



April 2016

# **“Corrupt conduct” under the *Crime and Corruption Act 2001***

Submission to the  
Department of Justice and Attorney-General  
by the Crime and Corruption Commission

# Contents

<b>Executive summary.....</b>	<b>3</b>
<b>Introduction.....</b>	<b>5</b>
Changes recommended by Callinan and Aroney.....	5
Impacts of the changes.....	6
<b>Part A. The definition of corrupt conduct .....</b>	<b>7</b>
1. “Corrupt conduct” adversely affecting the exercise of powers and functions of a UPA.....	7
2. Section 15(1)(c) – Requirement to prove benefit or detriment .....	9
3. Section 15(2) – examples of corrupt conduct.....	10
<b>Part B. The impact of the definition on the number and nature of complaints .....</b>	<b>11</b>
Decrease in numbers of complaints received by the CCC .....	11
Source of complaints to the CCC .....	12
Possible explanations for falling complaint numbers.....	12
Decline in numbers of complaints received from UPAs .....	12
Decline in numbers of complaints received from the public.....	14
Serious or systemic matters reported to the CCC .....	14
<b>Part C. Broader jurisdiction of the CCC.....</b>	<b>16</b>

## Executive summary

---

On 1 July 2014 the *Crime and Corruption Act 2001* (CC Act) came into effect. It included the following key changes:

- The introduction of a purpose element for the requirement of a benefit or a detriment;
- The threshold for corrupt conduct was raised from “could be a criminal offence” to “*would* be a criminal offence” if proved;
- The Act required all complaints to be made by way of statutory declaration;
- The referral threshold for public officials at section 38 was raised from “suspects” to “*reasonably suspects*”.

The most significant and obvious impact of the changes to date has been the large reduction in the number of complaints made to the CCC. In the CCC’s view, this is attributable to the combined effect of the narrower definition of corrupt conduct, the higher reporting threshold and the requirement for statutory declarations, any or all of which may be impeding the ability of agencies and members of the public to report corruption to the CCC. At this point it is difficult to ascribe the decrease in complaints numbers to one particular factor.

Moreover, the CCC believes that the combined changes are reducing its visibility of public sector conduct that may indicate or even facilitate corruption.

The focus of this submission is on aspects of the changes to the definition of corrupt conduct:

- Part A looks at issues inherent in the definition itself, including related issues that have emerged in other jurisdictions;
- Part B examines issues related to the decrease in complaints numbers, some portion of which may be attributable to the changes to the definition; and
- Part C looks at broader issues regarding the CCC’s jurisdiction.

The CCC has five recommendations for amendments to the CC Act, which are intended to ensure that the jurisdiction of the CCC is broad enough to:

- maintain an appropriate focus on serious and systemic corruption, while allowing broad visibility across risk issues, and
- encompass contemporary corruption risks, such as the emergence of those related to commercialisation and public–private partnerships.

### Recommendation 1

That section 15 of the CC Act be amended to include conduct of a person (whether or not a public official) that could impair public confidence in public administration and which could involve any of the following matters:

- collusive tendering;
- fraud in or in relation to applications for licences, permits, approvals or clearances under statutes designed to protect health and safety or designed to facilitate the management and commercial exploitation of natural resources;
- dishonestly obtaining or assisting or benefiting from the payment or application of public funds or the disposition of public assets for private advantage;
- defrauding the revenue; and
- fraudulently obtaining or retaining employment as a public official.

## **Recommendation 2**

That the requirement to prove that the conduct was engaged in for the benefit of, or detriment to, a person be removed from the definition of corrupt conduct in section 15(1)(c).

## **Recommendation 3**

That the list of additional criminal offences contained in section 15(2) be removed from the CC Act.

## **Recommendation 4**

That the requirement in section 36(3) for a complaint to be made by way of a statutory declaration be removed.

## **Recommendation 5**

That the CC Act should be amended to state that the principles for performing the corruption function include:

- (a) to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:*
  - (i) corrupt conduct, or*
  - (ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
  - (iii) conduct connected with corrupt conduct,**may have occurred, may be occurring or may be about to occur,*
- (b) to investigate any matter referred to the Commission by the Queensland Parliament.*

# Introduction

---

The Crime and Corruption Commission's (CCC) submission has been prepared to assist the Government in its current review of the definition of "corrupt conduct" under the *Crime and Corruption Act 2001* (CC Act).

The Issues Paper<sup>1</sup> from the Department of Justice and Attorney-General notes that one of the purposes for the change in definition of corrupt conduct included:

"(...) that there should be a reduction in the number of trivial complaints handled by the CCC to ensure that its resources are used most effectively in dealing with corruption".

This requirement arose from the recommendations to a report undertaken by the Hon. Ian Callinan AC and Professor Nicholas Aroney — the *Review of the Crime and Misconduct Act and Related Matters* (the Callinan and Aroney Report) tabled before Parliament in April 2013.

## Changes recommended by Callinan and Aroney

The Callinan and Aroney Report concluded that the CCC received too many complaints, a large number of which were in its opinion frivolous, vexatious and/or mischievous.

