SUMMARY OF KEY SUBMISSIONS

Commission staff prepared the following non-exhaustive summary of some key submissions. The Crime and Corruption Commission (CCC) submission is not summarised as it is discussed extensively in the report.

Use of seconded police officers by the CCC (including information about interstate integrity bodies)	
General information — use of seconded police	**New South Wales (NSW) Independent Commission Against Corruption (ICAC), The Hon Peter Hall QC, Chief Commissioner** NSW ICAC may arrange for the secondment of police. Seconded police may exercise the functions of a police officer of the rank of constable. NSW ICAC has not engaged seconded police since 2008. The impetus for change in approach is not clear, but the change does not reflect a lack of support by NSW ICAC for the use of seconded police. NSW ICAC indicated no hesitancy in using seconded police and noted seconded police provided a benefit as they retained their police powers during their secondment. **NSW Crime Commission, Michael Barnes, Commissioner** NSW Crime Commission works in partnership with other law enforcement agencies. Police officers are regularly appointed to the NSW Crime Commission for the duration of investigations. **Victoria Independent Broad-based Anti-Corruption Commission (IBAC), Glenn Ockerby, A/Chief Executive Officer** Victoria IBAC does not use seconded police. It can coordinate investigations with law enforcement, but police officers do not perform duties or functions for IBAC. **Victoria Police, Neil Paterson APM, Deputy Commissioner** Victoria Police does not have a secondment memorandum of understanding (MOU) with Victoria IBAC. IBAC often recruits former police from Victoria and other jurisdictions. Victoria Police is in the process of updating its conflict of interest policy, which will state that secondary employment with any organisation or body with legislated oversight or investigative functions over Victoria Police is a conflict of interest. **South Australia (SA) Independent Commission Against Corruption (ICAC), Ann Vanstone QC, Commissioner** SA ICAC uses seconded police officers and may have up to eight officers seconded at any one time under an arrangement with SA Police. SA ICAC, at times, also uses

police who are not seconded to assist with investigations under a Memorandum of Administrative Arrangement.

Tasmania Integrity Commission, Greg Melick AO SC, Chief Commissioner

Police are occasionally seconded to the Integrity Commission for the purpose of investigations, inquiries and technical assistance. The arrangements are by a letter of understanding with Tasmania Police. Seconded police are not involved in prosecutions or decision-making regarding charges; instead, they conduct fact-finding misconduct investigations. Seconded police are not involved in criminal investigations.

Western Australia (WA) Police Force, Chris Dawson, Commissioner of Police

Legislation permits secondment of WA Police Force officers to the WA Corruption and Crime Commission (WA CCC) upon agreement by both commissioners. A MOU is in place to prescribe an agreement to exchange officers from time to time.

During the secondment, the police officer is regarded as an employee of the WA CCC. The WA Police Force plays no part in the daily management or deployment of the officer and WA CCC is responsible for paying salary, superannuation and all other employment entitlements. The length of the secondment is by negotiation between the commissioners.

Secondments to the WA CCC are rare and officers are seconded based on their specific knowledge base – for example, financial expertise to assist with unexplained wealth investigations.

Northern Territory (NT) Independent Commissioner Against Corruption (ICAC), Michael Riches, Commissioner

NT ICAC does not use seconded police and has no intention to do so in the foreseeable future.

NT Police Force, Jamie Chalker, APM, Commissioner of Police and Chief Executive Officer of Fire and Emergency Services

The NT Police Force does not have any of its police officers seconded to the NT ICAC. All police officers who have transferred to NT ICAC have resigned from the police force prior to taking up the position. While there is provision under legislation for police officers to be made available under an arrangement with NT ICAC, this power has not been exercised (except for one police officer as part of a temporary return-to-work program).

	Australian Commission for Law Enforcement Integrity (ACLEI), Jaala Hinchcliffe, Integrity Commissioner ACLEI supports the Integrity Commissioner. Both are established under the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (LEIC Act). ACLEI investigates allegations of corrupt conduct by staff of 10 Commonwealth law enforcement agencies, including the Australian Tax Office, the Australian Competition and Consumer Commission, the Australian Securities and Investment Commission and the Australian Federal Police (AFP). ACLEI uses seconded police officers as part of their investigation teams. Currently there are three police officers seconded from the AFP and one from the NSW Police Force. Secondments are underpinned by an MOU with the relevant home agency. The use of secondments has been successful to date and provided valuable assistance to ACLEI investigations.
Support for the use of seconded police	**Queensland Police Service (QPS), Katarina Carroll APM, Commissioner of Police** QPS is a key partner agency to the CCC. Both QPS and CCC play a crucial role in preventing, disrupting, responding to, and investigating major criminal and corrupt behaviour. Seconded police officers play a strategic role in the execution and delivery of both the CCC major crime function and corruption unction. QPS has a CCC Police Group led by a commissioned officer of the rank of detective chief superintendent. In practice, the CCC Police Group currently sits within the Crime, Counter-Terrorism and Specialist Operations Command led by Deputy Commissioner, Tracy Linford APM, with the detective chief superintendent reporting to the deputy commissioner for administrative (human resource) matters but not operational matters of the CCC. The detective chief superintendent otherwise reports to the CCC Chief Executive Office (CEO). The detective chief superintendent is a member of the QPS Executive Leadership Team (ELT) and also the CCC ELT. The responsibilities of the detective chief superintendent of the CCC Police Group include: • responsibility for all seconded police officers from a human resource perspective including recruitment, welfare, professional development and transitioning back to QPS at the end of secondment • direct supervision and control of officers within Witness Protection, Technical Surveillance, Intelligence, Physical Surveillance and Forensic Computing within the Operations Support Division; but no operational oversight or direct supervision of officers allocated to the Crime Division or

Corruption Division (these officers are responsible to their respective senior executive officer at CCC)

- liaising with the Commissioner and members of the QPS
- collaborating with other law enforcement agencies
- organising and maintaining the collection, collation and dissemination of criminal intelligence
- advising the CCC Chairperson in relation to vetting procedures and police matters generally
- fostering an inclusive workplace where health, safety and wellbeing are promoted and prioritised.

QPS advise there are 85 police officers seconded to the CCC (as at 4 March 2022), with the number of positions fluctuating based on operational requirements.

Professor A J Brown, Professor of Public Policy and Law, Program Leader, Public Integrity and Anti-Corruption, Centre for Governance and Public Policy, Griffith University

The issue with seconded police officers is not the use of seconded police themselves. It is that the bulk of police are seconded not to support the anti-corruption function of the CCC but rather the serious and organised crime functions; and police secondment presents a risk of conflict of interest where corruption or misconduct concerns arise in respect of those functions, requiring the CCC to then investigate itself 'independently'.

The CCC should retain officers who are trained in criminal investigation and authorised to exercise police powers, including the power to charge persons with criminal offences in relation to, or arising from, corruption investigations. The use of serving police officers remains one efficient and effective option for achieving this. However, this must be supported by policies that protect the functions of the CCC as a body which:

- needs to remain both institutionally and culturally independent of the QPS
- is not simply a law enforcement agency i.e. 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.

Seconded police officers *can* be best suited for corruption investigations where criminal offences are alleged or arise. They are likely to have current and up-to-date investigative training, and the use of secondments offers high-performing

investigators a career option without having to resign from the QPS. It also overcomes the need to duplicate legislative authority for police powers.

Queensland Police Commissioned Officers' Union of Employees (QPCOUE), Dr Dan Bragg, President

QPCOUE is a registered industrial union representing senior commissioned officers at the QPS at the ranks of inspector, superintendent and chief superintendent.

There are 85 QPS officers seconded to the CCC across a range of capabilities including corruption and crime investigation and, of those officers, eight are commissioned officers represented by QPCOUE.

Police secondment is governed by an MOU and high-level agreement between the QPS and CCC. Seconded police are a vital part of a multidisciplinary team. They bring contemporary policing methodologies and training to their role, and a diversity of thought and experience that enhances the investigation teams. The seconded commissioned officers are senior and very experienced members of the QPS. They provide balance and perspective in what can be very complex and challenging investigations.

The model of the CCC, an integrity agency with a blend of experienced, dedicated QPS officers, has generally served the Queensland community well.

Some concerns are raised by the QPCOUE (and Queensland Police Union of Employees) on behalf of its members:

- Procedural fairness relating to handling investigations against some QPCOUE members and police officers.
- Regular and unreasonable appealing by CCC to the Queensland Civil and Administrative Tribunal of QPS Ethical Standards' decisions, with many of them being dismissed.

The QPCOUE considers these concerns can be managed and dealt with better with a significant QPS secondment presence at CCC.

Queensland Council for Civil Liberties, Terry O'Gorman, Vice President

Concerning the use of seconded police at the CCC further examination is needed; but it is accepted that police are better investigators than lawyers.

Regarding the tenure of staff at the CCC, the longer staff remain at the senior executive service level the greater the risk of the CCC as an organisation becoming inward looking and stultified. Balanced against that is the absence of an adequate career structure, especially for senior CCC personnel, which makes it difficult to attract and retain competent people to fill those roles.

Robert (Bob) Atkinson, AO, APM (Retired) Former Commissioner of Police, Queensland

Mr Atkinson is a former (retired) Commissioner of Police having served as a police officer for 44 years from 1968 to 2012, of which the final 12 years of his career was as Commissioner.

The secondment of police to the CCC is a long-established process which should continue. It enhances the concept that maintaining ethical and professional standards within the QPS is primarily the responsibility of all members of the QPS and competent, experienced investigators are a valuable commodity. It is unlikely a seconded police officer would have the confidence to resist a prosecution where the Chair of the CCC has authorised such prosecution. The term of secondment for police should be a minimum of two years and a maximum of three years.

In relation to procedures, practices and processes, the prevailing culture within the CCC determines how these aspects are operationalised. Unless there is clear criminal and/or corrupt activity, an educational approach to resolution is to be preferred over an aggressive prosecutorial approach. The use of invasive, covert and coercive tactics should only occur in serious matters that warrant and justify the use of these extraordinary powers (not, for example, minor human resource management matters).

Mark Le Grand, Former Director of the Official Misconduct Division, Criminal Justice Commission (CJC) (Queensland)

Mark Le Grand was the inaugural Director of the Official Misconduct Division of the original CJC from 1990 to 1999. Prior to this, he had roles as Deputy Director of the Commonwealth Director of Public Prosecutions, head of the Victorian and Australian Office of the National Crime Authority, and General Counsel to the inaugural Chairman of the CJC.

Mr Le Grand says that when comparisons are drawn to the absence of seconded police in the NSW ICAC, it is important to note that ICAC is not responsible for the investigation of police misconduct or for the investigation of major crime. Further, due consideration of the investigative role assigned to the CCC demonstrates the CCC could not operate effectively without access to seconded police. The need for successful investigations outweighs the risks the police culture imposes. Some of the advantages of using seconded police officers include:

- 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, whether intersecting with local operations or between state and federal operations.

Professor Ross Martin QC

Professor Martin QC was Chairperson of the CMC from February 2012 to March 2013. Prior to his appointment Professor Martin QC worked as a legal officer with the original Fitzgerald Inquiry and in the Office of the Special Prosecutor, followed by a lengthy career at the Office of the Director of Public Prosecutions (ODPP). Professor Martin QC now teaches and researches criminal law at the Griffith University Law School.

Professor Martin QC notes the use of police has been a vexed issue in the history of the CCC. Police have specific powers under the *Police Powers and Responsibilities Act 2000* (PPRA). They have specific training in, and specific powers related to, unavoidable investigative issues such as the obtaining of search warrants, conducting surveillance, controlled operations, issuing notices to financial institutions, obtaining monitoring orders, suspension orders and the laying of charges.

From his experience, Professor Martin QC notes that seconded police officers brought with them an aspect of police culture that is positive — a manifest willingness to be proactive in pursuing evidence; but also the challenge, possibly created by section 255(4) of the *Crime and Corruption Act 2001* (CC Act) (seconded police are the joint responsibility of the CCC CEO and most senior police officer at the CCC), that they routinely turned for direction to their police superiors rather than to the lawyers. At times, he had difficulty exercising authority over some police investigators regarding timely finalisation of their investigations.

On balance there is no real way to avoid having seconded police officers at the CCC in both the crime and corruption portfolios. It is difficult to see how complex investigations involving the gathering of surveillance and search evidence can be undertaken without their assistance or without the need for temporary police-staffed taskforces.

Fine-tuning of the relationship between police and non-police such as lawyers is a matter of management rather than a matter requiring statutory intervention.

	Regarding term limits of police, maintaining corporate memory is a very important aspect of why at least some police should be allowed to remain for an extended period. Professor Martin QC is not convinced that such requirements as to term limits need to be encoded in statutes. Appropriate administrative instruments such as MOUs between the CCC and the QPS might create the flexibility necessary to give effect to the need for rotation. Michael Woodford, Parliamentary Crime and Corruption Commissioner (Parliamentary Commissioner) Police officers who are expert in conducting investigations are necessary for the proper functioning of the CCC. The risk of 'institutional capture' in relation to seconded police officers who decide whether to lay charges can be ameliorated by the charging function sitting with the QPS, external to the CCC.
Lack of support for the use of seconded police (or examples of a lack of use)	Queensland Human Rights Commission (QHRC), Scott McDougall, Commissioner In terms of the implications of using seconded police on CCC organisational culture, the QHRC refers to the *United Nations Handbook on police accountability, oversight and integrity*, noting strengths and weaknesses of internal and external accountability mechanisms for police and that having police as members of an external oversight agency should generally be avoided. Although recognising the need for the CCC to employ experienced law enforcement and investigation staff and the challenges for the CCC if police were not seconded to it, the QHRC suggests further consideration be given to seconding officers from outside Queensland, whether that is from interstate or overseas police forces. It considers this may address the concerns of counsel assisting noted in the Parliamentary Crime and Corruption Committee's (PCCC) Report No. 108 that there was a degree of 'group think' or 'pack' culture among police officers connected with Operation Front; concerns that led to the PCCC's recommendations to enact cultural change at the CCC including recommendations 4, 5 and 6 (recommendation 6 being the establishment of this Commission of Inquiry). Together Queensland, Industrial Union of Employees, Michael Thomas, Assistant Branch Secretary Together is a public sector union representing over 28,000 workers from across the public sector in health, education, public services and some workers in the private sector. Together submits the CCC has expanded its remit in investigating corruption in the Queensland Public Service well beyond the scope intended and now engages in matters that are properly the remit of performance management and discipline under the *Public Service Act 2008.*

The expansion of the CCC's activities is attributable to the structure of the CCC where seconded police officers are used to investigate and consider all matters under its purview — something that skews the way in which matters, better suited to disciplinary processes, are dealt with. There is a concern that current CCC processes lack the separation between investigating and prosecuting functions, thereby creating a risk that prosecutions may be undertaken to justify CCC reviews (Taskforce Flaxton was used as an example) or because there has been a loss of objectivity by 'getting too close to the case'.

Logan City Council, Cherie Dalley, Former Councillor

The use of seconded police officers at the CCC should be removed. The legislation should be amended to require investigating officers of the CCC to request a review (or similar) by the DPP to ensure the charge will 'stand the scrutiny of a courtroom'. Further, a requirement to conduct a totally unbiased investigation must also be included in legislation as this is the only way fairness can be assured.

Ipswich City Council, Cr Paul Tully (and former Deputy Mayor) — joint submission

This is a joint submission by current councillors Paul Tully and Sheila Ireland, and former councillors David Pahlke, Charlie Pisasale, Andrew Antoniolli, David Morrison, Cheryl Bromage, Kerry Silver, Kylie Stoneman, Wayne Wendt and David Martin, who were all part of the Ipswich City Council in 2018 and subject to dismissal by an Act of Parliament in August of that year on the CCC's recommendation.

