COMMISSION OF INQUIRY INTO QUEENSLAND POLICE SERVICE RESPONSES TO DOMESTIC AND FAMILY VIOLENCE

RE: Notice number 3.002 dated 13 June 2022

Statement of Elizabeth Foulger

1. I am the Executive Director of Integrity Services (**IS**) at the Crime and Corruption Commission (**CCC**).

2. Integrity Services is the business unit of the CCC responsible for assessing complaints about corrupt conduct to determine whether they are within the CCC's jurisdiction, and what action, if any, is most appropriate.

3. Notice number 3.002 requires the CCC to produce, by 4:00PM on 20 June 2022:

   A statement outlining the Crime and Corruption Commission's complaints handling process as it relates to complaints involving the Queensland Police Service, including a process chart of the relevant CCC complaints handling processes.

4. The following statement outlines:

   a. the CCC's Corruption function, guiding principles and governance;

   b. the complaints handling process generally;

   c. the complaints handling process as specific to complaints against members of the Queensland Police Service (**QPS**);

   d. the complaints handling process, specific to complaints of domestic and/or family violence; and

   e. the CCC's role in oversight of police discipline.

5. Copies of the process chart and relevant documents are attached to this statement and numbered 1 - 6.

Crime and Corruption Commission

6. The CCC is established by *the Crime and Corruption Act 2001* (**the CC Act**). Pursuant to the CC Act its primary functions are:

   a. to combat and reduce the incidence of major crime; and

   b. To continuously improve the integrity of, and to reduce the incidence of corruption, in the

public sector.[1]

CCC's corruption function – corrupt conduct and police misconduct

7. Relevant to the terms of reference of the Commission of Inquiry into QPS responses to domestic and family violence, section 15 of the CC Act establishes the meaning of 'corrupt conduct' as follows:

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

[1] CC Act, s.4.

cultural, mining or energy resources;

(iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;

(iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;

(v) fraudulently obtaining or retaining an appointment; and

(c) would, if proved, be—

(i) a criminal offence; or

(ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

8. The CC Act, in its Schedule 2 Dictionary, defines police misconduct as follows:

Police misconduct means conduct, other than corrupt conduct, of a police officer that—

(a) is disgraceful, improper or unbecoming a police officer; or

(b) shows unfitness to be or continue as a police officer; or

(c) does not meet the standard of conduct the community reasonably expects of a police officer.

The CCC's corruption function and guiding principles

9. Section 33 of the CC Act sets out the CCC's corruption functions. Relevantly, section 33(1)(b) provides that the CCC must ensure that complaints about corruption, or information or matters involving corrupt conduct, are dealt with in an appropriate way.

10. Section 35 of the CC Act sets out how the CCC should perform its corruption functions, including through:

a. the assessment of complaints;

b. referral of complaints of corruption back to the relevant public official to deal with;

c. performing a monitoring role in relation to both police misconduct and corrupt conduct

d. dealing with and investigating complaints, both independently and jointly with the relevant public official;

e. assessing the ways in which units of public administration (**UPAs**) deal with complaints about corruption; and

f. providing UPAs with advice and recommendations about dealing with corrupt conduct.

11. Section 35 emphasises the importance of the CCC liaising with the public official, wherever possible, in exercising its corruption function, and the requirement that the CCC must focus on more serious cases of corrupt conduct and cases of systemic corrupt conduct.

12. Section 34 of the CC Act sets out the principles the CCC must apply when performing its corruption functions, as follows:

    (a) **Cooperation** – the CCC and relevant UPAs should work cooperatively to prevent and deal with corruption

    (b) **Capacity building** – the CCC has a lead role in developing the capacity of UPAs to deal with corruption

    (c) **Devolution** – subject to cooperation, capacity and public interest principles, action to prevent and deal with corruption should be taken by the relevant UPA

    (d) **Public Interest** – the CCC has an overriding responsibility to promote public confidence and should deal with issues of corruption when it is in the public interest for the CCC to do so.

13. The application of these principles allows for and encourages UPAs to take responsibility for dealing with corruption in a timely, effective and decisive manner.

14. The CCC recognises that effectiveness of the devolution principle hinges on both the capacity of the relevant UPA to effectively deal with complaints, and public confidence in the UPA to do so impartially.

Governance

15. The CCC's Operational Framework (**Attachment 1**) and Operating Model Governance Arrangements (**Attachment 2**) articulate a set of consistent standards that address how operational activities are identified and managed throughout their lifecycle.

16. These standards are supported by an Operations Manual (**Attachment 3**),[2] which sets out a structured approach to decision-making that occurs across the governance, management, operational and technical levels of all operational activities, including complaint handling and investigations.

17. This strong governance framework is designed to deliver consistent and timely assessment decisions and ensures the CCC remains focused on the most serious allegations of corrupt conduct.

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[2] CCC Operations Manual, Chapter MM01. The Operations Manual is an extensive internal document which sets out policies and procedures in relation to all operational activities of the CCC.

Complaints handling process

Receiving complaints

18. The CCC receives complaints of corrupt conduct and police misconduct relating to QPS employees and sworn members via four main avenues:

    a. through a direct complaint made to the CCC (CC Act, section 36 complaint);

    b. through mandatory notification from a public official[3] (section 37, 38, and 40 notifications);

    c. as 'information' which could be received through routine agency audits, media articles, Crime Stoppers, or the CCC's own intelligence activities or sources; or

    d. as a 'matter', which could be received through court proceedings, referrals from the Coroner, or a public inquiry.