The CCC (then the CMC) held a different view in relation to the volume of complaints received by then CMC. It advocated for:

- (1) a broad definition of "misconduct" (of which corruption is a subset), as this would include many offences and disciplinary breaches that might occur on the fringe of corruption, and
- (2) receipt and assessment of a high volume of complaints in order to have visibility over a wide range of conduct. While it recognised the difficulty in proving to a criminal standard offences of which corruption was an element, in the CCC's view, such complaints remained appropriate for its consideration and investigation as they might include evidence of conduct associated with a high risk of corruption.

The Panel gave limited weight to these views. In their report the Panel stated that the cost of maintaining the CMC's "triage" system at a level that enabled it to process large numbers of complaints "(...) outweighs any conceivable benefit, even including as it should within that benefit both the occasional, seemingly insignificant allegations which leads to an uncovering of serious corruption (...)"<sup>2</sup>.

Consequently, the Callinan and Aroney Report's recommendations relevant to this submission were to:

- raise the threshold for corrupt conduct from "could be a criminal offence" to "would be a criminal offence" if proved;<sup>3</sup>
- insert into the CC Act a requirement for all complaints to be made by way of statutory declaration;<sup>4</sup> and
- change the referral threshold<sup>5</sup> for public officials at section 38 CC Act from "suspects" to "reasonably suspects".

These recommendations were accepted by Government and enacted in the legislation which came into effect on 1 July 2014.

---

1 The State of Queensland (Department of Justice and Attorney-General) 'Corrupt conduct' under the *Crime and Corruption Act 2001* Issues paper, page 7.

2 Page 116.

3 Recommendation 3A.

4 Recommendation 3B.

5 Recommendation 3E.

## Impacts of the changes

To date, the most significant and obvious impact of the changes has been the large reduction in the number of complaints (including information and matters) made to the CCC. Although this decrease in the number of complaints received was in line with the recommendations of the Callinan and Aroney Report, the CCC notes that the numbers of matters received began to decrease even before the change to the legislation came into effect. Since July 2014 the number of complaints has continued to fall and it is only very recently that complaint numbers have begun to stabilise.

In the CCC's view the reduction in the number of complaints can be attributed to the combined effect of a narrower definition of corrupt conduct, a higher reporting threshold and a requirement to make complaints by statutory declaration. However, in the CCC's view, the reduction in complaints has reduced its visibility of conduct that may indicate or facilitate corruption, thus limiting the CCC's ability to meet its objective of reducing the incidence of corruption in the public sector.

The focus of this submission is on aspects of the changes to the definition:

- Part A looks at issues inherent in the definition itself, including issues that have emerged as a result of events in other jurisdictions;
- Part B examines issues related to the decrease in complaints numbers, some portion of which may be attributable to the changes to the definition; and
- Part C looks at broader issues regarding the CCC's jurisdiction.

## Part A. The definition of corrupt conduct

---

This section focuses on issues inherent in the definition itself, including related issues that have emerged in other jurisdictions. It broadly addresses questions 3, 4 and 5 of the Issues Paper.

In this section, the CCC recommends changes to three aspects of the definition of corrupt conduct:

1. That the term “corrupt conduct” be amended to capture limited conduct of anyone who adversely affects the exercise of powers and functions of a Unit of Public Administration (UPA);
2. That the requirement to prove benefit or detriment to a person set out in section 15(1)(c) be removed;
3. That the examples of corrupt conduct set out at section 15(2) be removed.

A discussion of each of these aspects is set out below.

### 1. “Corrupt conduct” adversely affecting the exercise of powers and functions of a UPA

Until 1 July 2014, sections 14(a) and 14(b) of the CM Act defined *conduct* according to whether or not it related to a person who held an appointment in a unit of public administration. The 2014 amendments to the CC Act saw the former sections 14 and 15 of the CM Act combined into one section, now section 15 in the CC Act.

As it now stands, the effect of combining these sections is that any conduct that “... *adversely affects, or could adversely affect directly or indirectly the performance of functions or the exercise of powers...*” must also meet the requirements set out in (new) section 15(1)(b); i.e. that the conduct:

- (i) is not honest or is not impartial; or
- (ii) involves a breach of the trust *placed in a person holding an appointment [emphasis added]*, either knowingly or recklessly; or
- (iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment.

Consequently, should the conduct of someone who is not employed in a UPA lead to a UPA employee acting in a way that compromises the agency’s functions, under the present definition the CCC will only have jurisdiction if the employee also acts in one of the ways defined in section 15 (1)(b)(i) or (ii) or (iii).

The limitations this places on the CCC’s jurisdiction is best explained using sample complaints recently considered by the CCC and assessed as not within CCC jurisdiction.