It is recommended that:

- the CC Act be amended to ensure no serving police officers are engaged by, or seconded to, the CCC
- the power of the CCC to institute criminal proceedings through any means be removed from the CCC and any persons seconded to the CCC and vested in the DPP, to clearly separate the investigative and prosecutorial roles and ensure full public confidence in the CCC, considering the many sensitive inquiries and investigations which it conducts
- if neither recommendation is accepted, the CCC should only be authorised to commence legal proceedings by way of a notice to appear rather than through the arrest and notorious CCC public parades of individuals who are supposed 'innocent until proven guilty', except in the gravest of cases such as persons attempting to flee the jurisdiction.

Public submissions

Six public submitters took a critical view of the CCC's use of seconded police. Most submitters raised issue with the competence and integrity of seconded police

	officers they encountered as individuals being investigated by the CCC and some took issue with the potential conflict between police officers' investigative and charging functions.
Recruitment of seconded police — qualifications and training requirements for investigators	QPS, Katarina Carroll APM, Commissioner of Police A feature of the recruitment process for seconded police officers is that officers seconded to investigative roles must be appointed detectives. Criteria to be appointed as detective include: • a minimum of three years competent performance in an investigative field • successful completion of the Detective Training Program (there are three primary phases of the program, which is essentially crime focused with particular emphasis on offences against the person, drug, property, robbery and sexual offences as distinct from investigations into corruption, misconduct and fraud) • breadth and depth of experience in the investigation of a wide range of criminal offences • experience in the preparation of full briefs of evidence • demonstrated commitment to self-development • demonstrated use of contemporary strategies in the investigation, prevention and disruption of crime. Additionally, desirable experience for police officers seconded to investigative roles includes: • major and/or organised crime investigations within a multidisciplinary team environment • investigations into major fraud or corruption/misconduct/disciplinary related matters • the use and management of various forms of physical and electronic surveillance including telephone intercepts • compilation of complex briefs of evidence which may use various forms of electronic surveillance from external law enforcement agencies • cultivation and use of covert human services. The recruitment process does not include any specific exploration to ascertain the knowledge and understanding of officers about broader areas of law other than criminal law i.e. regulating disclosures made under the *Public Interest Disclosure Act*

2010; the role of the Queensland Industrial Relations Commission in relation to those disclosures; and any other areas of administrative law, public law, employment law and public sector corporate governance.

However, the QPS acknowledges there is opportunity for continuous improvement to enhance the investigatory capacity of detectives seconded to the CCC in other areas (administrative law, public law, etc.). The QPS notes that the CCC has legal officers specifically embedded within investigation groups to provide ongoing and timely legal support, advice and guidance in relation to these legal issues.

The transferrable skills honed by detectives throughout their career, coupled with the CCC multidisciplinary team approach to investigations, allows detectives to apply their transferrable skills to other areas of law. In addition, numerous police officers have tertiary and post graduate qualifications.

Victoria IBAC, Glenn Ockerby, A/Chief Executive Officer

Sworn IBAC officers must be appointed as authorised officers before exercising investigative functions. To be appointed, they must be suitably qualified or trained for the purposes of IBAC, which generally requires a background in law enforcement or something similar. There are no minimum requirements in terms of experience, qualifications or training. Prior to being appointed as an authorised officer, candidates must complete internal training on the scope of powers of authorised officers.

NSW ICAC, The Hon Peter Hall QC, Chief Commissioner

NSW ICAC officers principally engaged in investigations are:

- Investigators —required to have significant experience investigating serious offences and/or public sector misconduct; a good knowledge of criminal law, rules of evidence and criminal procedures; an understanding of the *Independent Commission Against Corruption Act 1988* (NSW ICAC Act); and an understanding of machinery of government and public sector organisational systems. They must have well developed planning and organisational abilities, problem solving and analytical skills, and effective communication skills.
- Senior investigators — required to have significant experience or formal qualifications investigating alleged serious offences, including fraud or public sector misconduct. They must have supervisory experience in an investigatory environment.
- Lawyers — required to have a law degree and either be admitted or eligible for admission as a barrister or solicitor; legal knowledge and experience, particularly in criminal law and administrative law; a sound knowledge of

the rules of evidence, procedural fairness and the NSW ICAC Act; and high level analytical, organisational and communication skills.

- Corruption prevention officers — required to have tertiary qualifications in management, public administration, organisational development, law or a related discipline; experience in management, research, speaking, education and business organisational analysis; good knowledge and understanding of the machinery of government, legislative and policy processes; developed and capable planning, organisational, research, problem solving, analytical and communication skills.

WA CCC, John McKechnie QC, Commissioner

The WA CCC is not a training agency and, being a small agency, seeks to recruit investigators with experience in law enforcement and investigative organisations. Given the nature of the investigations conducted, it is important to recruit a balance of investigators with experience in criminal law, civil law, administrative law, public sector investigations and, in recent years, financial investigators to conduct unexplained wealth investigations.

Investigators are also to have a sound understanding of public sector governance, and procurement processes and standards.

As the WA CCC is not a prosecuting authority and has no power to prosecute, commission officers require no expertise, qualifications or training regarding to decisions to commence prosecutions arising out of WA CCC investigations.

South Australia (SA) Independent Commission Against Corruption (ICAC), Ann Vanstone QC, Commissioner

Seconded police usually go through the same merit-based recruitment process as civilian investigators; however, sometimes police are seconded outside of the recruitment process on short term contracts due to urgency. To be an investigator at SA ICAC a person must have completed a Detective Training Course or Investigation Training Course. Every investigator at SA ICAC has previously been a designated detective in a law enforcement agency. SA ICAC's legal expertise comprises lawyers with prosecution experience.

SA Police, Grant Stevens APM LEM, Commissioner of Police

The qualifications sought for secondments to the SA ICAC are usually that of an 'investigator', which is detective level or someone with other investigative experience. The length of secondments is up to three years; otherwise, the officer must resign to remain with SA ICAC.

NT ICAC, Michael Riches, Commissioner

NT ICAC does not use seconded police. Investigators must have a Certificate IV in Government Investigations and all have investigation experience in law enforcement

or the military. All investigations are led by the ICAC Commissioner with input from investigators and the legal team (to fill gaps in expertise).

Tasmania Police, Darren Hine, Commissioner of Police

An MOU between the Tasmania Integrity Commission and Tasmania Police outlines that seconded police must be capable of conducting and assisting in investigations and inquiries under the *Integrity Commission Act 2009*; planning, coordinating and executing strategies to achieve investigative outcomes; ensuring natural justice or procedural fairness in all matters; maintaining effective communication and relationships without close supervision; maintaining strict confidentiality; and complying with strict policies relating to security.

Successful applicants must also be prepared to meet the requirements of the Integrity Commission by complying with the Integrity Commission voluntary code of conduct, completing a register of interests to avoid conflict of interest situations, and executing a confidentiality agreement.

ACLEI, Jaala Hinchcliffe, Integrity Commissioner

Seconded police officers are carefully chosen and enhance ACLEI's investigative capabilities. Upon commencement, secondees undergo an induction that includes ACLEI organisational processes, procedures, expectations and culture; and seconded police officers cannot make significant operational decisions in isolation. All critical decisions, application for warrants, and preparation of briefs of evidence are peer reviewed by an ACLEI-employed investigator or by a director in the investigations team (all of whom are also ACLEI employees).

The investigation teams include seconded police officers, former police officers and people with non-policing backgrounds (such as investigative, regulatory and compliance roles in the public sector) to ensure a balance of experience and expertise. 'Investigators' require a minimum qualification of a Certificate IV in Government Investigations (or equivalent), whereas 'senior investigators', in practice, have extensive prior experience and are equipped to conduct corruption investigations.

Michael Woodford, Parliamentary Crime and Corruption Commissioner (Parliamentary Commissioner)

Corruption investigation teams are overly reliant on investigative police officers. While the skill and expertise of investigative police in those teams is certainly needed, the tendency of those teams is to see criminal justice as the focus. A broader range of experience in corruption investigation teams may lead to an approach more focused on improving the integrity of, and reducing the incidence of corruption in, the public sector.

Professor A J Brown, Professor of Public Policy and Law, Program Leader, Public Integrity and Anti-Corruption, Centre for Governance and Public Policy, Griffith University

Even where criminal matters are involved, having only people who are seconded police officers or trained police officers would not be (or should not be considered) best practice for any Australian anti-corruption agency. A multidisciplinary team is needed which includes legal expertise, financial investigators or forensic accountants, at least one generalist policy officer or public servant with familiarity with functions, standards and normal operating practice in the type of agency or work involved, and a team leader with broader than just criminal investigation experience. That is because both the forensic side of corrupt conduct investigations, and the tactical and strategic decisions required, involve questions of public duty and public trust which will always go beyond simply the criminal process. The investigation focus should include what went wrong and/or what could be done to strengthen institutional processes or cultures for the purpose of preventing and reducing the corruption risk.

There is a strong argument to be made for training to increase and maintain a professional pool of people with good skills for anti-corruption and integrity investigations. Professor Brown asserts that this is an under-satisfied, specialist need among all Australian governments. There seems to be growing recognition of the benefits of expanding training of this kind — a need to invest in building a pool of integrity investigation expertise, larger than law enforcement or ex-law enforcement but also suitable for police, that is as large, multidisciplinary and transferable as possible.

Professor Brown advocates for the implementation of education further to basic investigation training, to establish an understanding of the wider roles and contexts of integrity investigations. There are identified gaps in skills and experience in this broader space, including:

- policy and political understanding of the overall integrity and anti-corruption framework in all jurisdictions
- international context of anti-corruption work
- use of compulsory powers
- procedural fairness for investigators
- conflict resolution skills (i.e. dispute resolution and mediation)
- investigation planning for results (i.e. scoping potential outcomes, identifying standards for judgment)

- multidisciplinary investigations
- management and support for complainants, witnesses and whistleblowers.

Further education should comprise a tertiary and/or vocational multidisciplinary program which addresses strategic, theoretical, and policy skills needed to apply existing basic skills in integrity-specific contexts. Content should be subject to ongoing adaptation to meet local needs, state-wide capability needs, and common national needs.

The program should be designed, supported, and co-delivered in partnership with government agencies across Australia (including integrity agencies).

The program should be directed at anyone in, or interested in, public sector integrity and should promote career attractiveness to public officers as a professional development path.

Local Government Association of Queensland (LGAQ), Alison Smith, Chief Executive Officer

The LGAQ is the peak body for local government in Queensland, and is a not-for-profit association established solely to serve councils and their needs. The LGAQ advises, supports and represents local councils, enabling them to improve their operations and strengthen relationships with their communities and facilitate effective negotiation and engagement between local and State Government.

The LGAQ recommends creating a new protocol, with the Commissioner of Police, to establish the skillset, experience and oversight mechanisms required for seconded police to the CCC. This would limit the period of any secondment, establishing clear lines of command, detailing position descriptions and any other knowledge of CCC policies and procedures necessary to undertake a secondment. Given the multi-faceted and sometimes contradictory role of the CCC, in overseeing complaints of official police misconduct, while also utilising the resources of seconded police as investigators — in both the major crime and corruption functions — there needs to be a distinct and deliberate separation in the executive functioning and operations of the CCC. Seconded police should have the specialist skills and experience required to satisfactorily undertake the work required by the CCC.

McInnes Wilson Lawyers (on behalf of the seven former Logan City Councillors), Paul Tully, Principal and Caitlin Connole, Senior Associate

The submission is made on behalf of Cherie Dalley, Trevina Schwarz, Russell Lutton, Phil Pidgeon, Stephen Swenson, Laurence Smith and Jennifer Breene, who are all former councillors of the Logan City Council.

	The councillors submitted additional training for seconded police officers should be included in their orientation upon secondment to the CCC to ensure a full understanding of the objectives, scope and powers of the CCC. Ipswich City Council, Cr Paul Tully (and former deputy mayor) — joint submission It is recommended the CCC engage a highly experienced person(s) with previous senior local government experience in Queensland or at elected member level to advise on the proper processes of local government, the appropriate roles of councillors, and councils' operational policies and procedures, to ensure there is a substantive and genuine understanding of the 'real world' of local government.
Retaining police powers — examples where seconded police retain their powers as police	SA Police, Grant Stevens APM LEM, Commissioner of Police Secondments to the SA ICAC are in accordance with the 2019 Memorandum of Administrative Arrangement (MoAA) between the Commissioner of Police and SA ICAC. Among other things, it states that during the period of secondment, secondees may continue to exercise all powers and authorities vested in the secondee under the *Police Act 1998*, or another Act or law, as a member of SA Police in the exercise of functions or powers under the *Independent Commission Against Corruption Act 2012* (SA ICAC Act), including the power of arrest. However, although the MoAA enables the Commissioner to issue secondees with a 'General Search Warrant' authority, those seconded who hold a General Search Warrant authority are not permitted to retain it and will only have the authority reinstated upon return to the SA police. Seconded police officers must therefore apply for search warrants under other legislation during SA ICAC investigations. SA ICAC, Ann Vanstone QC, Commissioner Seconded police officers may continue to exercise police powers (arrest; stop, search, and detain; search warrants). Investigations into corruption in public administration must be overseen by the SA ICAC Commissioner, who remains closely involved throughout the investigation. In terms of issues arising, conflicts of interest may occur, especially when investigating allegations against police officers. This is managed by excluding the officer with the conflict from the investigation and access to any related records; and these cases are allocated to civilian investigators. Tasmania Integrity Commission, Greg Melick AO SC, Chief Commissioner A seconded police officer continues to have the powers and functions of a police officer. They report to the Integrity Commission CEO and not to the Commissioner of Police (or other senior police officers).

Relinquishing police powers — examples where seconded police do not retain their powers as police	### WA CCC, John McKechnie QC, Commissioner The WA CCC currently has two officers seconded from WA Police. Seconded police officers do not retain their police powers for the period of the secondment and are subject only to the direction of the WA CCC. They are effectively WA CCC officers for the period of their secondment. Seconded police officers play no role in the processes connected with decisions to commence prosecutions.
General information — powers of seconded police to charge	### WA Police Force, Chris Dawson, Commissioner of Police The WA CCC has no prosecuting authority and has no power to prosecute. Criminal matters are referred to the WA Police Force during or at the conclusion of a WA CCC investigation; and the police force conducts its own investigation, supported by evidence gained by the WA CCC, and independently decides whether to charge. Offences against the *Corruption, Crime, and Misconduct Act 2003* are prosecuted by the State Solicitor's Office, and offences under any other legislation are prosecuted by Police Force Prosecutors or the ODPP. ### SA Police, Grant Stevens APM LEM, Commissioner of Police Seconded police officers retain an authority to arrest (under the *Summary Offences Act 1953*) when seconded to the SA ICAC. However, a decision to arrest a suspect would not of itself amount to the commencement of criminal proceedings — a brief of evidence would still need to be adjudicated by a prosecutor and information laid before the court. ### Michael Woodford, Parliamentary Crime and Corruption Commissioner (Parliamentary Commissioner) Reference is made to the historical common law powers of police officers to arrest and charge, and the power of police officers to issue and serve a notice to appear under section 382 of the PPRA; and to Court of Appeal decisions which respectively make it clear the CCC cannot direct a police officer to issue a notice to appear and the CCC is an investigative body without general powers to charge or prosecute offences. Two key issues arise when considering whether the usual approach to charging — under which police officers who can receive material that would be inadmissible at trial exercise the discretion to charge — is appropriate in relation to the CCC: 1. whether the seconded police officer is truly able to exercise independence from the CCC and its officers in the exercise of the statutory charging power 2. whether it is just that the person exercising the charging power has access to inadmissible compelled material.