19. The CCC also receives complaints which it categorises as 'issues'. These are complaints that do not meet the definition for corrupt conduct, or police misconduct, or are otherwise out of jurisdiction.

Section 36 – Direct complaints to the CCC

20. Section 36 of the CC Act allows for any member of the public to make a complaint about corrupt conduct directly to the CCC.

Section 38 – Duty to notify police misconduct

21. Section 37 of the CC Act provides that where the commissioner of police becomes aware of behaviour that raises a reasonable suspicion of police misconduct, they must notify the CCC. Section 37 is subject to section 40 of the CC Act.

Section 38 – Agency public official must notify

22. Section 38 of the CC Act provides that where a public official of an agency becomes aware of behaviour that raises a reasonable suspicion of corrupt conduct, they must notify the CCC. This would include the behaviour of a police officer. Section 38 is subject to section 40.

Section 39 – Duty to notify is paramount

23. Section 39 of the CC Act further clarifies that the duty to notify provided for in sections 37 and 38 is paramount, and overrides any other act or obligation the person has to maintain

[3] Notifications of corrupt conduct and police misconduct may be received from the Commissioner of Police (or their delegate) and also from the Public Officials of other UPAs

confidentiality about the matter.

Section 40 directions – Legislative approach to managing high volume complaints

24. Section 40 of the CC Act allows the CCC to issue directions about how and when an allegation of corrupt conduct must be notified by a UPA's public official. The purpose of this provision is to assist both UPAs and the CCC in managing the high volume of complaints coming to the CCC, and the associated administrative burden.

25. The CCC issued section 40 directions to the QPS on 18 August 2017 (**Attachment 4**). The directions establish three broad categories for allegations of corrupt conduct, with 'category one' being the most serious. The directions are intended to ensure:

    a. the CCC focuses on the most serious complaints;

    b. the QPS does not take action that may undermine the CCC's ability to assess and deal with the matter until the CCC has had the opportunity to assess it;

    c. there is no delay in the QPS being able to deal with category two and three matters; and

    d. not all alleged corrupt conduct is required to be reported to the CCC. Number of complaints

26. Table one records the total number of complaints received by the CCC from the 2016-17 financial year through until the 2021-22 financial year to date, and the calculated percentage of total complaints constituted by QPS complaints.

27. The table then shows the total number of allegations distilled, the number of allegations of corrupt conduct and the number of allegations involving police misconduct.

Table 1

Year	Total complaints	QPS complaints	Percentage of total complaints involving QPS	Referred by public	Referred by QPS	Total QPS allegations (CC & PM)	QPS CC allegations	QPS PM allegations
2016/17	3104	2020	65	1191	829	5390	2260	3130
2017/18	3180	1807	56	990	817	5295	2306	2989
2018/19	3118	1497	48	804	693	3845	1637	2208
2019/20	3328	1399	42	653	746	3709	1609	2100
2020/21	3499	1566	44	809	757	3980	1511	2469
2021/22	3586	1837	51	984	853	4316	1441	2875

Assessing and categorising complaints

28. A Case Categorisation and Prioritisation Model (**CCPM**) used by the CCC, provides a structured approach to decisions regarding seriousness and risk. Matters, whether received from a Public Official (under sections 37 and 38 of the CC Act) or from a member of the public (section 36) are assessed as High, Medium or Low **(Attachment 5).** This decision dictates the level at which the subsequent assessment decision making is performed. It should be noted that the CCPM is subject to a scheduled review commencing on 4 July 2022.

29. High risk matters are overseen by more senior officers, including the CCC Executive Leadership Team. The Executive Leadership Team is comprised of the Chairperson, Chief Executive Officer, Senior Executive Officer (Crime), Senior Executive Officer (Corruption), General Manager Operations Support and General Manager Corporate Services. Assessment decisions for matters categorised as medium and low risk are made by decision makers in the assessment unit, within IS. This approach ensures the governance and oversight applied to a matter reflects the nature of the complaint and does not contribute unnecessary administrative burden or impact timeliness.

Obligations of the Commissioner of Police

30. Section 41 of the CC Act provides that the Commissioner of Police has primary responsibility for dealing with matters involving police misconduct.

31. Section 41 further provides that the Commissioner of Police has responsibility for dealing with an allegation of corrupt conduct involving sworn and/or unsworn members of the QPS referred to them by the CCC.

32. Section 42 of the CC Act sets out how the Commissioner of Police must deal with complaints of corrupt conduct and police misconduct.

33. Together, sections 41 and 42 establish that allegations of police misconduct are to be dealt with and investigated by the QPS, subject to the CCC's monitoring role. The commissioner of police can request the CCC to deal with a complaint of police misconduct, or request that the CCC deal with the complaint cooperatively with the QPS.[4] This is further reflected in section 46 of the CC Act which sets out how the CCC must deal with complaints.

34. By application of these sections, allegations of police misconduct are ordinarily referred to the

[4] CC Act, s.42(4).

QPS to deal with. An exception may arise when an allegation of police misconduct is intertwined with, or closely related to, an allegation of corrupt conduct that the CCC has determined to investigate.

How the CCC must deal with complaints

35. Section 46 of the CC Act sets out the ways in which the CCC may deal with a complaint of corrupt conduct. In assessing an allegation of corrupt conduct against a sworn and/or unsworn member of the QPS, the CCC may determine to:

    a. take no further action

    b. refer the complaint to the QPS to deal with, including subject to oversight by the CCC

    c. conduct a joint investigation

    d. investigate the complaint

36. If the complaint is an allegation of police misconduct against a sworn officer, section 46 provides that the CCC must allow the QPS to deal with the matter, subject to the CCC's monitoring role.