#### Example 1

*Agency A, a government department, issues licences. Anyone wishing to obtain a licence from Agency A must first complete mandatory training and obtain suitable qualifications. However, Agency A has outsourced responsibility for training and qualifying people to a private company. One of the employees of the private company has accepted bribes from an outlaw motorcycle gang to issue qualifications to unqualified persons so that they can obtain licences. The result is that Agency A is now issuing licences in good faith to unqualified people.*

In this case, the integrity of the agency’s licensing process has been corrupted, or adversely affected, by the conduct of a person who is an employee of a private company.

## Example 2

*A university administrator approves a federally funded grant to a PhD student who has been enrolled at the university for several years. The grant gives the student a stipend for a set period of time. However, the approving officer is unaware at the time of approving the grant that the student had failed to declare – as he was required to do – that he had previously been involved in PhD studies at another university and that his PhD candidature had been cancelled by that university for poor performance.*

In this case, the grant process has been corrupted by the action not of the employee of the UPA (the authorising/approving officer) but by that of the student who failed to declare pertinent facts.

In most instances the fact of combining sections 14 and 15 would not have a significant impact upon the CCC's jurisdiction, as complaints of corrupt conduct are usually made about employees of UPAs.

However, the decision of the High Court in *Independent Commission Against Corruption v Cunneen [2015] HCA 14* has introduced a degree of uncertainty in relation to how the CCC's jurisdiction is impacted if the substantive conduct in question relates to a person who is not the holder of an appointment in a unit of public administration.

We are already seeing the emergence of greater complexity around this question with the increasing commercialisation of the public sector, as shown in Example 1, with outsourcing and public-private partnerships redefining the boundaries of government service delivery.

The types of conduct in the above examples were discussed in a report by the Hon. Murray Gleeson AC and Mr Bruce McClintock SC, when reviewing the jurisdiction of the Independent Commission against Corruption (ICAC) in New South Wales in 2015. The CCC agrees with the observations made in the NSW report in relation to ensuring that corruption by any person, regardless of whether they hold an appointment with a UPA, that adversely affects the exercise of powers and functions of a UPA should be within jurisdiction of an integrity agency.<sup>6</sup>

The CCC notes that there is currently a Bill before Parliament in Victoria<sup>7</sup> which will, if enacted, expand the jurisdiction of the Independent Broad-based Anti-corruption Commission in like circumstances. Relevantly, it also specifically recognises that the powers and functions of a public body may be adversely affected even though the conduct does not involve any dishonesty by a public officer.<sup>8</sup>

The CCC notes the discussion of this issue in the Issues Paper and recommends that there should be scope for the CCC to investigate allegations of corrupt conduct that affects the way in which a UPA performs its functions, regardless of whether it is the result of dishonest conduct by a holder of appointment in a UPA.

This could be achieved by introducing a limited section consistent with the Gleeson/McClintock report's recommendation.<sup>9</sup>

---

6 *Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption Report*, 30 July 2015, pages xi and 37–40.

7 *Integrity and Accountability Legislation Amendment (A Stronger System) Bill 2015*.

8 Clause 4(5) *ibid.*

9 The Independent Panel Report page xi.

## Recommendation 1

That section 15 of the CC Act be amended to include conduct of a person (whether or not a public official) that could impair public confidence in public administration and which could involve any of the following matters:

- collusive tendering;
- fraud in or in relation to applications for licences, permits, approvals or clearances under statutes designed to protect health and safety or designed to facilitate the management and commercial exploitation of natural resources;
- dishonestly obtaining or assisting or benefiting from the payment or application of public funds or the disposition of public assets for private advantage;
- defrauding the revenue; and
- fraudulently obtaining or retaining employment as a public official.

## 2. Section 15(1)(c) – Requirement to prove benefit or detriment

To establish corrupt conduct, section 15(1)(c) of the CC Act requires that the conduct of a person:

“is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person”.

The CCC recommends that this requirement be removed for the following reasons:

- It is inconsistent with paragraph (a) of the definition of “conduct” in section 14, namely “neglect, failure and inaction” because there will be cases in which serious neglect or inaction warranting dismissal will not have occurred with such a purpose in mind;
- The introduction of a purpose element may delay expeditiously assessing and dealing with matters involving corrupt conduct. Often the information required to satisfy this element of the definition is not provided by, or is unknown to, the complainant at the time of making a complaint;
- If Parliament’s intention in introducing this element was to limit the CCC’s jurisdiction to serious and/or systemic corrupt conduct, this has already been achieved by the requirement for corrupt conduct to be conduct that would if proved be a criminal offence (section 15(1)(d)(i)) or provide reasonable grounds for dismissal (section 15(1)(d)(ii));
- The majority of offences found in Chapter 13 of the *Criminal Code* (Corruption and Abuse of Office) require proof of a detriment/benefit;
- The purpose element causes confusion for agencies when assessing complaints and is one of the reasons identified in a recent CCC audit for matters not being assessed as corrupt conduct. The CCC also receives inquiries from UPAs in relation to whether particular facts of a complaint satisfy this element of corrupt conduct prior to formally notifying the CCC in accordance with section 38 of the CC Act;
- Apart from Queensland, only Western Australia has such a specific requirement, however, the absence of a benefit or detriment is not fatal to their jurisdiction where one or more alternate limbs of the definition are present.