	As to the first issue, the Parliamentary Commissioner claims the evidence from the Logan Councillors Inquiry gives 'little confidence that seconded police officers truly exercise their charging discretion independently of the CCC's assessment of the matter'. Some distance should be placed between the CCC and investigating police officers seconded to the CCC and the police officer who exercises the charging discretion by delivering a brief of the admissible evidence outside of the CCC to the QPS. The Parliamentary Commissioner suggests this option is preferable to the CCC providing a full brief of evidence and observations in briefs for consideration of senior officers at the CCC. It is also preferable to the alternative of requiring all decisions to lay criminal charges (or classes of charges) arising out of CCC investigations to be made or endorsed by the DPP. As to the second issue, the Parliamentary Commissioner notes the present legislative system does not prevent a charging officer having access to inadmissible compelled material. 'A cautious and careful approach' would be for the investigative police officer seconded to the CCC to provide a brief of evidence with the admissible evidence to an appropriately experienced officer at the QPS to consider for the purpose of charging. That police officer, who would not have had any access to or awareness of the contents of the inadmissible compelled material, would then be the point of contact for the DPP for the prosecution phase of the matter.
Support for seconded police to charge	QPS, Katarina Carroll APM, Commissioner of Police Section 255(3) of the CC Act does not provide a power to direct an officer to arrest or charge a person; this power rests solely with the Office of Constable and section 255(3) should not be read as giving the CCC such power. CCC has no powers of arrest or power to charge persons other than to take proceedings against a police officer or public servant for corruption in the Queensland Civil and Administrative Tribunal. The commencement of criminal proceedings rests solely with prosecuting authorities (for example, the QPS). While the DPP may usually be considered a prosecution authority, section 49(5) of the CC Act expressly excludes the DPP from the definition of prosecuting authority for such referrals. However, despite section 255(3) of the CC Act, and in accordance with the inherent duties and responsibilities conferred by the common law Office of Constable, the decision whether or not to arrest or commence proceedings remains with the investigating officer alone, even if the Chairperson or any other officer or staff member of the CCC has been briefed or has expressed a view on the investigation.

At a fundamental level, a police officer seconded to the CCC cannot at law, and is not in practice, directed to charge a person with an offence. However, the police officer may be directed to investigate a matter or to undertake investigative action (such as attend a search warrant). Further, day to day directions could be given to a police officer either formally or informally.

In making a decision to charge a person with an offence, there will be no difference in the end product of a brief of evidence that is progressed to the DPP or the Chairperson of the CCC.

There is a standard practice at the CCC for legal observations to be made in respect of corruption investigation briefs of evidence. Obtaining legal observations is not a requirement for major crime investigations, but it should be noted that each investigation team has, during the course of the investigation, an assigned legal officer who provides advice and guidance.

Professor A J Brown, Professor of Public Policy and Law, Program Leader, Public Integrity and Anti-Corruption, Centre for Governance and Public Policy, Griffith University

The view that the ability of CCC officers to charge blurs investigative and prosecutorial functions is misinformed or misconceived with respect to basic operations of the criminal justice system, including the existing powers of police to both investigate and initiate prosecutions by way of charge, notwithstanding ultimate control by the DPP.

History shows that if left to normal police or DPP processes for consideration of charges, corruption and official misconduct cases are at high risk of being jeopardised by delay or inaction, as they are usually complex matters that 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 be a deleterious effect on public confidence that exposed misconduct will lead to formal consequences.

Mark Le Grand, former Director of the Official Misconduct Division, CJC (Queensland)

Mr Le Grand questions whether seconded police officers really exercise an independent discretion to charge especially where the matter has been considered and approbated by the CCC Chairperson and its lawyers. However, a blanket prohibition on charging without the concurrence of an independent agency would go too far for the following practical reasons:

	• Regardless of the structure of the CCC, there is no necessary dichotomy between corruption and major crime. Corruption is often associated with major crime. • The investigation of people suspected of serious corruption can involve substantial risk to the safety and security of investigators. It would be counterproductive and even dangerous to tie the hands of police officers undertaking operations in the field in these circumstances. To prohibit persons being charged pending a referral to, and approval by, an independent prosecution agency in such circumstances, would be impractical, self-defeating and possibly dangerous. The practical line which could be drawn is between referral of the major brief before charging and leaving discretion in seconded police in the field to protect themselves and those assisting them, to secure evidence against destruction, and to prevent the flight of suspects by the laying of charges if reasonably necessary. Tasmania Police, Darren Hine, Commissioner of Police Seconded police at the Tasmania Integrity Commission can initiate charges if they are approved by the relevant prosecuting authority.
Lack of support for seconded police to charge	Tasmania Integrity Commission, Greg Melick AO SC, Chief Commissioner The Tasmania Integrity Commission noted it is unlikely a seconded police officer could lay charges on behalf of the Integrity Commission. It noted that some police struggle differentiating between criminal and disciplinary systems, including skills such as writing detailed investigation reports, and there were also short-term issues of adapting to the Integrity Commission's case management and operational systems. Queensland Law Society, Kara Thomson, President Significant concern is held regarding the involvement of seconded police officers in the investigation and charging of persons for corrupt conduct with a call for reform to this practice so that these officers are only called upon in corruption matters as a last resort and are subject to strict guidelines as to their roles and responsibilities. A police officer seconded to the CCC should not be tasked with deciding whether criminal charges should be laid. The role of seconded police officers at the CCC is not clear as they retain their powers and duties as police officers but take direction from the CCC chief executive and there is a lack of clarity about the protocols to be followed. This can lead to conflicts and a lack of transparency and independence about how a matter is progressed following investigation. The CC Act provides limited guidance on this. An option for change is for police officers, rather than being seconded, to be trained

and have experience working at the QPS before being permanently recruited to the CCC. This would ensure a clear and definite separation between the agencies. Secondments from QPS should generally be a last resort; and in the alternative arrangements could be made for interstate recruitment to ensure an arm's length relationship and reduce potential conflict of interest.

A seconded police officer is 'required' to apply the same test at the DPP in charging but does not operate within the ODPP structure and may not have ever worked within the ODPP.

Where a seconded police officer is tasked with considering whether charges are to be laid, it is the CCC that is essentially making the decision and a 'group think' mentality may develop to which the seconded officer becomes subject.

McInnes Wilson Lawyers (on behalf of seven former Logan City Councillors); Paul Tully, Principal and Caitlin Connole, Senior Associate

The immediate effect of a person being charged with an integrity offence under the LG Act is that their constituents are disenfranchised from the democratic process. In circumstances where the CCC has demonstrated such grave misjudgement as occurred in the case of the Logan City Councillors, the power should be expressly removed from it. The former councillors recommend an express limitation upon the capacity of any police officer seconded to the CCC to charge unless the matter has been approved by the DPP.

Ipswich City Council, Cr Paul Tully (and former deputy mayor) — joint submission

They do not accept that, in practice, a seconded police officer would not follow a 'direction' or recommendation from a senior CCC officer to charge despite there being no lawful duty for them to comply. It is said, '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.' Reference is made to *PRS v CCC* [2019] QCS 83.

Ipswich City Council, David Pahlke, Former Councillor

Seconded police officers at the CCC should not have the power to arrest.

	Gold Coast City Council, Tom Tate, Mayor The use of seconded police officers to investigate alleged corruption and lay charges against those investigated provides insufficient separation of policing powers and a perceived lack of impartiality. If police officers continue to be seconded to the CCC, the police officer who lays the charge should not be the same officer who conducted the investigation. Queensland Police Union of Employees, Ian Leavers, President Police seconded to the CCC should not have a role in the decision to criminally charge a person from a misconduct investigation.
Oversight of seconded police	QPS, Katarina Carroll APM, Commissioner of Police Management of officers seconded to the CCC is subject to the joint responsibility of the CCC CEO and the most senior police officer seconded to the CCC (the detective chief superintendent). That is, although officers are seconded to the CCC and are subject to the direction and control of the CCC CEO, they remain members of the QPS, therefore the Commissioner of Police remains responsible industrially for the administration, human resource management and welfare of seconded police. The CCC established a Police Resource Committee to oversee secondment arrangements within the CCC. Officers are seconded under two different models: the Partnership Model, which applies to the secondment arrangements for capability areas of physical and technical surveillance, forensic computing and intelligence; and an Expression of Interest (EOI) Model, which applies to the secondment arrangements for capability areas of investigations, strategy and performance, human source and witness protection. Seconded police officers remain subject to existing QPS service manuals, including the QPS Operational and Procedures Manual (OPM), Commissioner's Directions and the QPS discipline system; and they must comply with the *Police Service Administration Act 1990* and the *Police Powers and Responsibilities Act 2000*.

Matters relating to decisions to commence and/or continue prosecutions in the context of CCC investigations (including, information about interstate integrity bodies)	
Criteria to apply when commencing a prosecution arising from an	QPS, Katarina Carroll APM, Commissioner of Police Section 3.4 of the OPM provides that the QPS policy to commence proceedings is drawn from the ODPP, Director's Guidelines (Director's Guidelines) and based on the two-tier test.

integrity body investigation	The QPS position is that the Director's Guidelines should be complied with (see section 3.4.5 of the OPM).
'The two-tier test'	There is no inconsistency in relation to how the two-tier test is applied by officers seconded to the CCC and officers in the QPS as a whole. A two-tier test is always applied by police officers in deciding whether to commence criminal prosecutions. Training on the two-tier test is fundamental and commences during recruit training and is woven through many facets of ongoing training, such as detective training. Police officers are required to make decisions on a case-by-case basis as not all offences brought to the attention of the service will be prosecuted. The decision to institute proceedings against a person for an offence initially rests with the arresting officer, upon being satisfied on reasonable grounds: • an offence has been committed • the person against whom prosecution is proposed has committed that offence • a statutory authority to prosecute for that offence exists • any statutory limitations on proceedings have not expired • the elements of the intended charge can be proven. The primary test is the 'sufficiency of evidence test'. A prima facie case is essential, but it is not enough. There must be a reasonable prospect of the defendant being found guilty of the offence. Features to be considered include admissibility, reliability, defences, contradictory evidence, competency of witnesses, compellability of witnesses, credibility and availability of witnesses, and any adverse or hostile witness. Once the sufficiency of evidence test has been satisfied, police must then consider the 'public interest test'. A number of features are nominated as being relevant to this test, which include the effect on public order and morale, the necessity to maintain confidence in institutions such as Parliament and whether the prosecution would be counter-productive to the interests of justice. The two-tier test is applied rigorously by officers seconded to the CCC as an investigation is considered within a multidisciplinary team that can include the investigating officer, the team director, the executive director, senior executive officer (SEO), commission lawyers, and the Chairperson. The QPS does not consider that there is an inconsistency between a direction to police officers to apply the two-tier test and any other criteria that police officers are required to apply in deciding whether to commence criminal prosecutions. It

does not consider that section 382 of the Police Powers and Responsibilities Act removes the requirement for the investigating officer to make a decision to prosecute based on the sufficiency of evidence and public interest tests. The investigating officer must have a reasonable suspicion the person has committed or is committing an offence.

The QPS notes that section 382(2)(b) was introduced as an administrative amendment to allow an investigating police officer to ask another police officer to issue and serve a notice to appear, for example, in circumstances where the investigating officer is unable to serve a notice to appear. It is noted as per the second reading speech for the amendment Bill that the requesting police officer remains the complainant in the matter.

ODPP NSW, Sally Dowling SC, DPP

Decisions to commence prosecutions are governed by the NSW ODPP Prosecution Guidelines and involve two questions: can it be said that there is no reasonable prospect of conviction on the admissible evidence? Is the prosecution in the public interest? This test applies to all offences, including those arising from NSW ICAC investigations.

ACLEI, Jaala Hinchcliffe, Integrity Commissioner

The *Prosecution Policy of the Commonwealth* (Prosecution Policy) underpins all the decisions made by the Commonwealth DPP (CDPP) throughout the prosecution process. It is a public document and applies to all Commonwealth prosecutions, including prosecutions arising from ACLEI investigations. The two-tier test is applied in deciding whether to institute a prosecution or continue a prosecution.

Queensland Law Society, Kara Thomson, President

Supports the threshold for charging arising out of a CCC investigation being the two-tier test under the ODPP Director's Guidelines.

Queensland Council for Civil Liberties, Terry O'Gorman, Vice President

In terms of the 'test' to be applied when deciding whether to prosecute following CCC investigations (i.e. whether it should it be the lower-level test as applied by a magistrate in committing for trial or the higher test applied by the DPP when presenting an indictment), the Queensland Council for Civil Liberties supports the higher-level test.

Professor Ross Martin QC

The process of charging and then carrying that charge through to finality might be considered as engaging in a series of filters, generally of increasing restriction against the state in the sense that at each step considerations come into play that make it more likely a prosecution will come to an end. That is:

	• 'First Filter' is that the decision to arrest and charge may be made based on a 'reasonable suspicion' • 'Second Filter' is that the case must pass through a committal proceeding where the magistrate should apply the *prima facie case* test • 'Third Filter' is that applied by the DPP, typically after a committal hearing, which engages considerations of the DPP's Guidelines. It is at this point that the two-tier test is to apply to decide whether a charge should continue to proceed. Professor Martin QC notes that, while he expresses no exhaustive view about the extent of a charging officer's discretion not to lay a charge after a proper investigation, once the decision to charge has been made, the question of exercising public interest discretion should be for the DPP alone. It is not for an investigating agency (i.e. CCC) to pre-empt the DPP's public interest discretion. • 'Fourth Filter' is the obligation of a trial Judge to stop a trial where no prima facie case exists • 'Fifth Filter' is the jury's ultimate decision about whether the prosecution case has been proven beyond reasonable doubt The principles that apply to ordinary charges and prosecutions by the QPS should apply so far as is possible to the CCC. Principles of equality before the law dictate no one should be in a privileged position so far as the procedures relating to the laying of charges and the continuation of prosecutions. This particularly relates to instances where elected officials are subject to statutory suspension upon certain charges being laid against them, the consequences of charging should be considered at the time of charging. This derives from the misconception the CCC should follow the public interest discretion test in deciding whether to charge; Professor Martin QC remains unpersuaded that is or ought to be the case. Considering derivative statutory consequences in the charging of a class of suspects such as politicians should not unduly distort the process of charging itself or amount to a subversion of the will of Parliament — to do so perversely risks the creation of a class of citizen with greater protection from the operation of the law than others.
Commencing a prosecution in the context of an integrity body investigation	NSW ICAC, The Hon Peter Hall QC, Chief Commissioner NSW ICAC is an investigative body. It does not institute or conduct criminal proceedings. The decision on whether to commence criminal proceedings because of an NSW ICAC investigation is a matter for the DPP.

ODPP NSW, Sally Dowling SC, DPP

If the NSW ODPP determines there is sufficient admissible evidence and the prosecution is in the public interest, NSW ICAC is advised and commences the prosecution. If a brief of evidence is considered insufficient, NSW ODPP may request NSW ICAC to provide further evidence or information. If NSW ODPP determines there is no reasonable prospects of conviction or that a prosecution is not in the public interest, NSW ICAC is advised and may request a review of the ODPP decision.