37. The CCC may take no action or discontinue action if it is satisfied that:

    a. the complaint is frivolous, vexatious, lacking credibility, not made in good faith, or made recklessly or maliciously (CC Act, section 46(g)(i));

    b. dealing with the complaint would be against the public interest or an unjustifiable use of public resources (CC Act, s.46(g)(ii)); or

    c. the subject matter is not within the CCC's functions or had been dealt with by another entity (CC Act, s.46(g)(iii)).

How the complaint is dealt with

38. The CCC investigates only the most serious or systemic corruption allegations itself (sometimes in partnership with UPAs), and devolves other allegations to relevant public sector agencies, such as the QPS, for investigation.

39. The majority of allegations are devolved back to UPAs to deal with on a no further advice basis (refer no further advice) (**RNFA**). The CCC will typically devolve a matter on an RNFA basis if the complaint is not serious enough to warrant oversight by the CCC, if the CCC is satisfied that the agency can deal with the allegations without the oversight of the CCC, and if complaint does not require expert investigative skills or subject matter experts.

40. UPAs may deal with RFNA matters as they consider appropriate. However, RNFA matters may be subject to audit by the CCC, and so must be handled and recorded appropriately. In 2020-21, 72 per cent of all matters were RNFA and 88 per cent of section 38 matters were RNFA).

41. Where a matter is referred back to a UPA to deal with, the CCC may elect to monitor the way the agency deals with the complaint. This may take the form of:

    a. a merit and compliance review (**MCR**). A merit and compliance review is undertaken in those matters where the CCC consider it is in the public interest to maintain oversight of the way an agency has dealt with a matter, but it has formed a view it is unlikely the CCC would need to assume responsibility for the investigation.

    b. public interest review (**PIR**). A public interest review is a closer form of scrutiny for the most serious and systemic allegations of corrupt conduct where the CCC has determined it is in the public interest to maintain oversight *throughout* the investigation. With these matters, the CCC has identified it may be necessary to assume responsibility for the matter, even briefly, to allow for the exercise of CCC powers, or to provide a greater level of direction to the way the investigation is conducted; and

    c. monitoring via audit

42. When considering how complaints against QPS officers should be dealt with, it is relevant that the QPS is an agency with extensive experience in investigating conduct allegations, with a longstanding Ethical Standards Unit (**ESU**) which sits within its own command and is presided over by a dedicated Assistant Commissioner.

43. For this reason, and noting the legislative requirement that police misconduct should be dealt with by the QPS, all complaints about police misconduct must be referred to the QPS to deal with, and most complaints of corrupt conduct will be referred to the QPS to manage on an RNFA basis.

44. The CCC is however mindful of issues of public perception and public confidence as it relates to allegations made against police being investigated by police. For that reason, when assessing how a matter should be dealt with the CCC also considers whether the public interest and/or public confidence requires the CCC to monitor the way a matter is dealt with, or investigate the matter itself.

Flexibility to change how a matter is dealt with

45. If the CCC finds that the standard of an investigation or the outcome is not considered

satisfactory, or if the investigation requires the use of the CCC's investigative powers not ordinarily available to the QPS, then the CCC can assume responsibility for dealing with the complaint. This can be identified during the course of monitoring matters, or when a UPA seeks advice or assistance. Any decision to assume responsibility is taken after further assessment and consultation with the UPA.

46. The CCC will also assume responsibility for the investigation of a matter where the investigation identifies criminal charges of a serious nature that warrants investigation by the CCC, and where referral of the criminal aspects to the QPS is not practicable or appropriate.

Complaints in relation to QPS

Assessment

47. A flow chart detailing steps in the assessment of a complaint involving a subject officer from the QPS is provided at **Attachment 6** to this statement.

48. All complaints and notifications are triaged in the first instance by a Senior Complaints Officer (**SCO**), within IS. This is conducted with oversight by senior commission officers and lawyers.

49. The SCO is responsible for assessing the complaint to determine whether the allegations raised, if proven, would satisfy the definition of 'police misconduct' or 'corrupt conduct'. If not, it is dealt with and categorised as an 'issue'.

50. The SCO further considers whether the complaint or notification raises a 'reasonable suspicion' that the conduct actually occurred. For a suspicion to be 'reasonable', there needs to be more than bare or idle speculation,[5] and some evidence on hand sufficient for a reasonable, objective person to suspect corrupt conduct. If not, the matter is assessed as 'bald', and no further action is taken.

51. Complaints raising allegations of police misconduct must be referred or returned to the QPS to deal with. In some circumstances the CCC may determine to monitor the way the QPS deals with a complaint involving police misconduct. This is discussed further below.

52. Where a matter involves allegations of corrupt conduct, in the majority of cases the matter will be referred back to the QPS to deal with on an RNFA basis. Referral to the QPS is consistent with the principles under section 34 of the CC Act, particularly the devolution principle and accepting that the QPS has relevant investigative skills and subject matter expertise.

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[5] *George v Rockett* (1990) 170 CLR 104.

53. In some circumstances the CCC may determine to monitor the way in which the QPS deals with the matter. The CCC may determine to investigate an allegation of corrupt conduct involving a QPS officer, either independently or in cooperation with the QPS. As indicated above, this occurs where the CCC identifies that public interest considerations, and public confidence in the QPS, require the matter to be dealt with by the CCC. Examples would include where the allegations are made against a very senior member of the QPS, where there might be an adverse perception about the impartiality of the QPS, or where the concerns are systemic and/or involve serious criminal offences.