For these reasons, the CCC’s view is that section 15(1)(c) should be removed from the existing definition, and that doing so will not compromise the intention of the Act.

## Recommendation 2

That the requirement to prove that the conduct was engaged in for the benefit of, or detriment to, a person be removed from the definition of corrupt conduct in section 15(1)(c).

### **3. Section 15(2) – examples of corrupt conduct**

The 2014 amendments to the CM Act introduced sub-section 15(2) into the CC Act. This section is comprised of a non-exhaustive list of conduct that could be corrupt conduct. It closely mirrors section 8(2) in the ICAC Act. However there is one significant difference between section 15(2) CC Act and section 8(2) ICAC Act — the latter purports to expand the definition of corrupt conduct within the ICAC Act by creating a separate basis of jurisdiction. Section 15(2) does not expand the CCC’s jurisdiction in relation to corrupt conduct.

The CCC notes that this section has not assisted in interpreting its jurisdiction and could be omitted from the CC Act.

#### **Recommendation 3**

That subsection 15(2) be removed from the CC Act.

## Part B. The impact of the definition on the number and nature of complaints

The CCC is of the view that an informed analysis of the reasons for a fall in complaint numbers necessarily includes an examination of where complaints about corrupt conduct originate, as well as the changing type of complaints received by the CCC.

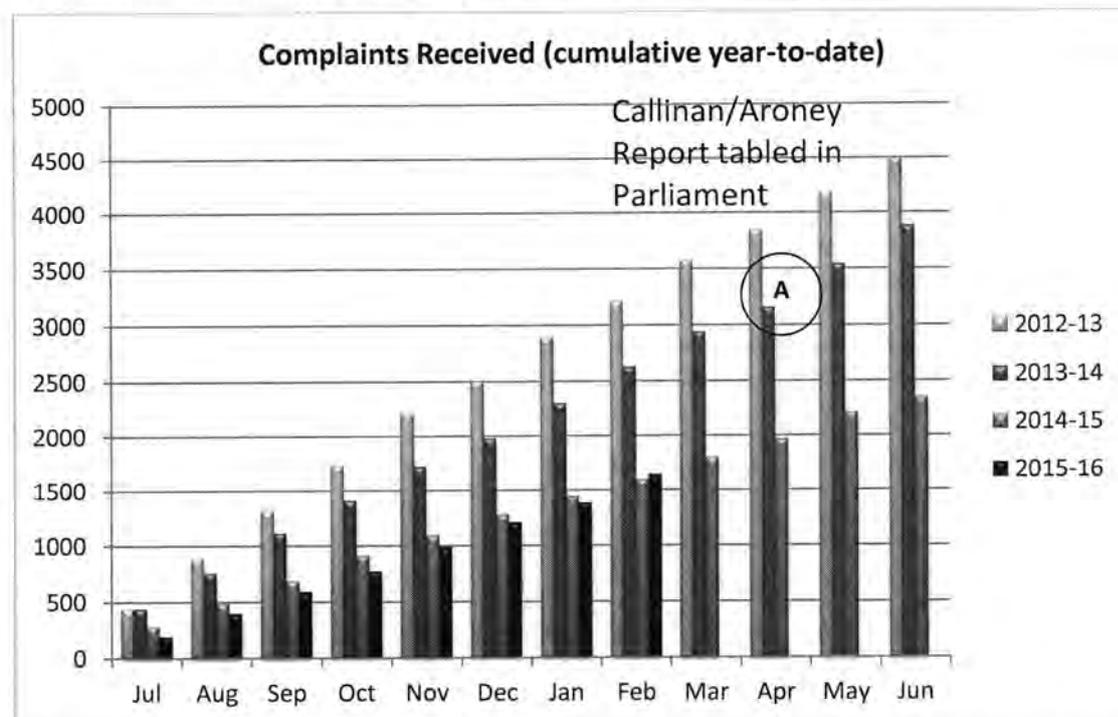
This section broadly addresses questions 1, 2 and 6 of the Issues Paper.

### Decrease in numbers of complaints received by the CCC

A breakdown of the changing numbers of complaints received by the CCC has been outlined in a previous submission.<sup>10</sup>

It appears that the decline in the number of complaints being received by the CCC began about the time of the Callinan and Aroney Review in late 2012. By April 2013, when the reviewers' report was tabled in Parliament, the CMC was already experiencing a significant decline in the number of complaints being received, compared to the same time the previous year (marked as an "A" on Figure 1 below). While there is no empirical data available to the CCC to demonstrate the reasons for the decline in complaints numbers prior to the changes to the CCC's legislation, anecdotal evidence suggests that UPAs had adopted a pre-emptive approach to the likelihood that the then CMC's jurisdiction was likely to be narrowed following the Callinan and Aroney Review.

**Figure 1.** Complaints received by the CCC between July 2012 and February 2016



The analysis below looks at both the source and types of complaints received by the CCC in order to identify possible reasons for the reduction in complaint numbers.