NSW Crime Commission, Michael Barnes, Commissioner

The NSW Crime Commission does not make decisions to charge or otherwise commence prosecutions. It works in partnership with other law enforcement agencies. Police officers are regularly appointed to the NSW Crime Commission for the duration of investigations. However, decisions to obtain advice from the DPP or to commence criminal charges lay with the partner agencies, such as the NSW Police Force and AFP; not with the NSW Crime Commission.

Victoria IBAC, Glenn Ockerby, A/Chief Executive Officer

IBAC may commence proceedings for any offence under the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act) or any offence in relation to any matter arising out of an IBAC investigation. Decisions to prosecute are guided by internal IBAC and Office of Public Prosecutions (OPP) policies; and must consider the *Charter of Human Rights and Responsibilities Act 2006*, *Victim's Charter Act 2006*, and Victoria's Model Litigant Guidelines.

WA CCC, John McKechnie QC, Commissioner

The WA CCC has no legislative authority to commence a prosecution arising from a WA CCC investigation. These decisions are made by agencies with power to charge, such as the WA Police Force, the State Solicitor's Office, and ODPP.

SA ICAC, Ann Vanstone QC, Commissioner

SA ICAC does not have any prosecutorial powers, and seconded police have never laid charges arising from investigations.

Tasmania Integrity Commission, Greg Melick AO SC, Chief Commissioner

The Tasmania Integrity Commission has no function to prosecute or investigate offences.

NT ICAC, Michael Riches, Commissioner

NT ICAC (or Commissioner) has no function to initiate prosecutions. The decision to commence a prosecution rests with the NT Police or the DPP. This separation is considered appropriate.

ACLEI, Jaala Hinchcliffe, Integrity Commissioner

An authorised ACLEI officer (i.e. someone who is not already a constable) may exercise powers of arrest for the purpose of investigating a corruption issue, as if they have the powers of a constable. However, ACLEI (or Integrity Commissioner) cannot conduct its own prosecutions. Prosecutions arising from ACLEI investigations, whether relating to summary or indictable offences, are undertaken by CDPP.

Queensland Council for Civil Liberties, Terry O'Gorman, Vice President

Decisions to prosecute should not be made by the CCC.

Queensland Police Union of Employees, Ian Leavers, President

The CC Act should be amended to clarify that the CCC cannot commence or conduct prosecutions outside the discipline sphere under existing section 50, and to provide a requirement for a limitation period, on commencing corrupt conduct proceedings, of 12 months from the time it comes to the knowledge of the investigating authority.

Section 49 should be amended to make it clear that the CCC must refer its investigation (all materials favourable and unfavourable) directly to the Police Commissioner to consider if criminal charges should be commenced. The Police Commissioner will delegate the task to a suitable person — either internally or externally. If the matter relates to a serving police officer, it would be referred to the QPS Ethical Standards Command or someone at the private bar to consider.

LGAQ, Alison Smith, Chief Executive Officer

The NSW ICAC model of charging and prosecution should be adopted, whereby the ODPP recommends whether and when to charge. The regular and ongoing examples of failed prosecutions commenced by the CCC in Queensland suggests changes are needed.

McInnes Wilson Lawyers (on behalf of the seven former Logan City Councillors), Paul Tully, Principal and Caitlin Connole, Senior Associate

The councillors submit the need for an express limitation on the charging powers of seconded police officers to the CCC, unless approval is obtained by a secondary body like the DPP to ensure that investigative processes, including the evidence, is scrutinised and properly assessed, and express provision to ensure the CCC remains an independent body for investigating corruption and that all charging authority rests with the DPP or QPS. An independent team or subgroup should be formed within the ODPP restricted to charging offences arising from CCC investigations. The CCC's functions should be limited to investigating corrupt conduct and preparing an outline of evidence to support a charge for prosecution.

Interaction between the integrity body and the Director of Public Prosecutions in the context of an integrity body investigation	NSW ICAC, The Hon Peter Hall QC, Chief Commissioner One of NSW ICAC's functions 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 the corrupt conduct and to furnish this evidence to the DPP. The decision whether to commence criminal proceedings because of an NSW ICAC investigation is a matter for the DPP. NSW ICAC has a MOU with the ODPP that sets out in general terms the responsibilities of NSW ICAC and the ODPP, namely: • NSW ICAC is responsible for preparing briefs of admissible evidence which are provided to the ODPP. • The briefs are usually provided after the investigation has concluded and ICAC has made its 'report' public. • NSW ICAC investigators, in consultation with a NSW ICAC lawyer assigned to the matter, prepare the briefs which are reviewed by the relevant NSW ICAC lawyer before provision to the ODPP. Generally, compelled evidence will not be admissible in subsequent criminal proceedings therefore such evidence is not included in the briefs provided to the ODPP. The exception is where the evidence relates to an offence against the NSW ICAC Act, such as, giving false and misleading evidence. • The NSW ICAC lawyer's review of the brief is to ensure the brief is complete, accurate and meets all requisite evidentiary and disclosure requirements, including a cover letter addressing: each of the proof elements for the identified offence(s); any known or expected difficulties of proof; which witnesses have indicated that they are willing to give evidence and not give evidence; the significance of the documents included in the brief; and if there is any particular urgency. • Once the ODPP has finalised its review of the evidence it provides its advice to NSW ICAC. The offences nominated by the ODPP may differ from those identified by the NSW ICAC. Where the ODPP does not agree with the NSW ICAC's view, the ODPP's advice prevails. NSW ICAC has never instituted criminal proceedings without the agreement and advice of the ODPP. • Criminal proceedings are generally commenced by a court attendance notice (CAN). ICAC prepares the CANs in accordance with ODPP advice and serves the CANs. ODPP is named in all CANs as the prosecutor; no ICAC

officer is named as prosecutor. All prosecution proceedings are conducted by the ODPP.

One of the purposes of the MOU is to prevent unnecessary delays in obtaining advice on whether prosecution action should be commenced — it includes timetables:

- For time-limited summary offences, the NSW ICAC brief will be provided no later than three months before the time will expire and within eight weeks of receipt of the brief, the ODPP will advise NSW ICAC if criminal charges are available or provide a progress report.
- For indictable offences (and most offences prosecuted following a NSW ICAC investigation are indictable offences)
  - Within two weeks of receipt of the brief, ODPP will notify ICAC of key administrative matters i.e. lawyer allocation, contact details, categorisation of matter complexity.
  - Within three months of receipt of the brief, a conference is held between ODPP and NSW ICAC, during which a timetable is developed for answering requisitions and furnishing advice.
  - For 'straightforward' and 'standard' matters (as defined in the MOU), ODPP is to advise whether charges are available within six months of receipt of the brief; for 'moderate complexity' and 'high complexity' matters, ODPP is to advise whether charges are available within 12 months of receipt.

While NSW ICAC and ODPP consider the timetables reasonable and appropriate, due to resourcing limitations, ODPP has had difficulty meeting the MOU dates, which has resulted in delays in the provision of advice to NSW ICAC.

ODPP NSW, Sally Dowling SC, DPP

The NSW ICAC Act provides the legislative basis for the referral of matters by NSW ICAC to NSW ODPP. A MOU (in the process of being updated) exists between the two agencies and outlines the practices and procedures for the referral of matters and stipulates the format and information to be included in the referral.

NSW ODPP will not provide advice to NSW ICAC on an informal basis. The process is governed by the MOU. NSW ODPP primarily provides advice to NSW ICAC *before* commencement of a criminal prosecution in response to a specific referral from NSW ICAC on the question of the sufficiency of evidence to prosecute; although it can 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 laid by NSW ICAC, the ODPP assumes full responsibility for all prosecutorial

decisions to be made (but will consult with NSW ICAC). It is not the case that advice is typically provided by NSW ODPP *after* commencement of a criminal prosecution.

The MOU includes timeframes for the provision of advice and evidence.

Victoria IBAC, Glenn Ockerby, A/Chief Executive Officer

If after an investigation IBAC believes an indictable offence was committed, they can (and do in most cases) seek advice from the Office of Public Prosecutions (OPP) on appropriateness of charges. Where indictable offences are filed, the prosecution is taken over by the OPP after IBAC files charges, and before the first hearing. IBAC usually prosecutes summary charges; however, they can request the OPP to take over prosecution of summary charges. Referral powers are provided under the IBAC Act and referral protocols are termed in an agreement between IBAC and OPP.

WA CCC, John McKechnie QC, Commissioner

The ODPP does not currently accept briefs of evidence directly from the CCC. The CCC currently refers matters for consideration for prosecution to the State Solicitor's Office (SSO). However, the CCC, SSO and ODPP are in the process of developing a MOU to govern matters associated with prosecutions arising from CCCC investigations.

ODPP WA, Amanda Forrester SC, DPP

In the performance of its serious misconduct function, the WA CCC may refer allegations for further action by an independent agency or appropriate authority, or provide evidence obtained in the course of investigation to those entities, or to a suitable authority in another jurisdiction.

Prior to the Court of Appeal's decision in *A v Maughan* [2016] WASCA 128 (*Maughan*), there was some uncertainty as to whether the WA CCC had itself the power to commence and conduct prosecutions. However, in *Maughan*, the Court of Appeal held that the WA CCC's functions do not extend to the prosecution of offences it has investigated but which otherwise have no connection with the CCC or the administration of its Act. The Court of Appeal left open the issue of whether the WA CCC is empowered to prosecute matters which concern the administration and enforcement of its Act.

Following *Maughan*, where the WA CCC considers an investigation undertaken discloses the commission of an offence, it refers the matter to the SSO. It remains open to the WA CCC to refer allegations to the WA Police for investigation and charge, and a prosecution might thereafter be taken over by the ODPP from 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

believes there is a prima facie case against the accused, and it is in the public interest to prosecute, the SSO will commence proceedings. Simple offences are prosecuted by the SSO. For indictable offences, the SSO will commence prosecution and liaise with the ODPP regarding which office conducts the proceedings. Where it is agreed that the prosecution will proceed on indictment, the ODPP takes over at the committal stage.

If alteration or discontinuation of charges is contemplated, the ODPP consults the WA CCC and the SSO.

Once the ODPP has conduct of a prosecution arising from a WA CCC investigation, it is managed in the same manner as any other prosecution.

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 these cases, formal correspondence is raised and the SSO is entitled to act on the DPP's recommendation.

SA ICAC, Ann Vanstone QC, Commissioner

SA ICAC does not have any prosecutorial powers, and seconded police have never laid charges arising from investigations. Until recent legislative amendments in 2021, SA ICAC could refer briefs to the DPP or SA Police who would decide whether to prosecute. Now, SA ICAC may still seek advice from the DPP in relation to a matter but must only refer matters for prosecution to a law enforcement agency.

NOTE: The issue of the involvement of commission officers in a matter once a prosecution has been commenced was recently the subject of litigation — *Bell* v *The Queen* [2022] SASCFC 116 (see also, *Bell* v *The Queen* [2022] HCA Trans 030). After the Court of Appeal decision, the DPP gave an undertaking not to make further requests for ICAC's assistance in prosecutions of any matter arising from investigations commenced before 25 August 2021.

SA Police, Grant Stevens APM LEM, Commissioner of Police

Following amendments to the SA ICAC Act, commencing 7 October 2021, SA ICAC can no longer refer a matter directly to a prosecution authority but may (only) refer it to a law enforcement agency who will be responsible for any further investigation and prosecution of the matter. Seconded police officers cannot initiate charges. (Note in this regard the submission states: seconded police retain their authority to arrest under the *Summary Offences Act 1953*; however, a decision to arrest a suspect would not of itself amount to the commencement of criminal proceedings — a brief of evidence would still need to be adjudicated by a prosecutor and information laid before the court).

Tasmania Integrity Commission, Greg Melick AO SC, Chief Commissioner

The Tasmania Integrity Commission has no function to prosecute or investigate offences but will regularly seek advice from the DPP or Tasmania Police on potential criminal matters; if evidence an offence has been committed arises, the Commission will seek advice from the DPP or police before proceeding with the matter (also ensuring the Integrity Commission does not prejudice a potential prosecution). In the past, Tasmania Police were briefed on evidence collected by the Integrity Commission when suspecting a potential criminal matter occurred. Police could then seek referral of the matter for investigation. The DPP usually charges and prosecutes on behalf of the Integrity Commission.

NT ICAC, Michael Riches, Commissioner

No prosecutions have yet commenced following an NT ICAC investigation. There is a MOU between NT ICAC, NT Police and the DPP which outlines the process for commencing prosecutions, provision of briefs of evidence, and other operational agreements. Under these arrangements:

- NT ICAC is not party to proceedings of any prosecution. NT ICAC does not influence prosecutions and at no time may NT ICAC express opinions on prospects of prosecution.
- NT ICAC is to provide a brief of admissible evidence and covering letter to the DPP for each matter referred. If evidence provided was obtained under compulsion it should be made clear in the brief. The DPP may request further information from NT ICAC. The covering letter must meet specific requirements and identify things such as proof elements, known difficulties of proof elements, willingness of witnesses to give evidence, significance of documents, and any urgency.
- If the DPP consider there are more appropriate charges than those identified by NT ICAC, the DPP will provide advice as to their preferred alternative charges.
- NT ICAC has an ongoing duty to make full disclosure to the DPP.
- NT ICAC will pay any court awarded legal costs for unsuccessful prosecutions.

In terms of timeframes for advice, the MOU provides that for summary offences where a charge is time-limited, within eight weeks of receiving the material the DPP will advise if criminal charges are available or provide a progress report; and for indictable offences, an opinion will be provided on a timeframe determined on a case-by-case basis but not exceeding six months.

ACLEI, Jaala Hinchcliffe, Integrity Commissioner

Section 142 of the LEIC Act places the Integrity Commissioner in a different position to that of other Commonwealth investigative agencies. If an ACLEI investigation reveals the commission of an offence against a law of the Commonwealth, the Integrity Commissioner must assemble a brief and refer *admissible* evidence of the offence to the AFP or the CDPP; whereas, in contrast, other Commonwealth investigative agencies retain discretionary power to determine whether to do so. (Noting, however under the Prosecution Policy it is generally considered desirable wherever practicable that matters be referred to the CDPP prior to the institution of a prosecution so the brief can be examined to determine whether a prosecution should be instituted and, if so, on what charge or charges.)

Accordingly, as all prosecutions arising from ACLEI investigations are undertaken by CDPP, the two agencies maintain a strong working relationship, including scheduling regular meetings to discuss emerging issues, future matters that may be referred, and the progress of matters already referred. During complex investigations, ACLEI may engage with the CDPP to discuss relevant matters. Also, in assessing referrals made, the CDPP may advise ACLEI of additional evidence needed to finalise assessment of the brief.

Queensland Police Union of Employees, Ian Leavers, President

The ODPP has lost its independence. The Queensland Police Union submits the CCC places informal pressure upon the ODPP. The CCC and ODPP should be obliged, by legislation, to maintain records of any directions or communications between them. This will ensure the CCC does not impose its will upon the ODPP and from it becoming a mouthpiece for the CCC.

Professor Ross Martin QC

It is for the police at the CCC ultimately to decide to lay charges. It is parallel with the practice at the QPS. If the CCC thinks that there is merit in considering internally the legal position with respect to potential charges prior to their being brought so that the police officer's view has the benefit of that internal legal opinion, then that process is to be encouraged so long as it does not dilute unduly the decision of the police officer to undertake to charge an accused person. The CCC has indicated that in future it will seek outside advice before laying charges. That outside advice should come from appropriately senior counsel at the Bar. The ODPP should not be consulted for advice prior to charging. That is to maintain consistency with the practice that applies in ordinary QPS cases.