Categorisation as 'police misconduct' or 'corrupt conduct'

54. Off-duty conduct is usually not assessed by the CCC as 'corrupt conduct'. This is because section 15(1)(b) of the CC Act requires a result connected to the performance of functions or exercise of powers of a person holding an appointment.

55. The CCC historically assessed allegations against off-duty QPS officers as police misconduct unless they were done 'under the colour of office' (for example, if the officer used police-issued accoutrements or falsely represented themselves as being on-duty).

Complaints of domestic and/or family violence

Allegations that a police officer engaged in domestic and/or family violence – corrupt conduct or police misconduct?

56. Domestic and family violence (**DFV**), by its nature, almost always occurs in private rather than in the course of exercising powers or functions as an appointment-holder. The CCC has never assessed such allegations against police officers as meeting the definition of 'corrupt conduct' given there is often no direct adverse effect on the performance of policing functions or exercise of powers. Past examples include matters involving a QPS officer named as a respondent on a domestic violence order (**DVO**),[6] or breaching the provisions of a DVO.

57. In June 2022 the CCC has adopted a more expansive interpretation of section 15(1)(b) of the CC Act, as it relates to off-duty police conduct, noting section 15(1) is very broadly drafted and captures conduct that 'could' and 'indirectly' affect the powers and functions of police officers. The CCC now acknowledges that off-duty conduct may satisfy the definition of corrupt conduct. In other words, a 'direct' nexus to policing powers is not required.

58. The impact of the change is that matters previously assessed as 'police misconduct' might now

[6] Defined under section 23 of the *Domestic and Family Violence Protection Act 2012* as (a) a protection order; or (b) a temporary protection order.

be assessed as 'corrupt conduct'.

59. No allegations of DFV by police officers have been assessed by the CCC as involving corrupt conduct since it adopted this expanded position in June 2022. The CCC has received six complaints with links to DFV since 1 June 2022. Each of these files is still under assessment and the CCC is presently considering what action is most appropriate.

60. The CCC will assess DFV of a police officer as corrupt conduct where it:

    a. affects or could affect the officer's ability to perform the functions of their role honestly and impartially;[7] and

    b. is a criminal offence or reasonable grounds for dismissal.[8]

61. This position recognises the unique function that police officers play in law enforcement and in the community. Police officers have, by virtue of their position, a nuanced understanding of how the system works and access to police information systems. They might know local police called to investigate DFV matters, the prosecutors who would appear at court, the lawyers, and possibly the magistrate. The very fact that a person is a police officer exacerbates the power imbalance already present in a domestically violent relationship.

62. Breach of a court issued DVO is one example of a serious matter that could affect the police officer's ability to appropriately perform their functions/powers. An officer who breaches it demonstrates disregard for public safety and the system of laws they are obliged to uphold. It follows that the officer may be unable to impartially investigate, prosecute, and enforce laws when confronted with DFV in the line of duty. The conduct satisfies section 15(1)(b) of the CC Act. Breach of a DVO is also an offence under the *Domestic and Family Violence Protection Act 2012* (Qld),[9] and satisfies section 15(1)(c)(i) of the CC Act.

63. Many other forms of DFV are criminal offences, including Assault,[10] Choking, suffocation or strangulation;[11] Acts intended to cause grievous bodily harm;[12] Rape;[13] and Unlawful stalking.[14]As with breach of a DVO, a police officer who engages in these acts might not be

[7] CC Act, section 15(1)(b).
[8] CC Act, section 15(1)(c).
[9] *Domestic and Family Violence Protection Act 2012*, section 177.
[10] *Criminal Code Act 1899* (Qld), s246.
[11] Ibid, s315A.
[12] Ibid, s317.
[13] Ibid, s349.
[14] Ibid, Chapter 33A.

expected to respond to DFV incidents appropriately and impartially when on duty.

64. Assessment of conduct as within or out of jurisdiction is a complex and fact-specific exercise, often made on incomplete information. That is the case for all complaints, but may be particularly challenging for DFV matters, which themselves may involve complex interpersonal relationships, and limited corroborative evidence. COs are actively encouraged to seek legal advice and consult with their supervisors if necessary.

Allegations about police conduct associated complaints and/or investigations concerning domestic or family violence complaint – corrupt conduct or police misconduct?

65. The CCC also receives complaints and notifications about the actions of police officers in dealing with complaints about, and investigations into, DFV.

66. The nature and type of allegations typically relate to a failure to recognise and respond to DFV matters appropriately. This might involve failure to:

    a. recognise clear indicators of DFV;

    b. respond to victims' experiences; or

    c. hold perpetrators to account.

67. These complaints are also assessed to determine if they involve allegations of police misconduct and/or corrupt conduct.

68. Any alleged 'failure' of a police officer to exercise functions or powers appropriately will typically satisfy section 15(1)(a) of the CC Act, as there is a clear 'adverse effect'.

69. These allegations will also satisfy the 'breach of trust' limb of section 15(1)(b) of the CC Act. The CCC interpret 'Trust' to mean 'the obligation or responsibility imposed on someone in whom confidence is placed or authority is vested, or who has undertaken to carry out a particular duty or role'. 'Breach' is interpreted by the CCC to mean in relation to that trust, breaking that obligation, or failing in that responsibility.

70. Whether a police officer's failure to recognise and respond to DFV matters is 'corrupt' usually turns on section 15(1)(c). Breach of trust-type conduct is unlikely to be a criminal offence. Therefore, the question is whether the alleged 'failure' is so serious that it would, if proved, be reasonable grounds for dismissal.