<sup>10</sup> Submission to the PCCC review of the Crime and Corruption Commission, pages 49 to 54 (<https://www.parliament.qld.gov.au/work-of-committees/committees/PCCC/inquiries/current-inquiries/five-year-review>).

## Source of complaints to the CCC

The CCC receives complaints containing allegations of corrupt conduct from three main sources:

- (i) notifications from UPAs;
- (ii) complaints, information or matters from members of the public; and
- (iii) CCC-generated complaints.

As the third category, CCC-generated complaints, is not relevant to this submission, it will not be discussed any further.

**Figure 2.** Source of complaints, 2012–13 to 2014–15

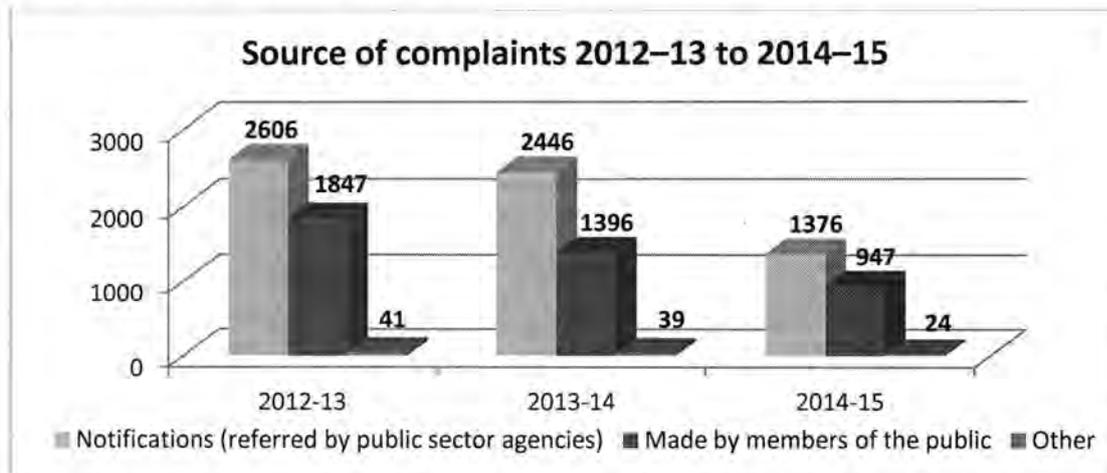


Figure 2 shows that there has been a fall in complaint numbers of approximately 48 per cent from 2012–13 to 2014–15, and that this percentage applies equally to notifications from UPAs and complaints from members of the public (UPAs from 2606 to 1376, public from 1847 to 947).

## Possible explanations for falling complaint numbers

The CCC notes that questions 1 and 2 in the Issues Paper relate to the effect that the change in the definition may have had on the ability of UPAs to appropriately manage allegations of misconduct that are not captured by the new definition of corrupt conduct and therefore not within the jurisdiction of the CCC.

The CCC has not received any information from any UPA to suggest that the change in definition to corrupt conduct has led to an inability to adequately deal with misconduct matters that were previously categorised as official misconduct but were not corrupt conduct.

However, the CCC contends that the impact from the change to the definition of corrupt conduct is inextricably linked to other legislative changes introduced in 2014. As stated in the Introduction, given that there was simultaneously a change to the definition, the raising of the threshold for reporting and the introduction of the statutory declaration, it is impossible to say definitively that there has been a single or predominant reason for the decline in complaint numbers.

## Decline in numbers of complaints received from UPAs

The CCC recently audited the extent to which UPAs were complying with their obligation to report corrupt conduct pursuant to section 38 of the CC Act. One of the purposes of the audit was to determine whether UPAs were accurately and consistently complying with the changes to the CCC's jurisdiction. The data was analysed to see if the change in definition meant that a significant number of allegations were no longer being reported to the CCC.

The audit identified that 28% (62 out of a sample of 225) of the audited files did meet the definition of corrupt conduct and should have been reported to the CCC, but were not. Most agencies failed to record the reason why the matter was not referred to the CCC; only 13 of the 62 supplied reasons for not reporting the complaint. Of those 13, five indicated that the allegation did not satisfy one of the elements of the definition of corrupt conduct and eight were recorded as not having raised a reasonable suspicion of corrupt conduct. Approximately one third of the matters (21 of 62) not reported were categorised as "high".<sup>11</sup> It is concerning that such a large proportion of the matters not reported to the CCC were categorised as serious conduct. The CCC is of the view that this finding demonstrates that a number of high-risk corruption matters may not be being reported to it.

With so few recorded explanations of why allegations of corrupt conduct were not reported to the CCC, it is difficult to identify to what extent the change in the definition from official misconduct to corrupt conduct led to a failure to report complaints.

While there is some anecdotal evidence there has been some confusion by UPAs over the application of the requirement for the conduct to provide a benefit or cause a detriment [s. 15(1)(c)], the findings from the audit are consistent with the CCC's view that the reason for the decline in notifications of corrupt conduct from UPAs is primarily due to the introduction of the reasonable suspicion test in section 38 of the CC Act.

