

# HOW THE RISK OF POLICE COERCION DURING QUESTIONING IS ADDRESSED IN QUEENSLAND, AUSTRALIA



This research is the result of law internship program hosted by the Institute for Criminal Justice Reform (ICJR) and facilitated by the Australian Consortium for 'In- Country' Indonesian Studies (ACICIS). This partnership aimed to increase students' awareness of legal issues that are being discussed in the host country, Indonesia, through a comparative approach with the best practice in Australia.

# HOW THE RISK OF POLICE COERCION DURING QUESTIONING IS ADDRESSED IN QUEENSLAND, AUSTRALIA

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## 1. INTRODUCTION

Improperly obtained confessions and admissions during police questioning can be very problematic for the legitimacy and efficacy of the criminal justice system.<sup>1</sup> The risk of confessions and admissions being produced through coercive questioning practices is addressed in a number of ways in Queensland, Australia. Firstly, there is legislation that regulates how police questioning is conducted, including a prohibition on using threats to produce confessions; rights for the suspect to contact another person and have them present during the questioning; and requirements to electronically record questioning. Secondly, there is legislation that requires confessions and admissions to be electronically recorded in order to be admissible in court and allows the exclusion of improperly obtained confessions and admissions. Queensland and Commonwealth legislation on the exclusion of such evidence will be compared to illustrate the differences in how this area is approached in Australia. Thirdly, the reporting and investigating process for alleged corrupt conduct or misconduct during police questioning in Queensland will be outlined in regard to the three organisations that deal with these allegations: the Queensland Police Service, the Crime and Corruption Commission, and the Queensland Human Rights Commission. In conclusion, these three topics will provide a snapshot of how Queensland addresses and minimises the risk of coercive questioning practices being used to produce improperly obtained confessions and admissions.

## 2. LEGISLATION ON QUEENSLAND POLICE QUESTIONING OF SUSPECTS FOR INDICTABLE OFFENCES

Chapter 15, part 3 of the *Police Powers and Responsibilities Act 2000* (Qld) regulates police questioning of suspects for indictable offences in Queensland.<sup>2</sup> Indictable offences are criminal offences such as crimes and misdemeanours.<sup>3</sup> These offences can only be prosecuted when an indictment is made, 'unless otherwise expressly stated'.<sup>4</sup> The following paragraphs will explain the key sections of the *Police Powers and Responsibilities Act 2000* (Qld) that protect the rights of suspects of indictable offences and reduce the risk of confessions or admissions being produced through coercive practices. These sections do not apply to questioning for non-indictable offences. The Queensland

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<sup>1</sup> See T. F. Bathurst & Sarah Schwartz. 'Illegally or improperly obtained evidence: In defence of Australia's discretionary approach' (2016) 13(1) *Judicial Review* 78, 83.

<sup>2</sup> *Police Powers and Responsibilities Act 2000* (Qld) ch 15 pt 3, s 415(1).

<sup>3</sup> *Criminal Code Act 1899* (Qld) ss 3(2)-(3).

<sup>4</sup> *Ibid* s 3(3).

Police Service Operational Procedures Manual does encourage officers to comply with these sections during questioning for serious non-indictable offences.<sup>5</sup>

## 2.1 Prohibition of Threats, Promises, or Torture

During questioning, police officers must not use threats, promises, or torture to elicit a confession. For indictable offences, section 416 of the *Police Powers and Responsibilities Act 2000* (Qld) states that '[a] police officer who is questioning a relevant person must not obtain a confession by threat or promise.'<sup>6</sup> Furthermore, it is a serious criminal offence for a public official,<sup>7</sup> such as a police officer, to torture a person by inflicting 'severe physical or mental pain or suffering on a person'<sup>8</sup> that is 'for the purpose of obtaining from the victim or from a third person information or a confession'.<sup>9</sup>

The legislation specifically states that it is not a defence to torture say that 'the conduct constituting the offence was done out of necessity arising from the existence of a state of war, a threat of war, internal political instability, a public emergency or any other exceptional circumstance',<sup>10</sup> or that the 'the accused acted under orders of a superior officer or public authority'.<sup>11</sup> In conclusion, the legislation clearly states that threats and promises to elicit confessions for indicatable offences are prohibited, and the use of torture during any form of questioning is a criminal offence.