71. Examples of matters meeting this threshold include:

a. a police officer who ignores repeated calls for assistance from a victim of DFV, particularly where there is clear, physical evidence of serious DFV (such as sexual assault or strangulation);

b. a police officer who fails to obtain a DVO against a perpetrator of DFV, particularly where there is evidence that perpetrator is highly dangerous and there is imminent risk of serious harm to a victim; or

c. a police officer who fails to take timely and appropriate action regarding a DFV complaint, particularly if it involves risk to life (such as murder or suicide threats).

72. If the failure to appropriately respond to DFV directly contributes to loss of life, serious harm to a victim, or damage to public confidence in the QPS, it is more likely to satisfy section 15(1)(c). These matters would be assessed as 'corrupt conduct'.

73. However, it is inevitable that police will fall short of appropriate standards from time-to-time. Dismissal will not be appropriate in most cases. These less serious failures would ordinarily be assessed by the CCC as 'police misconduct' on the basis that they do not meet the standard of conduct the community reasonably expects of a police officer.

74. Examples of police misconduct include:

a. a police officer who fails to detect more subtle, insidious forms of DFV, such as coercive control or emotional abuse;

b. a police officer who turns away a first-time complainant or redirects them to other services, such as a hospital rather than dealing with the substance of the complaint;

c. a police officer who fails to amend a DVO in response to changing circumstances or new information which does not present an immediate threat to life.

Assessment against the Case Categorisation and Prioritisation Model (CCPM)

75. Once a complaint or notification involving a QPS officer is assessed as involving police misconduct or corrupt conduct, and including sufficient information to raise a reasonable suspicion, it is assessed against the CCPM and categorised as High, Medium or Low. As discussed above, this categorisation determines the seniority of the officer responsible for making an assessment decision.

Low matters

76. In accordance with the CCC's CCPM, all police misconduct matters are categorised a 'Low'.

77. All 'Low' matters are assigned by the SCO to Assistant Complaints Officers (**ACO**) and Complaints Officers (**CO**) to deal with. Those officers must determine whether to take no further action in relation to the matter, or to refer it to the QPS to deal with on an RNFA basis. Where a complaint was made directly to the CCC, rather than notified to the CCC by the QPS, an ACO/CO must also provide advice to the complainant about how their matter was assessed and the reason for the assessment decision.

78. A matter involving allegations of police misconduct may be assessed as 'Medium' in some limited circumstances. For example, where a matter involves allegations associated with DFV, it may meet the threshold of 'Medium' in instances where:

    a. the matter involves additional allegations of corrupt conduct;

    b. the conduct of the officer which resulted in the DVO or them breaching a provision of a DVO is considered a serious indictable offence (e.g. rape, serious assault); or

    c. significant complaint history of the subject officer.

79. Between 1 July 2020 and 30 May 2022, the CCC received 98 complaints which included at least one allegation that a QPS officer had engaged in DFV. Seventy five of these files were classified as 'Low' against the CCPM. The remaining 23 were assessed as 'Medium'.

80. All of the 'Low' files were finalised as RNFA to the QPS, or assessed as requiring no further action.

81. Between 1 July 2020 and 30 May 2022 the CCC received 370 complaints involving 925 allegations with a link to DFV.

82. Of the 370, 288 files involving 681 allegations were assessed as Low against the CCPM. The CCC determined to take no further action in relation to 203 allegations, while the remaining 477 allegations were referred to the QPS on an RNFA basis.

Medium matters

83. When a matter is assessed as a 'Medium' the SCO must brief the Director Assessments and the Director Reviews, who are both Senior Officers, about the matter, and the Directors collectively determine how the matter should be dealt with. The file is then referred to a CO/ACO to action as per the Directors' advice.

84. Decisions about medium matters may result in the CCC determining to take no further action, referring the matter to the QPS to deal with on an RNFA basis, or referring a matter to the QPS to deal with subject to monitoring by way of MCR or PIR.

85. The factors to be considered when determining whether a matter should be subject to monitoring are referenced in Chapter IM04 of the CCC's Operations Manual. Monitored matters typically relate to allegations:

    a. of a serious and/or systemic nature;

    b. involving a current area of focus (as stated in the CCC's strategic plan);

    c. involving an identified area of concern for the CCC (for example assaults in custody, failure to activate body worn video);

    d. relating to an emerging issue/identified corruption risk; and/or

    e. involving a subject officer with a history of similar or concerning allegations.

86. Many of the above factors may be relevant in deciding to monitor the investigation of allegations involving police and DFV.

87. DFV (police involvement and/or failure of duty) has been an 'area of concern' for the CCC since February 2020. There is also heightened public concern in relation to DFV issues in the wake of the Women's Safety and Justice Taskforce and this Commission of Inquiry. Following the release of the Taskforce's recommendations, the CCC updated its recordkeeping systems to keep close track of DFV matters.

88. The CCC is more likely to monitor the investigation of matters where:

    a. the subject officer is identified as high risk, with a significant complaint history;

    b. the allegations of DFV are very serious; or

    c. the allegations are systemic in nature (for example, where multiple officers from the same district fail to respond appropriately to DFV situations).

89. If a decision to take no further action is made, this decision must be checked and confirmed by a legal officer before the matter can be finalised.

90. Once the assessment decision is made the ACO/CO is responsible for actioning for the decision, and for complaints made directly to the CCC, the ACO/CO must advise the complainant of the

assessment decision and the reasons for it.