### ***Less serious allegations of corrupt conduct – not referred by agencies by agreement***

Another factor that may have contributed to a reduction in the number of matters being referred to the CCC by UPAs is the new directions issued by the CCC pursuant to section 40 of the CC Act.

Section 40 of the CC Act permits the CCC to issue a direction to a public official about the way in which the CCC is notified of an allegation of corrupt conduct pursuant to section 38. Following the amendments to the CC Act in July 2014 the CCC has issued new directions to Queensland government departments and some councils. The directions are commonly referred to as "section 40 directions".

For the first time the new section 40 directions divide allegations of corrupt conduct into three tiers:

- the most serious allegations of corruption which must be notified immediately to the CCC;
- less serious matters that are significant enough that they must still be notified to the CCC, however the agency involved is permitted to commence dealing with the matter and only notify the CCC at the specified interval (usually monthly); and
- the least serious matters, which are not required to be reported to the CCC. The CCC monitors how these matters are dealt with as part of its audit program.

The current audits undertaken by the CCC have not identified that many matters are falling into this third category.

The CCC does not consider that the drop in reporting from agencies in relation to corrupt conduct has been affected to any significant degree by the third tier of matters that agencies are dealing with themselves.

The CCC does not recommend any change to the reporting threshold in section 38 at this time. This is because, while the higher threshold reduces the CCC's visibility over some conduct, there is no compelling evidence to support the view that it has impacted on the number of matters reported to the CCC of serious and systemic corrupt conduct.

Further audits may resolve the issue one way or another.

---

11 Matters classified as "high" are the most serious type of allegations. See discussion of "Serious and systemic matters reported to the CCC" on page 14.

## Decline in numbers of complaints received from the public

### *Statutory declarations*

One of the 2014 amendments that may have influenced the decline in number of complaints received from members of the public is the requirement for complaints to be made by way of a statutory declaration, other than in exceptional circumstances [s. 36(3)].

It is noted that in relation to what they perceived as frivolous, vexatious and/or mischievous complaints Callinan and Aroney made several recommendations which included the introduction of the requirement for complaints to be made by way of a statutory declaration:

We understand that a balance does need to be struck between the non-intimidation of complainants and the need for robustness of criticism of public affairs on the one hand, and the interests of the subject of a complaint and the cost to the public of dealing with baseless complaints on the other. That balance is not we think put at risk by requiring that complainants carefully consider whether a complaint is warranted or reasonable, and that a reasonable basis may exist for making it.<sup>12</sup>

The CCC has no means by which to reliably determine why a member of the public may decide not to report suspected corrupt conduct to the CCC. Nor does it have data in relation to persons who may have been dissuaded from lodging a complaint due to this requirement.

The CCC in its recent submission to the Legal Affairs and Community Safety Committee considering the *Crime and Corruption Amendment Bill 2015* stated as follows.<sup>13</sup>

In the CCC's experience, complaints accompanied by a statutory declaration are not of any higher quality or value to the CCC. The assessment process is necessarily stalled in cases where the agency awaits receipt of the Statutory Declaration. When it is ultimately received, experience has shown it rarely adds anything further to the complaint received in the first instance, and often simply restates the complaint in a sworn format. The CCC's perception is that the complaints received have no greater probative value nor are they more reliable for the requirement.

The exceptions and exemptions to the requirement for a statutory declaration are of some assistance in managing the issues. Although the CCC is not advocating for the removal of the public interest disclosure exemption, it does note that elected officials, as disclosers pursuant to the Public Interest Disclosure Act (PID Act) are exempt from the requirement. This result appears to be inconsistent with the intended purpose of the requiring complaints to be sworn.

### **Recommendation 4**

That the requirement in section 36(3) that a complaint must be made by way of a statutory declaration be removed.

## Serious or systemic matters reported to the CCC

As noted earlier one of the concerns highlighted in the Callinan and Aroney Report was the number of low-level complaints being dealt with the then CMC.

The categorisation of matters as High, Medium or Low is a system by which the CCC differentiates between the seriousness and/or systemic nature of the complaint under assessment. Until 1 July 2014 a slightly different categorisation system was used, categorising matters as 1, 2 and 3 depending on their seriousness.