Support for the CCC obtaining external, independent advice before commencing a prosecution arising from a CCC investigation	### Michael Woodford, Parliamentary Crime and Corruption Commissioner (Parliamentary Commissioner) The Parliamentary Commissioner describes the CCC's intention to obtain independent external advice before charges are laid, either from the DPP or another appropriately qualified and independent advisor, as 'well intentioned' but as continuing 'the charging fallacy'. The individual police officer, not the CCC, decides whether to charge. Also, while accepting the submission of LGAQ that the mere fact of charging can have a substantial impact on the stability of local government, the Parliamentary Commissioner considers that a requirement for pre-charging advice should extend beyond the confines of the LG Act. It should extend to offences under other pieces of legislation that have the capacity to destabilise all arms of local and state government. Expert advice on charging need not necessarily be obtained from the DPP but may also be obtained internally or externally by the QPS. ### Queensland Law Society, Kara Thomson, President The removal of the direct referral power to the DPP under section 49 has had unintended consequences; given the nature of the CCC's investigations, and the broad powers of the CCC and public interest involved, a review by an external body is necessary. There is ambiguity between what the CCC was established to do, what the legislation permits it to do and what in fact happens in practice. There is a need to delineate the CCC's scope of authority very clearly in relation to decisions to charge. Reform is needed to ensure decisions are not made by the CCC without involvement from an external body, such as the DPP — by not referring a matter out to an external prosecuting authority it can serve to undermine public confidence as there is no independent review of the evidence which can cause or contribute to failed prosecutions. Options suggested — the Commissioner of Police be given the role of reviewing evidence, and the Commissioner can then refer the matter to the appropriate section of the QPS to review and lay charges; or the matter can be referred to a senior prosecutor at the ODPP or a senior member of the legal profession. The relevant test for charging should be that under the ODPP Director's Guidelines. ### Queensland Council for Civil Liberties, Terry O'Gorman, Vice President In terms of 'who' should review the briefs, reference was made to the CDPP which is often called upon by Commonwealth law enforcement agencies to review briefs before a prosecution is commenced. It was acknowledged this would pose

resource implications for the Queensland DPP. Consideration should be given to the Commonwealth resourcing model in this regard.

Further, having this done by a member of the Queensland Bar poses problems; for example the CCC would get to choose who is briefed and could select a barrister likely to recommend a prosecution; an individual barrister may not be sufficiently rigorous in making a decision because the barrister may be hoping for further briefs; and the barrister would need to be senior and have a background in criminal law, which would limit persons available.

Gold Coast City Council, Tim Baker, Chief Executive Officer

The Council recommends consideration be given to adopting a similar approach to NSW, NT and Tasmania (regarding their powers of referral to prosecuting authorities before charging).

Robert (Bob) Atkinson, AO, APM (Retired) Former Commissioner of Police, Queensland

There should be policy and practice consistency between the CCC, QPS and the DPP regarding a decision to prosecute and the form of placing a person before a court. It would be preferable to have the DPP involved in determining the sufficiency of evidence in matters that require determination in the District or Supreme Court.

Mark Le Grand, Former Director of the Official Misconduct Division, CJC (Queensland)

Fundamentally there should be separation between the prosecution and investigation of a matter. It is a fallacy to say that an investigator is properly placed to make the decision about prosecution. Involvement in an investigation, especially a lengthy and complex investigation, taints the whole review process:

- Assessing witness credibility — involvement with witnesses over time may lead to subjective opinions which overlook the weaknesses in their testimony, but which would be objectively obvious to a jury.
- The expenditure of time and resources — many investigations are complex, resource intensive and time consuming. Having invested so much into a case and faced with justifying that commitment to the Parliamentary Committee and to the public, there is a strong if subtle pressure to validate the investigation by proceeding to prosecution.
- Issues of compelled evidence — the analysis of what evidence is admissible and inadmissible requires rigorous examination at arm's length from the investigation and is not appropriate for an in-house assessment.

	These matters are best assessed by an independent and expert prosecuting agency such as the DPP. The exclusion of the DPP as a permitted prosecuting authority contravenes key principles of the legal system that the prosecutor remains separate from the investigation. Public Submissions One public submitter recommended that the DPP, independent from the investigative process, be tasked with examining the merit of available evidence before a charge is brought by a seconded police officer at the CCC.
Matters relating to section 49 of the *Crime and Corruption Act 2001*	Michael Woodford, Parliamentary Crime and Corruption Commissioner (Parliamentary Commissioner) Section 49 was amended after concerns about its operation had been expressed by the then Acting DPP, Mr Michael Byrne QC, in a submission to the PCCC's 2015 Review of the CCC. In June 2016, the PCCC in Report No. 47 on Review of the CCC endorsed the submission of Mr Byrne and recommended the government consider amending section 49 to remove the power of the CCC to refer corruption investigations to the DPP. However, in August 2016 the then Parliamentary Commissioner, Mr Paul Favell, wrote to the Director-General, Department of Justice and Attorney-General suggesting a different course; instead of amending section 49, Mr Favell suggested that consideration be given to the establishment of a protocol between the CCC and the DPPP to allow reports to be provided in limited circumstances. Then in 2018, section 49 was amended to remove the DPP as a 'prosecuting authority' with the consequence that the Police Prosecutions Corps is essentially left as the only prosecuting authority to which the CCC may report an investigation. The Parliamentary Commissioner expresses the view that section 49(2)(a) in its present form has no practical utility. It only applies to corruption investigations. Further, there is no statutory requirement that a police officer seconded to the CCC must first seek the approval of the DPP or any other person (including a senior CCC officer) before laying a criminal charge arising from a corruption investigation or a major crime investigation. In that respect, a police officer seconded to the CCC is in the same position as any other QPS officer, a fact reinforced by section 255(5) of the CC Act. If decisions to bring criminal charges following CCC investigations are to be subject to prior independent approval, section 49 should be amended or a new section should be enacted. Alternatively, an appropriate approval process could be set out in the CCC's policies and procedures.

Queensland Law Society, Kara Thomson, President

Reform is needed to ensure decisions are not made by the CCC without involvement from an external body, such as the DPP.By not referring a matter out to an external prosecuting authority it can serve to undermine public confidence as there is no independent review of the evidence which can cause or contribute to failed prosecutions. Section 49 should be amended to specifically exclude a seconded police officer as constituting a 'referral out' under that provision.

Professor A J Brown, Professor of Public Policy and Law, Program Leader, Public Integrity and Anti-Corruption, Centre for Governance and Public Policy, Griffith University

Professor Brown submits that, rather than requiring the CCC first to consult the DPP, consideration should be given to codifying the circumstances in which investigatory and prosecutorial best practice would mitigate in favour of consulting the DPP, or an independent legal advisor, prior to charge, and these factors should be added to section 49 of the CC Act as matters that the CCC is required to consider when determining whether to seek additional advice prior to charge.

LGAQ, Alison Smith, Chief Executive Officer

Section 49 of the CC Act is not appropriate and sufficient, and should be amended to prevent what happened to the former councillors of Logan City Council and Moreton Bay Regional Council from ever occurring again.

Section 49 should be amended to require, prior to the laying of serious criminal charges, that the CCC first report on its investigation to, and be reviewed by, the ODPP. It is said that the failure of the charges against the former councillors of Logan City and Moreton Bay Regional Councils to proceed beyond the committal stage, due to what appears to have been a lack of evidence, is of itself evidence that neither the CCC, nor police officers seconded to it, are capable of making the correct decision when it comes to the laying of serious criminal charges. In the alternative, at the very least, an amendment to section 49 to require an intended CCC decision to lay criminal charges for a 'disqualifying offence' under the LG Act to be first subject to a report to, and review by, the DPP.

Moreton Bay Regional Council, Allan Sutherland, Former Mayor

Section 49 of the CC Act should be amended to require the CCC to obtain the recommendation of the DPP, or a senior independent legal advisor, before exercising (through seconded police) the discretion to charge serious criminal offences in the exercise of its corruption function.

The seconded police officers at the CCC did not appear to understand the issues regarding the practical workings of local government, how council business relating to planning was conducted, the role of the Mayor and the operation of the LG Act.

The evidence gathered by the seconded police included heavy reliance upon inadmissible hearsay and opinion evidence. Exculpatory evidence or information was ignored or not included in the brief of evidence, as became apparent at the committal hearing stage. Further, the seconded police elected not to consider or investigate the matters raised by Mr Sutherland in his voluntary record of interview, prior to charging him. 'The evidence given by the Crown's own witnesses at committal should have come as no surprise to the CCC if they had analysed the evidence properly and impartially and made enquiries about the responses I gave during my voluntary interview.'

Gold Coast City Council, Tim Baker, Chief Executive Officer

The submission is provided on behalf of the Council of the City of Gold Coast (the Council). The Council generally supports the robust integrity framework established under the LG Act and the CC Act; and related legislation.

It is submitted that the lack of separation between the exercise of powers of seconded police officers and the exercise of police powers to charge results in a lack of independent scrutiny as to whether the investigation has yielded sufficient evidence to support the laying of charges.

Legislative clarification is needed regarding the CCC's role in prosecutions, as it is difficult to reconcile its ability to charge through seconded police officers with the following position:

- section 49 of the CC Act outlines that the CCC investigates matters and if it considers there should be criminal charges following an investigation, refers the matter to a prosecuting authority
- section 50 of the CC Act provides the CCC with discretion to prosecute *corrupt conduct* of an officer in a Unit of Public Administration, where there is evidence to support the start of disciplinary proceedings at the Queensland Civil and Administrative Tribunal.

Mark Le Grand, Former Director of the Official Misconduct Division, CJC (Queensland)

The 2018 amendments to the CC Act have watered down conformity with the Fitzgerald Inquiry recommendations. It is recommended that former section 33(2A) of the CJC's *Criminal Justice Act 1989* be restored to the CC Act. That provision required that a report of an investigation must be made to the DPP or other prosecuting authority with a view to such prosecution proceedings. Now, by the time the DPP assesses the evidence, the damage of laying charges has already been done (e.g. reputational harm, loss of livelihood, threat to democracy). Rather than amending section 49, what should have occurred in 2018 was that the ODPP be given more resources.

	NSWCC, Michael Barnes, Commissioner In the Queensland context, Commissioner Barnes' experience includes: State Coroner, Magistrates Court (2003 to 2013); and Chief Officer, Complaints Section of the CJC (1993 to 1999). Commissioner Barnes recommends the reinstatement of the requirement for the CCC to refer a brief to the ODPP for advice before criminal charges are laid. This was a sound practice as it recognises it can be difficult for investigators to view the results of their endeavours objectively. Conversely, police routinely prefer more serious charges in the absence of ODPP input, leading to the matter not proceeding to trial or the charges being dismissed. However, having regard to the fact that cases investigated by the CCC are frequently more complex, the status of defendants in CCC cases will inevitably ensure their protestations will have greater impact if charges are withdrawn. The harm in that eventuality is not just to the defendant — the CCC suffers and the justice system is brought into disrepute. On balance, the CCC should refer a brief to the ODPP before preferring criminal charges.
Issues arising from knowledge of or access to compelled evidence	NSW ICAC, The Hon Peter Hall QC, Chief Commissioner The privilege against self-incrimination does not apply in NSW ICAC hearings and witnesses can be compelled to answer questions. Thus, it is often the case that the evidence available to ICAC upon which it makes its findings will differ from the admissible evidence able to be used in subsequent criminal proceedings. NSW ICAC has a MOU with the ODPP which sets out, in general terms, the responsibilities of each. Under the MOU, NSW ICAC officers are responsible for preparing briefs of admissible evidence which are provided to the ODPP. Compelled evidence is not included in the brief. The briefs of evidence are usually provided after the investigation has concluded. NSWCC, Michael Barnes, Commissioner The NSWCC must seek leave of the Supreme Court to coercively examine charged persons about the subject matter of the charge. Thereafter, the NSWCC must ensure that none of the coercively obtained evidence is disclosed to a member of an investigative agency or a prosecutor if that person is involved in prosecution of the examinee for the offence they were examined about. The evidence obtained coercively from the charged person is not admissible against them; however, it is admissible against another person, subject to the court determining that the interests of justice require the release of the compelled evidence in those other criminal proceedings.

ODPP NSW, Sally Dowling SC, DPP

Direct use of an accused's compulsory evidence (public or private) is not permitted when prosecuting an accused for any offence (except an offence under the NSW ICAC Act). Indirect use of compulsory evidence is governed by appellate decisions. The current practice is that NSW ICAC will not provide transcripts of evidence compulsorily obtained in a referral to NSW ODPP (unless advice is requested for the sufficiency of evidence for giving false and misleading evidence to NSW ICAC). Internal practices in the specialist units at NSW ODPP apply and ensure access to this evidence is restricted to specific prosecution teams. This involves having separate prosecutors with carriage of the advice and prosecution of substantive corruption offences from the prosecutors who have carriage of the advice and prosecution of offences under the NSW ICAC Act.

WA CCC, John McKechnie QC, Commissioner

Investigative material acquired compulsorily by the WA CCC in the exercise of its serious misconduct function may be assembled and furnished to an independent agency or another authority (*A v Maughan* [2016] WASCA 128).

ODPP WA, Amanda Forrester SC, DPP

The ODPP requires the WA CCC to provide all relevant material for a prosecution, which may include evidence obtained by its use of coercive powers such as examination transcripts and compulsorily acquired documents.

The restrictions on the use in criminal proceedings, in WA, of evidence obtained by the exercise of the WA CCC's coercive powers have, since *Maughan*, been well understood, although they have not been tested in any controversial aspect. In *Maughan*, the Court of Appeal considered the significance of the *X7* line of authorities to the provision by the WA CCC of examination transcripts to a prosecutor under the *Corruption, Crime and Misconduct Act 2003* (CCM Act).

Relevantly, the CCM Act:

- expressly authorises the conduct of compulsory examinations for the purposes of investigating criminal conduct and expressly abrogates the privilege against self-incrimination which would otherwise be available to persons examined
- does not oblige the WA CCC to make directions about the use which might be made of the evidence given by persons examined to ensure their fair trial
- defines a 'restricted matter' in terms that include any evidence given before the WA CCC, and the contents of any compulsorily acquired

documents, and prohibits the disclosure of a restricted matter otherwise than in accordance with ss 151 or 152

- expressly authorises the provision of information gathered by the WA CCC during its investigations to prosecuting agencies
- provides a qualified 'direct use immunity' such that evidence given under compulsion during an examination cannot be admitted as evidence in any subsequent criminal proceedings against the person examined
- expressly preserves the operation of s 21 of the *Evidence Act 1906* (WA), which permits a witness to be cross-examined in relation to statements they made during compulsory examination if those statements are inconsistent with the evidence given in the criminal proceedings
- makes admissible the transcript of an examination as evidence of the witness's statements to the WA CCC.

In *Maughan*, the Court of Appeal followed *R v Independent Broad-based Anti-corruption Commissioner* [2016] HCA 8; (2016) 90 ALJR 433. The Court of Appeal summarised the proper construction of the CCM Act thus:

> [T]he general provisions of the Act which reveal the object or purpose of the Act relevant to these proceedings; the scheme by which that object or purpose is to be achieved; the particular provisions of the Act with respect to the use which may be made of evidence given at an examination; and the specific provisions which both authorise and in one case require the Commission to provide information to a prosecutor, all clearly and unequivocally compel the conclusion that it is necessary to attribute to the legislature an intention that the prosecutor have access to the transcript of evidence given by an person examined before the Commission and subsequently charged with offences.

Notwithstanding the Court of Appeal's clear position on the proper construction of the CCM Act in *Maughan,* it is appropriate for the prosecution to consider whether evidence that was compulsorily obtained by the WA CCC should be managed in any exceptional way, and to be cautious in the use made of it. The consideration and the caution that is necessary will depend on the nature of the evidence and the allegations.