91. If a decision is made to monitor an investigation, the investigation is assigned to a review officer to confirm the allegations and refer the investigation to the QPS along with specific instructions relevant to the type of monitoring – MCR or PIR. The Review Officer also prepares correspondence advising the complainant of the assessment decision.

92. The allegations, assessment decision and advice to the complainant are reviewed by the Director Review before those actions are finalised.

93. As indicated above, of the 98 files created between 1 July 2020 and 30 May 2022 including at least one allegation that a QPS officer had engaged in DFV, 23 were assessed as medium and referred to the Directors for an assessment decision.

94. Of those 23, one matter was finalised as requiring no further action, 16 matters were sent to the QPS on an RNFA basis, four matters were referred to the QPS subject to a PIR and one matter was referred to the QPS subject to an MCR.

95. Of the 370 files identified as having a link to DFV, 79 files, raising 227 allegations were assessed as Medium. The CCC took no further action in relation to 51 allegations, and referred 118 allegations to the QPS on an RNFA basis. The CCC determined to monitor the way the QPS dealt with 26 allegations, across five files, by way of an MCR. A further nine files, raising 32 allegations, were referred to the QPS subject to monitoring by way of a PIR.

High matters

96. Historically it has been rare for a matter involving allegations associated with DFV to be assessed as 'High' against the CCPM.

97. When an allegation is assessed as 'High' the SCO must assign the matter to either of the Director Assessments, the Manager Assessment Unit or the Senior Review Officer. That officer is then responsible for preparing a written briefing note and referring the matter to the Executive Leadership Team for an assessment decision.

98. The ELT may determine to take no further action, refer the matter back to the QPS on an RNFA basis, refer the matter to the QPS subject to monitoring, or refer for investigation by the CCC (including in partnership with the QPS).

99. None of the 98 files including allegations that a QPS officer had engaged in acts of DFV were assessed as High against the CCPM.

100. Of the 380 files containing allegations linked to DFV, three files, raising a total of 17 allegations, were assessed as High against the CCPM. Of those allegations, two were referred to the QPS on an RNFA basis, ten were finalised as requiring no further action, and five allegations were referred for investigation by the CCC.

Section 40 Directions

101. As referenced above, there are directions in place pursuant to section 40 of the CC Act, about when and how the QPS must notify the CCC of allegations of corrupt conduct and police misconduct.

102. In accordance with the current section 40 directions, police misconduct matters are considered a Level 2 (QPS – CAT B) matter. As Level 2 matters the QPS may commence dealing with these matters immediately and to notify the CCC by way of a weekly schedule.

Assessment outcomes

No further action (NFA)

103. As indicated above, the CCC will determine to assess a matter as requiring NFA where, for example:

    a. The matter is outside of the CCC's jurisdiction (does not involve police misconduct or corrupt conduct);

    b. The evidence in support of the alleged conduct is insufficient to raise a reasonable suspicion that the conduct has occurred;

    c. Investigation of a matter is unlikely to be productive or would involve an unjustifiable use of resources;

    d. The allegations are interwoven with ongoing court proceedings; or

    e. The matter is more appropriately dealt with by another agency.

104. Where a complaint is made directly to the CCC, and the CCC determines to take NFA, the complainant must be provided with advice of the assessment and the reason for the decision.

Refer no further advice (RNFA)

105. Most complaints made against QPS officers will be assessed as appropriate to refer to the QPS to deal with, on a RNFA basis. This recognises the principles under section 34 of the CC Act, specifically the devolution principle.

106. Where a complaint is made directly to the CCC, and the CCC determines to send the matter

RNFA to the QPS, the CCC must provide the complainant with advice about the assessment and the basis of the decision.

107. If a complainant expresses a view that they do not want a matter referred to the QPS, the CCC will usually seek the complainant's consent before referring the matter to the QPS. If the complainant does not consent they are advised that the CCC will take no further action in relation to the matter.

108. If a complaint is sufficiently serious the CCC may determine to refer a complaint to the QPS regardless of the complainant's consent. For example, the CCC would refer a matter if there was a risk to the health and safety of the public, if it involved allegations of child exploitation material or rape, if it was assessed as high risk or if it was related to a senior member of the QPS.

109. Where a matter is sent to the QPS on an RNFA basis, the CCC has no further involvement in how the QPS chooses to deal with the matter

110. If an allegation is substantiated and proceeds to an abridged disciplinary process, or a full disciplinary hearing, the CCC will be informed. The CCC's role in police discipline oversight is discussed further below.

Merit and compliance review (MCR)

111. An MCR is undertaken in those matters where the CCC consider it is in the public interest to maintain oversight of the way an agency has dealt with a matter, but it has formed a view it is unlikely the CCC would need to assume responsibility for the investigation.

112. MCRs focus on:

a. the UPA's compliance with any guides or directions that the CCC has issued;

b. the UPA's compliance with its own internal policies or procedures;

c. the integrity with which the matter was dealt with;

d. the identification and implementation of recommendations addressing systemic concerns, whether procedural or with respect to an individual officer; and

e. the provision of advice to the UPA about dealing with corrupt conduct in a way that promotes public confidence.

113. When a matter is subject to an MCR, the agency must provide progress reports to the CCC

every three months until the matter is finalised, and it is generally expected that such matters will be finalised within six months.

114. The CCC will review each report and provide feedback to the agency, including recommendations for further actions to be taken, and/or preventative and procedural recommendations.