## 2.2 The Right to Contact and be Supported by a Lawyer, Relative, or Friend

Suspects for indictable offences have the right to contact another person and have that person attend the questioning with them. Before questioning begins, a police officer is required to tell the suspect that they have the right to contact a lawyer, relative, or friend of their choice, and ask them to attend the questioning.<sup>12</sup> If the suspect chooses to do so, '[t]he police officer must delay the questioning for a reasonable time to allow the person to telephone or speak to a person'.<sup>13</sup> Then, if the suspect 'arranges for someone to be present, the police officer must delay the questioning for a reasonable time to allow the other person to arrive'.<sup>14</sup> The Act states that what constitutes a reasonable time to wait depends on the specific circumstances of the situation,<sup>15</sup> and that '[u]nless

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<sup>5</sup> Queensland Police Service, *Operational Procedures Manual: Chapter 2 – Investigative Process* (OPM Issue 89 Public Edition, 5 August 2022) 8 <<https://www.police.qld.gov.au/sites/default/files/2022-08/OPM-ch.2-Investigative-Process.pdf>>.

<sup>6</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 416.

<sup>7</sup> *Criminal Code Act 1995* (Cth) s 274.2(1).

<sup>8</sup> *Ibid* s 274.2(1)(a).

<sup>9</sup> *Ibid* s 274.2(1)(b)(i).

<sup>10</sup> *Ibid* s 274.4(a).

<sup>11</sup> *Ibid* s 274.4(b).

<sup>12</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 418(1).

<sup>13</sup> *Ibid* s 418(2).

<sup>14</sup> *Ibid* s 418(3).

<sup>15</sup> *Ibid* ss 418(4)-(5).

special circumstances exist, a delay of more than 2 hours may be unreasonable'.<sup>16</sup> If the suspect successfully arranges for someone to attend the questioning, 'the investigating police officer must also allow the other person to be present and give advice to the relevant person during the questioning'.<sup>17</sup> This means that the suspect can receive support from the person during the questioning.

It should be noted that a police officer can remove the person from the questioning, however, certain criteria must be met to do so. To begin with, the police officer can remove the person '[i]f the police officer considers the other person is unreasonably interfering with the questioning'.<sup>18</sup> However, only specific conduct constitutes unreasonable interference, such as 'conduct that prevents or unreasonably obstructs— (i) proper questions being put to a relevant person; or (ii) the person's response to a question being recorded'.<sup>19</sup>

The Act specifically states that unreasonable interference does not include reasonable conduct such as 'to seek clarification of a question',<sup>20</sup> 'to challenge an improper question',<sup>21</sup> 'to challenge the way in which a question is put',<sup>22</sup> or for a lawyer to give legal advice.<sup>23</sup> This means that the person who attends the questioning with the suspect is able to help ensure that there are no misunderstandings about what the suspect is being asked and is responding to, and that the person is able to challenge inappropriate questioning. Furthermore, before a police officer can exclude a person for unreasonable interference, the police officer must give the person a warning, tell them that they can be removed from the questioning for unreasonable interference, and allow them to stay in the questioning unless they unreasonably interfere again.<sup>24</sup>

If a person is removed for unreasonable interference, the police officer must tell the suspect that they can contact another lawyer, relative, or friend.<sup>25</sup> Furthermore, if the suspect organises for another person to attend the questioning, the police officer must 'delay the questioning for a reasonable time to allow the other person to be present during the questioning'.<sup>26</sup> Therefore, even if the first person is removed for unreasonable interference, the suspect is allowed to organise for another person to attend.

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<sup>16</sup> Ibid s 418(6).

<sup>17</sup> Ibid s 419(2).

<sup>18</sup> Ibid s 419(3).

<sup>19</sup> Ibid s 424(1)(a).

<sup>20</sup> Ibid s 424(2)(a).

<sup>21</sup> Ibid s 424(2)(b).

<sup>22</sup> Ibid s 424(2)(c).

<sup>23</sup> Ibid s 424(2)(d).

<sup>24</sup> Ibid ss 425(2)(a)-(c).

<sup>25</sup> Ibid s 426(1)(a).

<sup>26</sup> Ibid s 426(1)(b).