SA ICAC, Ann Vanstone QC, Commissioner

ICAC has never prosecuted a witness but would not provide any coercive evidence to the DPP if the situation arose.

NT ICAC, Michael Riches, Commissioner

There is a MOU between ICAC, the DPP and the NT Police which outlines the process for commencing prosecutions, briefs of evidence, and other operational

arrangements. Among other things the MOU provides that ICAC will provide a brief of admissible evidence and covering letter to the DPP for each matter referred. If evidence provided was obtained under compulsion it will be made clear on the face of the brief.

If inadmissible material is provided to the DPP, it will be considered by the DPP; however, any advice on reasonable prospects of success will take into account that the evidence is not in an admissible form.

ACLEI, Jaala Hinchcliffe, Integrity Commissioner

In response to the decisions in *Lee v NSW Crime Commission* (2013) 251 CLR 196, *Lee v The Queen* (2014) 253 CLR 45 and *X7 v Australian Crime Commission* (2013) 248 CLR 92, the LEIC Act was amended to clearly set out the circumstances whereby ACLEI can use its powers to disclose (compelled) information obtained directly or indirectly from ACLEI hearings, and the uses to which such information can be put — making a clear distinction between pre-charge and post-charge hearings. For example, once a witness has been charged with an offence (or such a charge is imminent), hearing material cannot be disclosed to a prosecutor of the witness without an order from the court hearing the charges. The court may order the disclosure of hearing material to a prosecutor if it would be in the interests of justice.

McInnes Wilson Lawyers (on behalf of the seven former Logan City Councillors), Paul Tully, Principal and Caitlin Connole, Senior Associate

Greater regulation is needed regarding the evidence provided to the DPP to ensure it is confined to admissible evidence. An independent team or subgroup could be formed that would be limited to charging; the CCC's functions could be left to that of investigating corruption conduct and preparing a report outlining the evidence to support a charge.

Professor Ross Martin QC

The former DPP, Michael Byrne QC, in relation to the prior ability of the CCC to refer briefs to the ODPP under section 49, spoke of the problems raised as a consequence of a series of High Court decisions that had the effect of requiring trial prosecutors to be quarantined by 'Chinese walls' from knowledge of information obtained by compulsion. Professor Martin QC shares these concerns about the practical problems that would arise if section 49 should be returned to its former position.

It may be appropriate for some or all of the evidence that ought not to be known by the prosecutor to be disclosed to the defence. Obviously, the ODPP cannot make decisions about disclosure if it is not allowed to see the material. For that reason, consideration should be given to amending the disclosure provisions of the *Criminal Code* so that the CCC and cognate bodies with coercive powers take

responsibility for disclosure. The CCC should also seek and be guided by outside counsel's advice regarding disclosure issues. It might be possible, subject to staffing considerations, to provide for the identification of a particular officer within the ODPP whose task it would be to consider disclosure issues and who is then insulated from the ultimate prosecution (that is an administrative matter).

Michael Woodford, Parliamentary Crime and Corruption Commissioner (Parliamentary Commissioner)

If decisions to charge following CCC investigations are to be considered by an independent police officer who is not seconded to the CCC, the evidence considered by that person should be limited to admissible evidence. Likewise, the brief of evidence to the prosecuting authority should be limited to the admissible evidence considered by the charging police officer.

Although the CCC has a longstanding practice of providing the DPP with all evidence collected by it, including compelled evidence, the reason for the practice is not clear. It could be to comply with section 49(4) of the CC Act (although section 49(5) now provides the DPP is not a 'prosecution authority') or it may be based on the CCC's view of the disclosure obligations under the *Criminal Code*. It is understood that if an accused requests the DPP for material concerning any compelled hearing conducted by the CCC relevant to the subject matter of the charges, that material is provided.

In criminal cases involving multiple defendants who are not aligned in their defence, it is routine for one defendant to be cross-examined by other co-defendants about inconsistent answers given at a compelled hearing. Yet section 197(2) of the CC Act arguably renders an answer, document, thing or statement given or produced by a defendant inadmissible against that defendant, even at the instance of a co-accused. Several issues arise from the CCC's practice regarding compelled material and from section 197(2) of the CC Act:

- The present process of supplying defendants with compelled material from CCC hearings of their co-defendants is legally suspect.
- If it is not permissible for a defendant to cross-examine a co-defendant about an answer, document, thing or statement given or produced by the co-defendant in a compelled hearing before the CCC, it begs the question why that material is being disclosed to the other defendants at all. The answer may lie in the CCC's interpretation of the disclosure provisions of the *Criminal Code*.
- Irrespective of the width of disclosure entitlements of defendants, disclosure requests for inadmissible compelled material may be more efficiently handled by the CCC than the DPP.

The need to properly resource prosecuting bodies in the context of charges arising from integrity body investigations	ODPP NSW, Sally Dowling SC, DPP Prosecutions of NSW ICAC investigations are routinely complex and lengthy and impose significant demands on the resources of the NSW ODPP. To manage these demands, referrals from NSW ICAC are directed to two specialised prosecution groups, the Public Sector Prosecution Unit (established in July 2019), and the Specialised Prosecution Group. These groups deal specifically with NSW ICAC referrals, prosecutions involving serving NSW Police, referrals from the Law Enforcement Conduct Commission and other high-profile complex prosecutions such as, involving politicians and confiscation matters. These two units within NSW ODPP provide specialist prosecution services in corruption and related offences. They operate separately to the general operational groups within the ODPP. That fact addresses any potential issues of conflict and aids in developing the capacity and experience of specialist lawyers in the prosecution of these types of offences. They are supported by a Specialist Legal Support Unit. ODPP WA, Amanda Forrester SC, DPP In WA there is no separate funding arrangement for prosecution costs or services. The ODPP is currently under-resourced having recently absorbed additional demand in the number and type of prosecutions it conducts. Considerable resources are required to sort evidence gathered by the WA CCC in respect of admissibility, format and disclosure obligations. The SSO carries out these essential tasks before prosecution commences — allowing the prosecution to proceed expeditiously and reducing the burden on the ODPP's resources. The ODPP has a small number or prosecutors experienced in prosecuting financial crimes. There is no identified team with the ODPP which handles prosecutions arising from WA CCC investigations and prosecutors with expertise are not always available. Queensland Council for Civil Liberties, Terry O'Gorman, Vice President Giving the ODPP the task of reviewing a brief of evidence to decide whether a prosecution should be instituted has obvious resources implications for the ODPP. Consideration should be given to the resourcing model for the CDPP, which is regularly called upon by Commonwealth law enforcement agencies to review briefs for such purposes, to assist in determining the additional resource allocation likely to be needed. Mark Le Grand, Former Director of the Official Misconduct Division, CJC (Queensland) Noting the concerns of the DPP advanced in 2016 when recommending that section 49 of the CC Act be changed, including time delays and budgetary issues,

	Mr Le Grand considers the more appropriate solution is to provide more resources to the DPP, not to cut the DPP out of the loop and deny the whole rationale for the DPP's involvement in the process as recommended by the original Fitzgerald Inquiry.

Human Rights considerations

The application of the HR Act to the CCC	QHRC, Scott McDougall, Commissioner The HR Act applies to the CC Act. The fact that Parliament provided the CCC with powers that may limit human rights does not mean it is excused from the obligations under the HR Act. Human rights are not absolute and may be subject to reasonable limits justified in a free and democratic society. The HR Act is likely to be relevant to how a court will interpret the powers and functions of the CCC and how those powers and functions are discharged (see, *SQH v Scott* [2022] QSC 16). The PCCC previously expressed concern that powers of the CCC granted to do vital work in protecting the community from major crime and corruption may potentially conflict with the HR Act and that the HR Act might inadvertently undermine these powers. The objects of the HR Act include helping to build a culture in the Queensland public sector that respects and promotes human rights. This is achieved primarily by requiring public entities to act and make decisions in a way compatible with human rights. The QHRC suggests such an outcome is only possible if all public entities, particularly those with extraordinary powers such as the CCC, are held to the same obligations. The QHRC welcomes the CCC's commitment to respect and protect human rights in compliance with the HR Act, including recently reviewing its policies and procedures for compatibility. The QHRC suggests this is an example of the HR Act driving improvements to policy and practice. The QHRC supports an amendment to section 60 of the CC Act to remove any ambiguity as to how it should be applied in the most human rights compatible way. That is, while the CCC has extraordinary powers to obtain evidence and information under compulsion, those powers must be interpreted compatibly with human rights; ensuring that an appropriate balance is struck between the use of such information by the CCC in furtherance of its functions and the rights of other parties not to be detrimentally impacted by the dissemination of that information. This would provide clear boundaries on the use of information held by the CCC.

Other matters raised in submissions	
Function, structure and governance considerations	**Professor A J Brown, Professor of Public Policy and Law, Program Leader, Public Integrity and Anti-Corruption, Centre for Governance and Public Policy, Griffith University** Professor Brown raises whether it remains the best option to continue with one agency with both the crime and corruption function, or whether it may again be desirable and feasible to separate these roles, as part of ensuring the capacity of the CCC and public confidence in it. Regarding methods to ensure the CCC does not become (or is not simply) a law enforcement agency which happens to also be responsible for investigating corruption matters, Professor Brown notes a key way to protect the core anti-corruption role and mission is by shoring up both the operational capacities and the broader professional philosophy, skills and capacities for judgment that go with the reality that anti-corruption is broader than simply the investigation of specific criminal offences. Budgetary security and independence of the anti-corruption functions of the CCC by statute would ensure against deprioritisation of resources. Professor Brown recommends strengthening corruption prevention functions and duties to provide the CCC with a much more active, enforceable, inquisitive and evaluative role in the corruption resilience of any and all parts of the public sector, including concerns or allegations relating to ministerial or parliamentary conduct matters. **Queensland Law Society, Kara Thomson, President** The Queensland Law Society call for procedural and statutory reform designed to reinvigorate the CCC's police integrity oversight function — this may include the creation of an independent commission with the Law Enforcement Conduct Commission in NSW providing an appropriate model. The CCC's oversight of the QPS has been so progressively diminished as to be functionally ineffective. There is a routine practice within the CCC of referring complaints against police to the QPS for internal investigation. **Queensland Council for Civil Liberties, Terry O'Gorman, Vice President** Since establishment, the CCC has significantly morphed so that its current major focus is its 'super police force' role in pursuing investigations in conjunction with the police. This has become its organised crime fighting role, which is now the primary focus of the CCC to the detriment of its role investigating complaints against police. Its role in investigating corruption and maladministration within the public sector has been maintained at an appropriate level. Regarding the organised crime function, the expanded role of the investigative hearings process and use of compulsory powers has had a negative effect on the

right to silence; for example, the threat of perjury undermines the right to silence, and answers given allow the police and the CCC to know what a person's defence at trial will be.

Regarding investigating complaints against police, the NSW procedure for investigating complaints against police should be adopted; there should be a standalone body separate from the police and the CCC to investigate these complaints. Further, examination of recent annual reports of the CCC indicates a failure by the CCC to investigate *trends* in relation to complaints against police.

Queensland Police Union of Employees, Ian Leavers, President

The role of the CCC as a standing royal commission has reached its use-by-date and significant restructuring is required to limit its role to a public sector anti-corruption body only. The scope of the CCC should be limited to that of a corruption watchdog, responsible for overviewing public sector corruption allegations and assisting departments to investigate corruption allegations as required. It is a waste of government resources for the CCC to involve itself in minor disciplinary matters of corruption which are investigated properly by units of public administration. The role should be to overview matters within the principle of devolution.

The crime function should be removed from the CCC and vested with the QPS, State Crime Command. The crime function is largely discharged by seconded police officers; thus, it is already performed by police officers. An independent crime Commissioner could be established, vested with the existing powers of the CCC and to work with the State Crime Command. The role would be independent of the Police Commissioner and could convene investigative hearings as warranted, subject to the same approval processes that exists for CCC hearings. It has and always will be the function of police to investigate crime.

Witness protection should be removed from the CCC and vested with the QPS, possibly the Intelligence Command area.

The research function of the CCC should be removed and vested with the university sector.

Police misconduct is appropriately investigated and dealt with by the QPS Ethical Standards Command.

The tenure of the Chair and any senior officers at the CCC must be limited to five years within a 10-year period.

Robert (Bob) Atkinson, AO, APM (Retired) Former Commissioner of Police, Queensland

Procedures, practices and processes are determined by the prevailing culture within the CCC and how those matters are operationalised. The CCC (and its predecessors) represent an important part of good governance. For the CCC to be effective, it is fundamental that it retain credibility in terms of sound policy and decision-making about investigating matters or referrals to agencies, the use of its significant powers and decisions to prosecute. Related pressures upon the organisation include funding and resourcing, expectations of results, media scrutiny, and public and political interest.

Possible reform:

- Unless there is clear criminal or corrupt activity, an educational approach to resolution is to be preferred over an aggressive prosecutorial approach.
- The Chair should be appointed for a minimum of three years and no more than five years and should be appointed as a District Court or Supreme Court judge at the outset, to take up the role in the courts at the conclusion of their term. Alternatively, an existing District Court or Supreme Court judge could be appointed as the Chair, who will conclude their judicial career at the end of their term.
- There should be bipartisan long-term guaranteed indexed annual State Government funding for the CCC.
- An advisory committee should be established for the Chair to engage with monthly that is representative of a broad cross-section of the community.
- A research unit should be established within the CCC with a role consistent with that originally established within the CJC in 1989.

LGAQ, Alison Smith, Chief Executive Officer

LGAQ submits that Queensland needs to have a fearless CCC that is thorough, rigorous and robust, but it must have adequate checks and balances to preserve its own reputation and trust with the public, and to ensure it is not abusing its extensive powers. A strong and independent anti-corruption agency is a vital check and balance on democracy in Queensland.

The overall structure of the CCC should be considered, including whether recommendations from the original Fitzgerald Report regarding the diversity of the CCC have been adequately implemented; the LGAQ considers they have not. Prior to the resignation of the former CCC Chairperson, the CCC had four barristers whose experience did not extend to managing large organisations. Community

affairs experience does not necessarily need to be drawn from a barrister cohort either.

Professor Ross Martin QC

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.

This is amplified when it is recognised that there have been several attempts to review the CCC the results of which, or the processes of which, were capable of rational criticism. The Connolly-Ryan Commission was stopped by the Supreme Court for bias. The Callinan-Aroney review had relatively few of its major recommendations adopted in the end.

It is against this background that it is urged that changes to the CCC should be modest rather than radical.

Ipswich City Council, Cr Paul Tully (and former Deputy Mayor) — joint submission

That the Inquiry examine the proper separation of powers between the CCC and the State Government and issues arising from the systemic failure of the CCC to accord natural justice.

Mark Le Grand, Former Director of the Official Misconduct Division, CJC (Queensland)

Changes to the CC Act, and consequentially to the operations of the CCC, since the establishment of the original CJC have diluted the Fitzgerald Inquiry Report recommendations. The corruption function of the CCC has mutated to a situation today which is not effective in discharging the role and functions envisaged by the views and recommendations of the Fitzgerald Report.