Public interest review (PIR)

115. A PIR is a closer form of scrutiny undertaken for the most serious and systemic allegations of corrupt conduct where the CCC has determined it is in the public interest to maintain oversight throughout the investigation. With these matters, the CCC has identified it may be necessary to assume responsibility for the matter, even briefly, to allow for the exercise of CCC powers, or to provide a greater level of direction to the way the investigation is conducted.

116. PIRs consider the following:

a. the UPA's compliance with any guides or directions that the CCC has issued.

b. the UPA's compliance with its own internal policies or procedures.

c. the adequacy, impartiality and transparency of any investigative, or other resolution, processes, including the identification of unreported allegations of corruption, the appropriateness of the conclusions, and recommendations made as a result of any investigative or other action taken.

d. the appropriateness of the decision whether to initiate disciplinary proceedings or not.

e. where no charges are laid, the appropriateness of any other action taken.

f. where disciplinary proceedings are commenced, the appropriateness of the allegations and of the decision-maker to hear the allegations.

g. the appropriateness of any finding or disciplinary action, which may trigger a review of that decision in the Queensland Civil and Administrative Tribunal (**QCAT**) ('reviewable decision').

117. Where a matter is referred to the QPS to deal with subject to monitoring by way of a PIR, the QPS must provide progress reports to the CCC at six weeks, then three months and after that at three-month intervals. The CCC expects these investigations to be finalised within 12 months.

118. When a matter is subject to a PIR, the QPS must provide the CCC with a copy of its final investigation report before a matter can be closed, or disciplinary proceedings commenced.

Investigation

119. Where an allegation involves the most serious allegations of corrupt conduct, and where public interest and public confidence necessitate, the CCC may elect to investigate a matter, and may do so independently, or in cooperation with the QPS.

Data on assessment outcomes for QPS allegations generally

120. Table two below indicates the assessment decisions made in relation to allegations involving the QPS from the 2016-17 financial year through until the 2021-22 financial year to date.

Table 2

Year	CCC Investigation	PIR	MCR	RNFA	NFA	Under Assessment	Total
2016-17	34	159	278	3250	1669		5390
2017-18	8	295	403	3286	1303		5295
2018-19	16	262	180	2400	987		3845
2019-20	24	175	140	2312	1058		3709
2020-21	24	202	165	2461	1128		3980
2021-22 (YTD)	10	280	73	3019	887	47	4316

Timeframes for dealing with QPS matters

121. The PSAA provides that, generally, disciplinary proceedings in relation to a complaint must be commenced within the later of:

a. one year from the date the disciplinary ground arises; or

b. six months from the complaint being made. This allows for instances where a complaint may not be made about an officer's behaviour until after one year had already

transpired.[15]

The role of the CCC in police discipline

122. A fair and robust performance management and discipline system is essential for ensuring the ongoing integrity of the QPS, and for ensuring public confidence in the work of police.

123. The CCC performs an investigative, oversight and monitoring function in relation to police discipline matters involving police misconduct, or corrupt conduct, pursuant to the CC Act.

124. The changes to the *Police Service Administration Act 1990* (**PSAA**) in October 2019 resulted in significant changes to the police discipline system.

How matters come to the CCC

125. Two types of discipline matters come to the CCC for review: Abbreviated Discipline Proceedings (**ADPs**) and Discipline Hearing Decisions (**DHDs**).

126. An ADP is a shortened discipline process intended to address misconduct promptly and effectively. ADPs are most applicable in matters where there is little doubt the conduct occurred, and where the officer readily admits the conduct.

127. The ADP process was legislated in 2019 with changes to the PSAA, and some minor amendments to section 219BA of the CC Act relating to 'reviewable decisions'.

128. DHDs result from a more formal discipline hearing process. Unlike ADPs, the CCC cannot suggest alternative, more appropriate sanctions. The only recourse for review is via the QCAT.

129. There are several different decision types:

    a. Discipline hearing decision;

    b. Decision not to take disciplinary action;

    c. Part 7A Declaration - is a discipline finding against a former officer. That is, if they stayed with the QPS, what their sanction would have been.

Abbreviated Discipline Proceedings

130. ADPs are initiated by giving the subject member[16] a written invitation to participate in the

[15] PSAA, sections 7.13 and 7.12.

[16] The police officer who is facing discipline charges for misconduct

process. A prescribed officer[17] may then make an offer to impose a disciplinary sanction or a performance development strategy, or both, on a subject member. The subject member can in turn provide submissions to the QPS as to the range of sanction(s) available to the prescribed officer.

131. Disciplinary sanctions are outlined at Division 5 of the PSAA. They include transfers, fines, community service and probation. Often, sanctions are accompanied by various professional development strategies.

132. Prior to a subject member being served with a 'Form A', which outlines the proposed sanction, the QPS are required to forward the relevant material to the CCC for consideration. An ADP is only valid if consented to by the CCC.

133. If the CCC does not consider the proposed sanction is within range, it will revert to QPS suggesting a more appropriate sanction.

134. If the CCC and QPS agree on the proposed sanction, the Form A is then sent to the subject member.

    a. If the subject member agrees to the sanction, the paperwork will be finalised by the QPS and sent to the CCC for record-keeping.

    b. In this sense a successful ADP process requires 'three-way' agreement between the CCC, QPS and subject member. It is intended to reduce the likelihood of QCAT reviews and ensure uniformity of sanctions offered under an ADP.

    c. If the CCC and QPS cannot agree on a proposed sanction, or if the subject member does not agree with the sanction, the matter proceeds to disciplinary hearing.