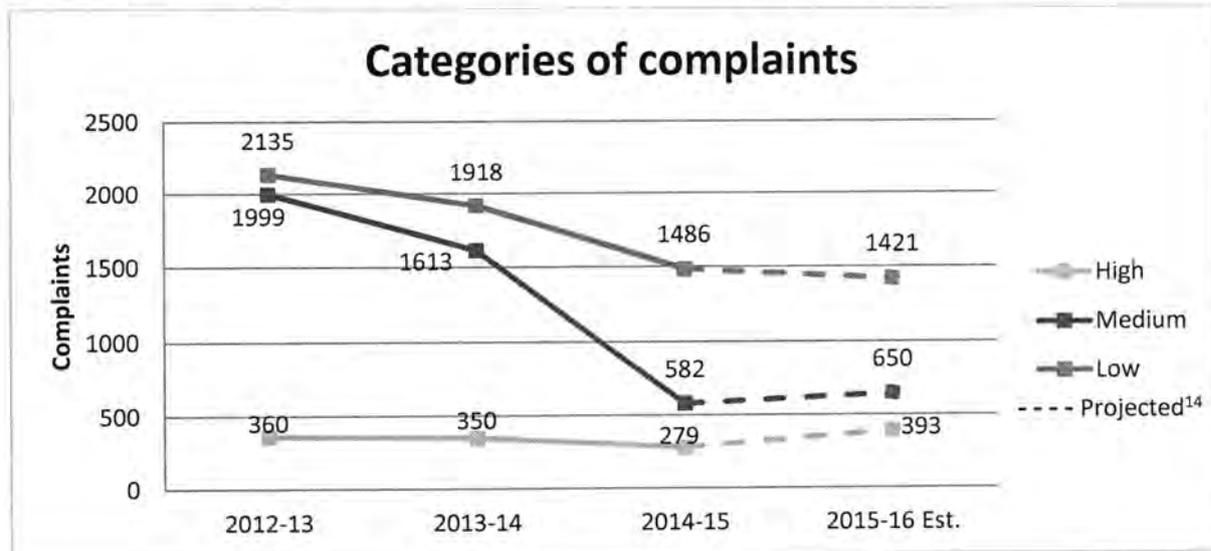
---

12 Callinan and Aroney Report page 122.

13 The CCC's submission to the PCCC's five year review recommended not only the return of the prevention function, but also that this function would benefit from additional information and intelligence gathering powers. See (<https://www.parliament.qld.gov.au/work-of-committees/committees/PCCC/inquiries/current-inquiries/five-year-review>), page 68.

While there are some differences in the criteria between the current system and the old, a comparison is still possible and useful to determine the types of matters whose numbers have declined since the change in definition.

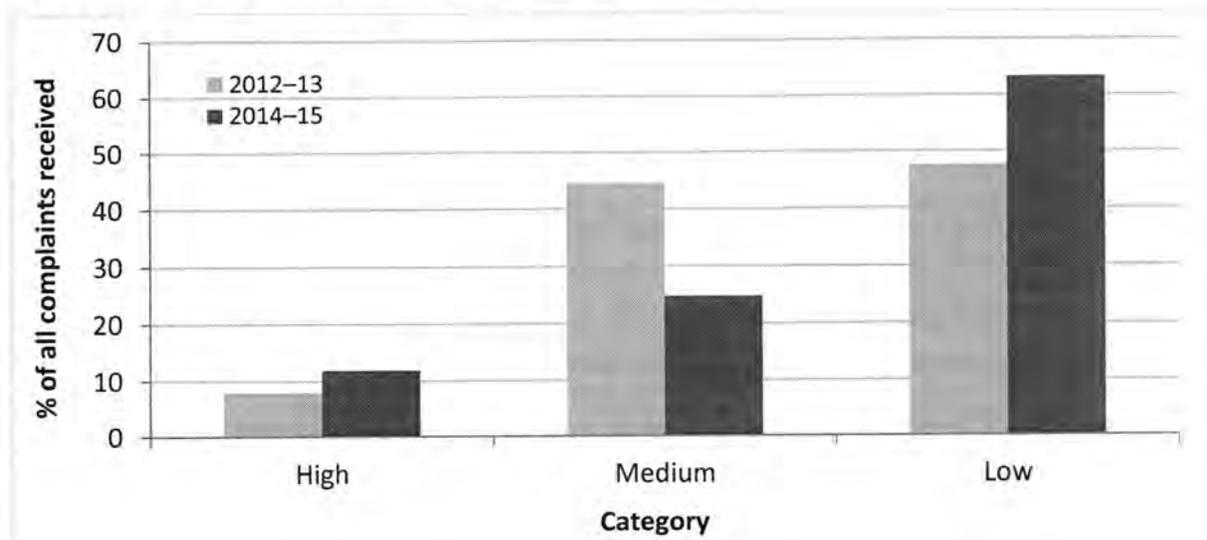
**Figure 3.** Categories of complaints received by the CCC between July 2012 and projected to 30 June 2016



The number of matters categorised as High fell by 23%. The biggest reduction was in the matters categorised as Medium, dropping 71% from 2012–13 to 2014–15. The least serious level of complaints, those categorised as Low, fell 30%.

This means that since 2012–13 the number of matters categorised as Low has increased as a percentage of the total number of matters coming to the CCC (see Figure 4 below). However, approximately 50% of the Low matters were referred to the CCC as section 40 matters. As section 40 requires the UPA to assess and commence dealing with a matter before notifying the CCC of it, the receipt of these matters does not place a significant burden on CCC resources.

**Figure 4.** Allegations by category 2012–13 and 2014–15



14 Projected data based on actual data from 1 July 2015 to 29 February 2016 and extrapolated to the end of the financial year.