Mr Le Grand describes the devolution principle as 'counter-productive nonsense' and believes it significantly prejudiced the CJC's effectiveness when it was introduced. Where government departments are given carriage of an investigation, they are not appropriately equipped to deal with complaints due to a lack of specialist resources for investigations, the complexity of corruption matters requiring experienced personnel, and a requirement for a proactive approach to

	effectively investigate. Additionally, the agency investigating the matter may have little incentive to pursue it thoroughly. Where they do, they might prejudice their relationships with employees. The devolution principle could dissuade people to report misconduct due to fear that it might return to their superiors and colleagues. QHRC, Scott McDougall, Commissioner The PCCC Report No. 108 considered the CCC's organisational culture in some detail. It referred also to the body being 'the modern incarnation of important anti-corruption bodies that have evolved over time but stem from the Fitzgerald Inquiry'. In that context, it is relevant to note that Commissioner Fitzgerald's 1989 report recommended that a function of the recommended new CJC should include a Research and Coordination Division. Referencing section 52 of the CC Act, the QHRC suggested research into the administration of the criminal justice system should be prioritised and not be subject to a referral by the minister. Ensuring government policy is evidence-based is also likely to support human rights compatible outcomes and assist in developing higher quality human rights statements of compatibility for the parliament. Public Submissions Five public submissions criticised the Devolution Principle and its use by the CCC. Some submitters took issue with the theory of offenders investigating themselves, and some detailed instances of devolution where a complaint was referred back to their employer, resulting in reprisal against the complainant. Ten public submissions claim issues with procedural aspects of CCC investigations, including lack of communication with and support to complainants, undue dismissal of complaints, and prolonged, inefficient investigations. Several submissions raised the complexity of making a complaint to the CCC, lack of clarity around the process, and deficiencies in the CCC's treatment of evidence provided by complainants.
CCC investigation practices	McInnes Wilson Lawyers (on behalf of seven former Logan City Councillors); Paul Tully, Principal and Caitlin Connole, Senior Associate Concerns were raised around the CCC giving a press conference on the day the former Logan City Councillors were charged. These public statements by the investigating and charging agency potentially prejudiced the criminal prosecution and affected the standing of the former councillors in the community. As a result of being charged, each of the councillors lost their careers which was an important part of who they were; they and their families suffered financially, mentally, emotionally, socially; their reputations were irretrievably tarnished.

The former councillors support the following legislative reform:

- Prohibiting the CCC from assisting complainants in collateral civil proceedings.
- Limiting the CCC's extensive coercive powers provided under the CC Act.
- Imposing safeguards to prevent the dissemination of confidential material under coercive powers, for the purposes of supporting an applicant in civil litigation.

Logan City Council, Cherie Dalley, Former Councillor

Ms Dalley is one of the (former) Logan City councillors charged by the CCC in 2019 and ultimately acquitted in 2021. She submits that the charges destroyed the futures of Logan's elected representatives and that the CCC could have waited for the result of the Queensland Industrial Relations Commission matter before 'attempting to influence' Ms Kelsey's case. She states the issue of the CCC meeting with Ms Kelsey's lawyers without giving the same opportunity to the accused's lawyers must be addressed to ensure all future accused have the same opportunity to present their case.

Logan City Council, Laurence Smith, Former Councillor

Mr Smith is one of the (former) Logan City councillors charged by the CCC in 2019 and ultimately acquitted in 2021. He submits members of the CCC and the seconded police officers failed to act fairly and impartially in their deliberations; failed to follow their own legislated processes; and ignored the process of the ODPP. The outcome of the investigation into the Logan City Council was pre-determined and based on unsubstantiated claims, accusations and false statements. It is his belief that some individuals at the CCC operate outside the guidelines.

As a result of the charges the former councillors were publicly humiliated and dismissed from their roles as elected officers with 'no natural justice applied'. The former councillors suffered financial, emotional and ongoing reputational damage because although the proceedings were discontinued, the public perception of the fraud charges remains.

Ipswich City Council, Cr Paul Tully (and former Deputy Mayor) — joint submission

Concerns are raised about the operational processes and investigative techniques of the CCC and its improper intrusion into matters beyond its jurisdictional and operational responsibilities. It is said that in the lead-up to the dismissal of the councillors there was improper and unprofessional conduct by the CCC, and that the grounds for dismissal were unwarranted and totally disproportionate.

The submission highlights an example of an arrest by the CCC where 'CCC police officers exercised their powers in a totally high-handed, improper and completely unnecessary manner [with regards to the arrest of a former mayor], knowing the extreme consequences and the considerable adverse publicity after [the mayor] had spent the night in the watchhouse'.

The impact has been significant and involved reputational harm, mental health and financial issues, and the breakdown of relationships.

The submission also underscores the devastating impact on the mental health and wellbeing of persons involved in CCC investigations, referencing an investigation that caused significant distress to a staff member who tragically took their own life amidst a robust CCC investigation involving 'a relentless examination of council records, including personnel records' for which the employee took personal responsibility.

It is submitted, among other things, that:

- Criminal penalties and strict procedures be put in place to stop the routine improper leaking of information to the media by the CCC.
- The CCC be prevented from involving itself in any day-to-day council matters including the appointment or removal of any council staff and other operational matters for which the relevant council is solely responsible, subject to the general oversight of the Minister for Local Government.
- The CCC review its operational processes to ensure that potentially lengthy investigations are appropriately reviewed in advance, and on an ongoing basis, to ensure no persons are likely to self-harm because of their fears, founded or unfounded, that they may be investigated and prosecuted by the CCC.

Ipswich City Council, Andrew Antoniolli, Former Mayor and Councillor

Mr Antoniolli is the former Mayor of the City of Ipswich. He was elected to the Ipswich City Council in March 2000 and served for over 18 years, including as Mayor for a year and a half. He, along with 10 other councillors, was summarily dismissed by an Act of Parliament in August 2018.

In May 2018, Mr Antoniolli was charged with dishonesty offences stemming from investigations by the CCC. He was subsequently convicted in the Magistrates Court of those offences; however, the convictions were later set aside by the District Court.

Mr Antoniolli recommends a public commission of inquiry be commenced into the culture and conduct of the CCC and its staff (past and present), with respect to failed prosecutions of recent high-profile members of the public. Further, a thorough investigation should be conducted into the conduct of the CCC and its staff (past and present), with respect to Operation Windage and the impact on legislation that led to the dissolution of the Ipswich City Council; and this also should be included in the proposed commission of inquiry.

The operational processes, investigative techniques and general conduct of the CCC are of serious concern. Mr Antoniolli raises issues of:

- harassment and intimidation by CCC officers
- broadening of investigations to become more of a 'fishing expedition'
- failure to disclose existing defences against the CCC's allegations that would absolve Mr Antoniolli of guilt
- CCC interviews being treated as interrogations
- deliberate and malicious interview tactics used to position Mr Antoniolli as dishonest
- delaying tactics to extend the trial.

Charges arising from CCC investigations directly affect those the subject of investigations, as well those closely associated to them. Individuals, including Mr Antoniolli, have suffered financially, mentally and reputationally.

Moreton Bay Regional Council, Allan Sutherland, Former Mayor

Mr Sutherland is the former Mayor of the Moreton Bay Regional Council. He served in local government for 25 years and was a councillor of the former Redcliffe City Council from 1994 to 1997, then Deputy Mayor from 1997 to 2004, before becoming the mayor until 2008. He was then Mayor of the Moreton Bay Regional Council for 11 years from 2008 until late 2019.

In late 2019, Mr Sutherland was charged with two offences of misconduct in relation to public office, following an investigation by the CCC. The charges brought an immediate and abrupt end to his decades of service in local government. He was arrested and describes being, '*treated like a criminal, and in a matter of moments, had lost not only my career but my reputation.*' In January 2022, after a three-day committal hearing in the Magistrates Court, the ODPP offered no evidence to the charges and the case was dismissed.

Mr Sutherland outlines, in detail, the emotional, social and financial impact the CCC investigation and prosecution of him had on him and his family. He questions what evidence was relied upon by the CCC to support the recording of over 8,000

phone calls over a six-month period, including many personal phone calls. He notes that, although the CCC publicly states it does not comment on cases before the courts, in his case his family and staff found out about the investigation from a publicly released press statement issued by the CCC stating it was in the public interest to confirm the investigation. He says this undermined his position as Mayor from that moment onward.

Mr Sutherland suggests that:

- The CCC's incompetence and desire for 'political scalps' in the local government arena lay at the heart of their actions against him.
- The seconded police officer elected to arrest him, rather than issue a notice to appear, in order to impose bail conditions (which he submits were harsh and unnecessary) due to their misguided concern about workplace reprisals should he be allowed to contact witnesses.
- It should be a requirement that the CCC obtain the recommendation of the DPP, or a senior independent legal advisor, before exercising (through seconded police) the discretion to charge serious criminal offences in the exercise of its corruption function. Any review needs to be undertaken by someone with the time and skill to analyse all the source evidence, not just statements taken by the CCC officers which can be entirely skewed and biased against a defendant and favour the CCC's preferred narrative or view of the world.

Moreton Bay Regional Council, Adrian Raedel, Former Councillor (and mayoral candidate in 2020)

On 27 June 2019, Mr Raedel was charged following an investigation by the CCC which had commenced in July 2018. Almost two years later, on 19 August 2021, the charge was discontinued by the ODPP before a committal hearing was held. The discontinuance was not due to additional evidence proffered after the charge was laid or due to in-roads made at a committal hearing. Instead, it came after the ODPP was able to consider the brief of evidence provided by the CCC and a decision was made to offer no evidence to the charge.

Mr Raedel believes, had proper independent consideration been given to the strength of the case at a much earlier time, he would not have been charged. He believes the culture at the CCC must be changed and he outlines how his human rights were denied throughout the investigation and prosecution of his case, including by a denial of procedural fairness, an overriding of the presumption of innocence and excessive use of powers.

Mr Raedel believes that:

- Seconded police 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 police officer to the viability of the evidence.
- The approach of the CCC across the last three years demonstrates their predominant aim and apparent focus is on the prosecution of elected officials and public servants, rather than on crime and corruption prevention.
- The approach by the seconded police to his investigation was to 'charge and then the DPP can consider the weight of the evidence'; and the tactics used were aggressive such that he felt a concerted effort by the CCC to put significant pressure on him in an attempt to have him plead guilty, which he felt amounted to bullying.
- The use of coercive hearings was excessive in the circumstances of his case. The approach of the CCC included intense questioning via coercive hearings of him and his family members
- The actions of the CCC in his case reflect their bias in the context of their intention to target local governments. The CCC, for example, appears not to have given any consideration to the political machinations occurring within the relevant local government at the time i.e. in his case he believes, the statements made to the CCC were done with the intention by some of injuring his professional reputation and to eradicate any prospect of his re-election to public office, including destroying his mayoral candidacy.

Gold Coast City Council, Tom Tate, Mayor

The CCC should undertake due diligence to identify corruption before launching an investigation due to the broad and far-reaching consequences of a CCC investigation, including financial costs and reputational damage (noting that no charges were brought in the case of the Gold Coast City Council investigation, but the CCC announced via media conference that they would be initiating an investigation into the Gold Coast City Council). For the best part of two years the Gold Coast City Council was under a shadow which seriously damaged public confidence in the council, only for a report to be issued in January 2020, two months before the local government elections were to be held, which cleared the council of any corruption. Concern is expressed about 'the overreach of an over-zealous CCC'. The CCC 'seemingly set out on a crusade to justify their heavy-handed intervention' which included multiple notices issued to the council for

documents, the use of coercive hearings and telephone intercepts over a significant period.

The very significant powers given to the CCC must not be used to pursue agendas against organisations or industries as would appear to be the case in the CCC's pursuit of local government over the last five years.

In the case of the Gold Coast City Council, although no corruption was found, the CCC released a report identifying some 'extraneous findings of limited consequence and effect' — the concern is that the report was released to justify the expense of the investigation undertaken. The CCC should not be able to publicly release a report as they did regarding the Gold Coast Council where there is an absence of corruption found; to do so makes a mockery of the cooperation and public interest principles under section 24 of the CC Act.

Michelle Stenner, Superintendent, QPS

Ms Stenner joined the QPS in 1991 and was appointed to the position of Superintendent Gold Coast District in June 2015. At times, she relieved as Acting Chief Superintendent Gold Coast District and in January 2017, she was awarded the Australian Police Medal.

In October 2016, an anonymous complaint was made to the CCC. Thereafter, she would ultimately be arrested by CCC officers, suspended from the police service and unsuccessfully prosecuted in the District Court by the ODPP for her role in approving the recruitment of a short-term, temporary administration officer position at the QPS. The recruitment related to a person who was related to another senior police officer and who had previously, and recently, been employed by the QPS in a similar role.

In summary, QPS staff prepared the relevant paperwork relating to recruitment but in doing so an error was made regarding the name of one of the signatories to the process. The paperwork recorded an officer's name despite them not being involved in the process. This could have been attributed to relieving duties that were happening across the relevant officers at the relevant time. Ultimately, an anonymous complaint was made to the CCC regarding the recruitment process, with specific reference to 'falsified documents'.

Ms Stenner reports that she was initially investigated by the QPS Ethical Standards Command, which determined there was no corrupt conduct. The CCC did not agree with the recommendation to close the matter. The Ethical Standards Command conducted further investigations, but the CCC assumed control of the investigation in March 2017. Thereafter, the CCC used covert methodologies including telephone intercepts and held coercive hearings. The matter was finalised five years after it began and after three trial listings. The ODPP ultimately

proceeded to trial on three counts of perjury (allegedly stemming from the coercive hearings) and did not proceed on the misconduct in public office offence (the allegation regarding the recruitment process that had commenced the process originally).

In October 2021, a directed verdict of not guilty was imposed in relation to all charges; Ms Stenner was acquitted. Ms Stenner says, from the time of the CCC investigation in 2017 until 29 December 2021, she was suspended from the QPS, and she now remains 'stood down' while a further internal investigation is undertaken by the QPS regarding the same matters for which she was prosecuted and acquitted of in the District Court.

Ms Stenner raises her concerns regarding:

- a lack of impartiality and fairness afforded to her by the CCC
- the significant personal detriment suffered by her, including financial loss sustained in funding her defence, detention in a watchhouse, professional suspension, public ridicule, loss of promotional opportunities and personal stress
- allegations the CCC exerted inappropriate pressure on the ODPP to maintain the prosecution against her
- allegations the CCC used the media to further its goals, including to bolster an application for telephone intercepts
- the use of police arrest powers when alternative, less public, means of commencing the proceedings could have been used
- the authorisation of charging within the CCC in circumstances where the full brief of evidence had not yet been prepared or even considered
- the CCC's failure to consider more recently obtained and up-to-date evidence (as the investigation advanced) when making a decision relating to the holding of a coercive hearing
- the CCC's failure to articulate and record reasons, when making decisions about the conduct of hearings
- the use of coercive hearings, in effect, to act as a 'perjury trap' and then reliance upon that to prosecute in the higher courts
- excessive investigative tactics and strategies deployed relative to the nature of the allegation under investigation.