Discipline hearing decisions

135. The CCC has a right to review DHDs in QCAT. It can review either the decision on liability (that is a finding that allegations are substantiated or not) or the final decision on sanction (for substantiated allegations).

136. The deadline for lodging a review is 28 days after the CCC is provided notice of the decision. In determining whether to review the decision, the CCC has access to key documents such as the decision, investigation report and subject member submissions.

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[17] An officer of the QPS who may impose a sanction on a subordinate officer as mentioned in section 7.4(1) of the PSAA & section 4(1) of the *Police Service (Discipline) Regulations 1990*

137. The CCC is unable to 'negotiate' sanctions with an ADP. Its options are limited to determining to review the decision in QCAT or not.

138. QCAT reviews consume significant resources and time. This is taken into consideration when formulating a recommendation. Typically, the CCC will only review a sanction regarded as significantly out of range for the conduct.

139. Sometimes, if the CCC disagrees with a DHD, it will send a letter to Ethical Standards Command (ESC) outlining its concerns, rather than formally reviewing in QCAT.

140. Once QCAT decides a matter, it is open to the CCC, the QPS decision maker or the subject member to appeal the matter to QCAT in its appellate jurisdiction. A further right of appeal lies from the QCAT appeal jurisdiction to the Queensland Court of Appeal.

Joinder

141. Occasionally, a subject member who is dissatisfied with the result of a discipline proceeding will elect to review the decision in QCAT. The respondent will be the prescribed officer from the QPS.

142. The CCC must be notified of the review under section 219P(3) of the CC Act. It can elect to join proceedings as a co-respondent.

143. Sometimes, even if the CCC had previously decided not to review the matter in QCAT itself, it will join a subject member's QCAT review so it can support QPS in defending the original decision or to argue that a different sanction is appropriate. That recognises that while the CCC may disagree with a sanction imposed by QPS, it may also choose not to review that sanction. This may be for a variety of reasons, including that the difference in position is marginal and would not justify the resource commitment to commence a review in its own right.

Joint Assessment and Moderation Committee (JAMC)

144. The aim of the Joint Assessment and Moderation Committee (**JAMC**) is to enable mutually beneficial collaboration between the QPS and the CCC, to ensure an effective and efficient complaint and discipline system.

145. The JAMC achieves this by enabling a regular forum for inter-agency relationship building and information sharing. JAMC is not an assessment forum. The matter is assessed by the CCC in the first instance and it is then placed on the JAMC agenda for discussion. Representatives from the CCC may discuss why a matter was assessed in a particular way and provide advice

to assist the QPS' understanding. The JAMC might also discuss the best way to deal with a matter, consistent with the assessment decision. JAMC may only result in a change to the assessment decision if the QPS provide new information relevant to that decision.

146. There are two tiers of JAMC. The role of the JAMC Tier 1 Committee is to consider and examine new complaint investigations. These may be complaints that are subject to CCC review or complaints that otherwise require the consideration of JAMC to identify any issues of concern or public interest so as to focus the investigation and reduce disagreements and unnecessary delays.

147. Tier 1 meetings are typically attended by an SCO from the CCC and a Complaints Management Officer or Detective Inspector from the QPS. If Tier 1 attendees are unable to resolve a matter, it will be escalated to the second tier of JAMC for resolution.

148. This second level of consultation is known as the Investigation Consultation Process (**ICP**). The role of the ICP group is to:

a. Focus on serious corrupt conduct and systemic corruption investigations being undertaken by ESC and subject to the CCC's statutory monitoring function.

b. Consider the available evidence to the criminal standard of proof and then determine the appropriate process for resolution.

c. Consider and examine matters to determine the best course of action.

d. Share information and discuss current, emerging and future trends in corruption investigations.

149. The ICP group is comprised of senior staff from the QPS and CCC who are authorised and delegated to make binding decisions for their respective organisations and who are able to allocate resources. Attendees from the CCC include the Directors of the IS Review and Assessment Units, and other CCC officers, including the Chairperson, on an as-needed basis. Attendees from the QPS include the Chief Superintendent of ESC, the ESC State Co-ordinator and various other officers from the complaints management division.

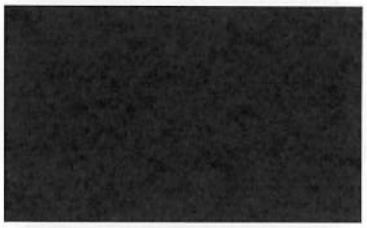
150. The ICP group does not meet on every matter. Its focus is on serious corrupt conduct and systemic corruption investigations being undertaken by ESC and subject to the CCC's monitoring function. However, not all matters for discussion at the ICP group will be subject to the CCC's monitoring process. For example, there may be matters of significant media interest or a significant social issue that does not necessarily, on its own, amount to corrupt

conduct.

Conclusion

151. In summary, assessing and dealing with complaints is complex, and involves many points of contact between the CCC and QPS. DFV may be a direct issue (where an officer is involved in DFV), a collateral issue (such as failure to investigate) or some combination of the two. However, the CCC endeavours to apply its principles consistently to this conduct as it does to all other conduct to ensure that matters are dealt with appropriately.

Signature:



Name: Elizabeth Foulger

Date of statement: 20 June 2022

ATTACHMENTS	
Number	**Description**
1	Operational Framework
2	Operating Model Governance Arrangements
3	Operations Manual Chapter MM01
4	Section 40 directions issued by CCC to QPS on 18 August 2017
5	Case Categorisation and Prioritisation Model
6	Process chart detailing steps in the assessment of a complaint involving a subject officer from QPS