## Part C. Broader jurisdiction of the CCC

---

This section looks at broader issues regarding the CCC's jurisdiction. It addresses question 7 of the Issues Paper.

The CCC is of the view that, as well as a specific examination of the definition of corrupt conduct, a more holistic view of the CCC's jurisdiction is necessary. When comparing the breadth of jurisdiction that the various integrity agencies in Australia have, it is necessary to not only consider the definition of corrupt conduct or other relevant term in each Act, but also any other related provisions in those Acts which impact upon jurisdiction.

It is difficult to conclude definitively that the variation in language in the various states' legislation regarding how corrupt conduct is defined is solely responsible for the actual or perceived disparity in each agencies' jurisdiction.

The CCC recommends that any consideration of the CCC's jurisdiction regarding corrupt conduct against other integrity agencies' jurisdictions should involve a broader examination of other sections in the relevant acts.

In 2001 the *Crime and Misconduct Act 2001* introduced a new way of dealing with misconduct and corrupt conduct. It enabled an oversighting model predicated on a combination of a broad definition for corrupt conduct, high visibility over a broad range of complaints, a "mere suspicion" test for referral of complaints, and a wide prevention function. The purpose of the Act was to continuously improve the integrity of, and to reduce the incidence of misconduct in, the public sector.

However, the *Crime and Misconduct and Other Legislation Amendment Act 2014* altered not just the definition of corrupt conduct, as outlined in section A; it also amended the Act's purpose (s. 4) and removed the CCC's corruption prevention function (ss. 23 and 24). The removal of the prevention function limits the CCC's ability to examine corruption risks not directly attributable to a specific allegation of corruption. The CCC is of the view that, to be an effective anti-corruption agency, it should have the ability to examine corruption risks that, while not the subject of a specific complaint, none the less warrant examination.<sup>15</sup>

For the purposes of comparison, section 13 of the ICAC Act 1988 (NSW) is more broadly based and better aligned with its functions than the CCC believes its own Act, the CC Act, currently to be. ICAC's Operations Jasper and Acacia, relating to allegations of corruption concerning mining exploration licences, are cases in which an integrity agency may have scant evidence about an allegation of corrupt conduct that looks suspicious but may not, at the time, raise a reasonable suspicion of corrupt conduct in relation to a particular individual's conduct.

Section 13 of the ICAC Act states, *inter alia*, that the principal functions of the ICAC are:

- (a) to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:
  - (i) corrupt conduct, or
  - (ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or
  - (iii) conduct connected with corrupt conduct,may have occurred, may be occurring or may be about to occur,

---

<sup>15</sup> The CCC's submission to the PCCC's five year review recommended not only the return of the prevention function, but also that this function would benefit from additional information and intelligence gathering powers. See (<https://www.parliament.qld.gov.au/work-of-committees/committees/PCCC/inquiries/current-inquiries/five-year-review>), pages 68–69.

Subsections (a)(ii) and (a)(iii), in particular, place in context the sort of conduct captured by the strict terms of the definition. In the CCC's view ICAC's legislation provides it with a much broader basis upon which to apply the definition of corrupt conduct in relation to how ICAC can carry out its corruption function. Further, those principles are much more in keeping with an integrity agency focused on reducing the incidence of corruption in the public sector and dealing with serious cases of corrupt conduct and cases of systemic corrupt conduct within UPAs.

In addition, subsection (b) of the ICAC Act authorises ICAC to investigate any matter referred to it by both Houses of Parliament. This is similar to section 294 of the CC Act which authorises the PCCC to refer to the CCC for investigation a matter involving corruption. The CCC's view of section 294 is that the conduct referred must still meet the definition of corrupt conduct under the CC Act. It would appear that the terms of a referral from both houses of Parliament in NSW to ICAC are not as restrictive.

The inclusion of similar provisions to section 13(a) and (b) of the ICAC Act in the CC Act would have a significant effect on expanding the circumstances in which the CCC could exercise its corruption function in Queensland, with the aim of reducing the opportunities and incentives for corrupt conduct in the Queensland public sector. To that end, the CCC makes the following recommendation.

### **Recommendation 5**

That the CC Act should be amended to state that the principles for performing the corruption function include:

- (a) to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:*
  - (i) corrupt conduct, or*
  - (ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
  - (iii) conduct connected with corrupt conduct,**may have occurred, may be occurring or may be about to occur,*
- (b) to investigate any matter referred to the Commission by the Queensland Parliament.*



# Crime and Corruption Commission

QUEENSLAND

**Crime and Corruption Commission**

GPO Box 3123, Brisbane QLD 4001

Level 2, North Tower Green Square

515 St Pauls Terrace

Fortitude Valley QLD 4006

Phone: 07 3360 6060

(toll-free outside Brisbane: 1800 061 611)

Fax: 07 3360 6333

Email: [mailbox@ccc.qld.gov.au](mailto:mailbox@ccc.qld.gov.au)

[www.ccc.qld.gov.au](http://www.ccc.qld.gov.au)