	Robert (Bob) Atkinson, AO, APM (Retired) Former Commissioner of Police, Queensland The use of telephone intercepts, search warrants, covert activity and coercive hearings should only occur in respect of serious matters that warrant and justify the use of such powers. In reality, coercive hearings are being used as a 'perjury trap' process rather than to establish facts and information. Consideration should be given to a suitability qualified person, external to the CCC, presiding over the hearings and thereby ensuring fairness of progression of the matter. Queensland Police Commissioned Officers' Union of Employees (QPCOUE), Dr Dan Bragg, President QPCOUE raise concern regarding the misuse of coercive hearing powers for more administrative or managerial matters that do not involve serious corruption or crime. Ipswich City Council, David Pahlke, Former Councillor Mr Pahlke was a councillor on the former Moreton Shire and then on the Ipswich City Council for a combined period of 28 years, from 1991 to 2018. He was never charged by the CCC but was one of 10 Ipswich City councillors who were dismissed in 2018, which he says destroyed his life, career and reputation. The councillors were said to have been dismissed on a direction from the CCC. Mr Pahlke submits that this was an unlawful process and the CCC 'did not maintain an independent impartial administration of justice'. Public submissions A common theme amongst five public submitters was that the CCC, in its investigation of them, lacked impartiality and demonstrated bias. One submitter wrote of feeling as though CCC officers had a vendetta. Two submitters referenced the lengthy prosecutions against them and the consequent reputational damage and stress, which affected not only them but their families. Eight public submissions claim that the investigation process is prejudiced and influenced by CCC officers' personal interests or alignment, including by way of non-disclosure of evidence and predetermined investigation outcomes. One submission particularly criticises the lack of diversity in the CCC's recruitment process.
Witness welfare — protecting the rights, safety and	NSW ICAC, The Hon Peter Hall QC, Chief Commissioner *Managing impacts on mental health*: NSW ICAC uses a risk-based approach to manage the welfare of those involved in its investigations. Where necessary, to gain an understanding of the risk and how it can be effectively managed, NSW ICAC

welfare of witnesses	may seek expert advice from a medical practitioner. NSW ICAC welfare management requirements include: • Initial internal processes, such as: officer level identification of welfare needs and concerns and a report by them to the senior ICAC officer responsible for the investigation; a record made on the NSW ICAC case management system by the senior NSW ICAC officer and ongoing management of the identified risk by them; reporting of all significant risks to the Executive Director, Investigation Division, who must then report to the Chief Executive Officer, and thereafter a notification of the risk made to the Chief Commissioner. • Having trained first aid officers and providing ongoing mental health awareness training to NSW ICAC officers involved in the exercise of NSW ICAC powers. • Identifying risks to the health and safety, including to the physical and mental health, of any person affected when exercising powers of obtaining information and/or documents, entering public premises, execution of a search warrant, conducting a controlled operation, or summonsing a person to attend a compulsory hearing examination or public hearing. • When a risk is identified an Operational Risk Management Plan is prepared setting out each risk and identifying means to eliminate or minimise the risk. • A counselling program is available to a person whose health and safety may be at risk arising from a NSW ICAC investigation. *Managing impacts on reputation:* The NSW ICAC Act and the NSW ICAC's Operations Manual ensure that potential reputational damage is one of the matters considered by NSW ICAC in determining whether to conduct a public inquiry. The risk of undue prejudice to a person's reputation is one of the factors that must be taken into account and balanced with other public interest considerations. NSW ICAC may also make non-publication directions where it is in the public interest to do so to prevent the publication of evidence or any information that might identify a witness where such publication might cause reputational harm. Where the ODPP decides not to commence criminal proceedings or a person is acquitted or convicted arising from an ICAC investigation, including because of an appeal, that outcome is published on NSW ICAC's website and in the annual reports.

Victoria IBAC, Glenn Ockerby, A/Chief Executive Officer

IBAC has several policies and procedures to minimise impacts arising from investigations or hearings. These are reviewed regularly. A risk-based approach is used, and welfare support based on individual needs is available, including:

- access to online resources which are publicly available
- access to counselling services from time of summons
- a professional counsellor and a private room available onsite during examinations where a high welfare risk has been identified
- an IBAC witness welfare officer on hand to help witnesses access professional support services during examinations where a high welfare risk has been identified.

WA CCC, John McKechnie QC, Commissioner

The WA CCC has several policies and procedures in place in relation to witness welfare and communication, including Safety and Welfare of non-Commission Officers materials, Introduction to WA CCC examinations, and Wellbeing Cards.

SA ICAC, Ann Vanstone QC, Commissioner

SA ICAC provides a Welfare Services Contact Card to people who interact with investigators, including witnesses summoned to appear. The card has details of a contact person (not involved in the investigation) who answers procedural questions. A SA ICAC Investigation Manual contains instructions to investigators on managing witness welfare throughout investigations and places an onus on them to pay attention to witness welfare and take appropriate action where needed. Options include:

- liaising with the witness manager, supervisor or HR official
- suggesting seeking access to an Employee Assistance Program (EAP) or medical advice
- considering whether the witness' welfare outweighs the necessity for their interview/examination.

SA ICAC has an examination checklist that includes questions relating to witness welfare.

Tasmania Integrity Commission, Greg Melick AO SC, Chief Commissioner

The Tasmania Integrity Commission:

- explains the process and purpose of confidential notices to affected parties

	• advises of help available from a counsellor or general practitioner, EAP, or lawyer about the notice • has previously organised a welfare contact person for the affected parties • considers timing when serving notices (e.g. Christmas) • provides information sheets with all notices, updates where appropriate, and contact details of the investigator. Northern Territory ICAC, Michael Riches, Commissioner To date, all matters have been investigated in private, despite NT ICAC having powers for public inquiries. NT ICAC may use public inquiries if it is in the public interest, which requires consideration of whether a person may suffer undue hardship including reputational harm, and the views of any person who would be affected by the public inquiry. A notice to attend is issued with a list of mental health support services. ACLEI, Jaala Hinchcliffe, Integrity Commissioner ACLEI manages the welfare of people affected by its investigations on a case-by-case basis. Currently, where someone under investigation is a staff member of an agency within ACLEI's jurisdiction, the primary resource available to them is the EAP provided by their home agency. ACLEI does not currently provide a generic welfare program for individuals involved in its investigations. However, ACLEI is actively considering whether it is appropriate to implement a Witness Management Policy and to provide access to the services of a support person for people subject to adverse findings. Currently, the LEIC Act requires the Integrity Commissioner, where it is intended to issue a critical opinion or to make a critical finding in a report, to first provide the relevant person with a statement setting out the opinion or finding and allow them a reasonable opportunity to make submissions in response.
The definition of 'Corrupt Conduct' under the *Crime and Corruption Act 2001*	QHRC, Scott McDougall, Commissioner The QHRC suggests legislative amendments should be considered to narrow the scope of corrupt conduct to ensure any limitation on rights is reasonable and proportionate. There is a question as to the purpose of the broad definition of corrupt conduct, and how such a broad definition achieves this purpose. Queensland Police Union of Employees, Ian Leavers, President Amend the definition of 'corrupt conduct' to again include an element of dishonesty.

	### Together Queensland, Industrial Union of Employees, Michael Thomas, Assistant Branch Secretary Concern is raised about the definition of 'Misconduct' adopted by the CCC in their publication, *Corruption in Focus: A guide to dealing with corrupt conduct in the Queensland public sector,* and a distinction is drawn between the CCC definition and the Queensland Industrial Relations Commission decision in *Coleman* v *State of Queensland (Department of Education)* where it was observed that: *'the definition of "misconduct" contained in s 187(4)(a)* [of the Public Service Act] *contemplates a deliberate departure from accepted standards, serious negligence to the point of indifference, or an abuse of the privilege and confidence enjoyed by a public service employee.'* The CCC's definition does not include reference to the need for a 'deliberate departure from accepted standards' and therefore seems a lower threshold. This results in unfair treatment of public servants, unnecessarily prolonged disciplinary processes that result in unreasonably significant financial and mental strain to individuals and wastage of public money, and the circumventing of employee rights by the over-classification of disciplinary matters. ### Public submissions One submitter supports the current framing of 'corrupt conduct' under s 15 of the CC Act. Three submitters do not support the current construction of s 15 of the CC Act, finding the definition of 'corrupt conduct' either too narrow or ambiguous.
Funding for legal representation at CCC hearings	### Legal Aid Queensland (LAQ), Peter Delibaltas, A/Chief Executive Officer LAQ advocates for designated funding to LAQ to facilitate the legal representation of people subject to CCC investigations who meet the LAQ means test for grants of legal aid. This may require legislative change. LAQ is not currently funded to provide legal representation to this cohort. That is despite people required to attend CCC hearings often later being charged with serious criminal offences, the extraordinary nature of the investigative hearings, and the absence of fundamental procedural fairness and human rights implications. This contrasts with other police investigations. In recognition of the importance of legal representation in these cases and acknowledging that often very little time is provided between the notice to attend and the hearing date, LAQ routinely provided its services to these people under section 205 of the CC Act. LAQ did so under an agreed funding arrangement with the Department of Justice and Attorney-General (DJAG) whereby LAQ incurred the

	upfront costs and thereafter DJAG reimbursed them once the DJAG internal financial/approving processes were finalised. Until recently there was an agreement by DJAG to reimburse LAQ's costs without waiting for their internal approval processing if an individual was entitled to a grant of legal aid under LAQ's means test. This agreement stalled 12 months ago, resulting in uncertainty of payment for LAQ and delays in providing financial assistance from DJAG under section 205. As a result, LAQ has stopped this representation service. The consequence is inequality between those who can afford legal representation, and thus continue to be assisted and have their interests protected, and those who cannot (who are often the most personally and financially disadvantaged in our community), and thus unrepresented before the CCC.
Section 175K of the Local Government Act	Professor A J Brown, Professor of Public Policy and Law, Program Leader, Public Integrity and Anti-Corruption, Centre for Governance and Public Policy, Griffith University The Logan City Council case demonstrates a need to expand the category of 'integrity offences' which trigger the section 175K consequence; that is, to include the criminal offence of reprisal and to increase the penalty for such an offence from its current maximum penalty of two years imprisonment to at least three years. The omission of whistleblower reprisal offences from the categories of 'integrity offences' is a gap in existing section 175K. There may also be other analogous witness protection-related offences that require inclusion. LGAQ, Alison Smith, Chief Executive Officer LGAQ suggests a review of section 175K of the LG Act regarding the suspension of a councillor charged with a disqualifying offence with regard to when or if suspension should occur. LGAQ acknowledges that it supported section 175K at the time of its introduction as an amendment in 2018; however, considers it is has become clear that the provision is problematic in practice, for example: • As a result of section 175K, nine Logan City councillors were suspended, meaning the council no longer had a quorum and the council was dismissed and an administrator was appointed. Those councillors suspended then ceased to be paid as their employment was terminated due to the dismissal of the council. Four councillors not charged were also dismissed. • The committal hearing did not commence until 19 months after the councillors were charged. The charges were dismissed 23 months after the councillors were charged.

- The suspension of the Logan councillors set off a chain of events that led to the denial of natural justice of those suspended and unfairly impacted the other four councillors.

LGAQ recommends section 175K be amended so that a councillor charged with a 'disqualifying offence' not be suspended until the councillor advises a court of an intention to plead guilty or the councillor is committed to stand trial over the charge.

Ipswich City Council, Cr Paul Tully (and former Deputy Mayor) — joint submission

That no councillor be suspended or disqualified from their position merely because they have been charged with a 'disqualifying offence' until they are found guilty of such offence and all appeals have been finalised.

Gold Coast City Council, Tim Baker, Chief Executive Officer

The combination of: the broad scope of what constitutes a 'disqualifying offence' under the LG Act; the automatic suspension of a councillor when they are charged with a disqualifying offence; and the potentially significant delay between when a person is charged with a disqualifying offence, and when they are committed to stand trial, means a councillor can be subject to a 'career-ending suspension' by virtue of being charged with a range of offences — from relatively minor to serious matters.

The serious consequence of automatic suspension does not occur when charges are laid in the ordinary course, nor does it occur for members of the Queensland Parliament (*Parliament of Queensland Act 2001* section 72).

The scope of section 175K of the LG Act and related provisions should be reviewed and narrowed by introducing an additional mechanism whereby a councillor cannot be charged with a disqualifying offence until the CCC has first obtained a recommendation from the ODPP, or a senior independent legal advisor, before police officers use their discretion to charge; by reviewing the scope of disqualifying offences; and subsequently by reviewing whether section 175K ought to be applied uniformly across all categories of disqualifying offence.

Public submissions

One submitter criticises the automatic suspension of councillors charged but not yet convicted — being the effect of section 175 of the LGA.

Protection of Public Interest Disclosures (PIDs)	**Professor A J Brown, Professor of Public Policy and Law, Program Leader, Public Integrity and Anti-Corruption, Centre for Governance and Public Policy, Griffith University** Professor Brown notes his disagreement with the relevant findings of the PCCC which go to the heart of its allegations that the CCC failed to fulfil its duties of impartiality and independence. He reiterates the vital importance that the people of Queensland have confidence in the effectiveness, efficiency and independence of the CCC, but feels that 'the one-eyed approach' taken by the PCCC and its counsel assisting to the issues that confronted the CCC at Logan Council has led to inaccuracies which have increased that challenge more than they have helped address it. The CCC has to grapple with a conflict between two functions, and it was this tension which gave rise to the Logan City Council events leading to the establishment of the Commission of Inquiry. That is, in the Logan City Council case, the CCC sought to simultaneously fulfil two different statutory functions: • its primary function of investigating suspected corrupt conduct under the CC Act, as had been reported to it by Ms Kelsey • its secondary function of assisting the protection of public officials who blow the whistle on corrupt conduct or otherwise assist the CCC with information or its investigations under the *Public Interests Disclosure Act 2010* (PID Act) and the CC Act. The PCCC did not properly address the question of what the CCC *should have done* to protect someone who aids a corruption investigation — in large part because the PCCC chose to overlook evidence that these decisions flowed not from any personal bias of CCC officers towards Ms Kelsey, but from a conflict in the current form of the CCC's functions (as above). In the Logan City Council case, the CCC chose indirect rather than direct formal means of legal support under the PID Act. The issue remains whether additional legislative or procedural changes are needed to promote the ability of the CCC to properly fulfil a statutory function of preventing, stopping, or remedying detrimental action against a public official who deserves protection as a result of reporting corruption or otherwise assisting the CCC. In particular, outstanding questions remain about: • whether it was necessary and correct for the CCC to prioritise its primary investigation function over its whistleblower or witness protection function in this way

- what reform is needed to enable legislated whistleblower and witness protection objectives to be properly fulfilled, in a manner that minimises any compromise to the primary investigation function.

These are important questions because they are the key ones on which overall confidence in the CCC's capacity, effectiveness and independence continue to depend.

Alan MacSporran QC

Alan MacSporran QC, former Chairperson of the CCC, raised similar issues noting the need to clarify the CCC's separate but related obligations to protect a public interest discloser and investigate allegations of serious corrupt conduct.

McInnes Wilson Lawyers (on behalf of the seven former Logan City Councillors); Paul Tully, Principal and Caitlin Connole, Senior Associate

There are no provisions governing the relationship between the CCC and whistleblowers about corrupt conduct. Reform is needed to ensure the CCC remains impartial and unprejudiced throughout the course of the investigation. Reference to the experiences of the former Logan City Councillors as part of the CCC investigation, Operation Front, was provided.

In the early stages of the investigation, the CCC issued a letter to the former councillors, dated 5 February 2018, that included: '*The CCC has a duty to protect people who have helped it to carry out its functions and treats allegations of victimisation against such people as a serious matter….'*

The letter, it was submitted, 'is emblematic of the CCC's view of itself in this case as investigatory, prosecutor and judge. That it considered it could be in any sense objective in its investigation given the partisan and aggressive position it had already taken is disturbing.'

Clear directions marking out the boundaries are warranted in circumstances where senior executives within the CCC have previously failed to act, and be seen to act, independently of the interest of whistleblowers.

Public submissions

Three public submitters criticised the CCC's treatment of PIDs. Criticism focused on harm to PIDs due to neither the CCC's governing Act nor its seconded police officers being adequately equipped to deal with reprisals from the making of PIDs. One submitter felt that they were not properly protected by the CCC in the process of making a PID and consequently suffered harm.