations which, if implemented, will affect the CCC’s operations. That review also recommended that the ‘Government proceed with its promised review of PID legislation as a matter of urgency, and at least within the next six months’. The CCC’s role in relation to public interest disclosures, and those who make them, merits consideration in that review, and generally.

6. Witness welfare: The need to better manage witness welfare, in particular the impacts of reputational harm, as part of the corruption investigation process were strong themes in the

submissions from former Moreton Bay Regional councillors, former Logan City councillors, and in the joint submission of the Ipswich City councillors (current and former). Incorporating all, or some, of the measures from the South Australian approach to addressing 'reputational harm' may go some way to addressing these concerns and merits consideration.

(The *Independent Commission Against Corruption Act 2012 (SA)* provides that: the independent reviewer (i.e. the PCC Commissioner equivalent), in considering whether the SA Independent Commission Against Corruption has exercised its powers appropriately, must consider *whether undue prejudice to the reputation of any person was caused*; and the role of the Crime and Public Integrity Policy Committee (i.e. the PCCC equivalent) includes, as part of its five-yearly inquiring into the operation of the Act, consideration whether its *operation has adversely affected persons not involved in corruption to an unreasonable extent.*)

7. CCC hearings: The general position prescribed by the CC Act is that a hearing is not open to the public. There are, however, exceptions set out in section 177 of the Act. There is a question regarding whether the correct balance is struck in present practices regarding decisions whether to hold public or private hearings. For example, Queensland appears to differ from most jurisdictions in that the CC Act does not expressly provide for consideration of the risk of undue prejudice to a person's reputation when determining whether to hold a public hearing. More broadly, there are questions whether the considerations bearing on decisions whether to hold public or private hearings, such as the importance of transparency and the balance with the interests of those involved and the administration of justice, are correctly applied at present.
8. Funding for legal representation of coerced witnesses: For the best part of a decade, Legal Aid Queensland (LAQ) provided legal representation at CCC hearings to witnesses who satisfied the LAQ means test. LAQ would subsequently be reimbursed by the Department of Justice and Attorney-General (DJAG). However, these arrangements between DJAG and LAQ ceased over 12 months ago. LAQ informed this Inquiry that they stopped providing the representation service as they encountered uncertainty of payment. A question therefore arises as to whether those arrangements should be reinstated.
9. The definition of corrupt conduct: In 2018, the definition of 'corrupt conduct' was widened to extend to conduct of people outside of the public sector whose conduct impairs or could impair public confidence in public administration. Competing submissions as to whether the present definition of corrupt conduct is too wide or narrow were made to this Inquiry. The question is whether the present definition of the term is appropriate.
10. Amendments to the *Local Government Act 1993 (LG Act)*: Under section 175K of the LG Act a person is automatically suspended as a councillor when the person is charged with a disqualifying offence. The operation of section 175K and its consequences attracted substantial comment from submitters to this Inquiry. Submissions included recommendations for the narrowing of the range of offences included as disqualifying offences or delaying suspension until a councillor pleads guilty or is committed to stand trial. On the other hand, the CCC emphasised that section 175K reflects a policy decision made by the Parliament to deal with the seriousness of charges of offences that fall within the definition of disqualifying offence in the section. The competing

submissions regarding section 175K of the LG Act raise questions about its ambit, operation and implications.

**Commission of Inquiry relating to the
Crime and Corruption Commission**

REPORT