### 2.3 Requirement to Electronically Record Questioning

The questioning of suspects for indictable offences is required to be electronically recorded, however, there are some exceptions to this rule. The *Police Powers and Responsibilities Act 2000* (Qld) states that '[t]he questioning must, if practicable, be electronically recorded'.<sup>27</sup> While the Act does not specifically define the term 'if practicable',<sup>28</sup> it does give several examples of situations where it might be impracticable for an electronic recording to be made, such as if a person spontaneously confesses on first contact with the police.<sup>29</sup> Furthermore, the Queensland Police Service DERIE Manual appears to give further examples of when recording is impracticable as it states that exceptions to the requirement to video and audio record include situations where there is no relevant equipment available at the location or if the equipment is not currently functioning.<sup>30</sup>

The *Police Powers and Responsibilities Act 2000* (Qld) states that if a written record of an admission or confession is made, '[a]n electronic recording must be made of'<sup>31</sup> the written record being 'read to the person in English'<sup>32</sup> and of 'everything said by or to the person during the reading'.<sup>33</sup> Furthermore, '[t]he person must be given the opportunity, during and after the reading, to draw attention to any error in or omission from the record he or she claims were made in the written record'.<sup>34</sup> While this allows the suspect to make corrections, it does mean that the original admission or confession was not recorded. Therefore, while there is a requirement to electronically record the questioning of suspects for indictable offences, there are exceptions to this requirement if electronically recording the questioning is impracticable.

Transparency in the electronic recording process is increased by the requirement for suspects to have access to the recording. A police officer must 'make a copy of the recording available to the person or the person's lawyer'<sup>35</sup> within seven or fourteen days depending on whether it is an audio recording, video recording, or both.<sup>36</sup> Furthermore, this must be done 'without charge'.<sup>37</sup> These requirements ensure that the suspect has access to a record of what happened during the questioning.

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<sup>27</sup> Ibid s 436(2).

<sup>28</sup> Ibid s 436(2).

<sup>29</sup> Ibid s 436(2).

<sup>30</sup> Queensland Police Service, *DERIE Manual: Section 1: Recording of interviews and other matters* (DERIE Manual Issue 21 Public Issue, 19 August 2022) 1 <<https://www.police.qld.gov.au/sites/default/files/2022-08/DERIE-s.1-Recording-of-Interviews-and-Other-Matters.pdf>>.

<sup>31</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 437(7).

<sup>32</sup> Ibid s 437(4)(a).

<sup>33</sup> Ibid s 437(7).

<sup>34</sup> Ibid s 437(6).

<sup>35</sup> Ibid s 438(2)(a)(i).

<sup>36</sup> Ibid ss 438(2)(a)-(b).

<sup>37</sup> Ibid s 438(2).

### 2.3.1 Advantages and Disadvantages of Electronic Recording

While there is limited research on the impact of the requirement to electronically record questioning in the Australian context, one research study examined how criminal justice professionals such as judges, prosecutors, defence lawyers, and police officers perceived the impact of the introduction of audio-visual recorded interviews in the Australian state of New South Wales.<sup>38</sup> The perceived benefits of audio-visual recorded interviews included improved public perceptions of the criminal justice system, less time spent at trial, more guilty pleas, and fewer admissibility challenges of evidence used to prove confessions.<sup>39</sup> However, the article noted that the use of audio-visual recordings can produce a false and highly problematic appearance of integrity and legitimacy if unrecorded questioning occurred prior to the recording.<sup>40</sup> Additionally, the viewing of video recordings in court could result in detrimental assumptions being made about suspects due to stereotyping their body language or appearance.<sup>41</sup> Therefore, when considering the benefits of electronically recording questioning, it is important to also remember the easily overlooked detriments.

## 3. LEGISLATION ON THE ADMISSIBILITY OF EVIDENCE IN COURT

The following sections will summarise the Queensland legislation on the admissibility of evidence in regard to electronically recorded questioning. The sections will outline how the admissibility of evidence for improperly obtained confessions and admissions is approached in different ways in Queensland legislation and Commonwealth legislation.

### 3.1 Queensland Legislation

Queensland has specific legislation on the admissibility of electronically recorded questioning and coerced confessions, and more general legislation that applies to improperly obtained confessions or admissions.<sup>42</sup> Evidence of a confession or admission made while the suspect was being questioned about an indictable offence is only admissible in court if the questioning was electronically recorded or the reading of the record of confession or admission was electronically recorded.<sup>43</sup>

The electronic recording of the confession or admission must contain the entirety of the questioning of the suspect.<sup>44</sup> Alternatively, if the electronic recording is of the reading of the

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<sup>38</sup> David Dixon, "A Window into the Interviewing Process?" *The Audio-visual Recording of Police Interrogation in New South Wales, Australia* (2006) 16(4) *An International Journal of Research and Policy* 323, 323, 328-329.

<sup>39</sup> *Ibid* 330.

<sup>40</sup> *Ibid* 335.

<sup>41</sup> *Ibid* 333-334.

<sup>42</sup> *Police Powers and Responsibilities Act 2000* (Qld) ss 436-437, 439; *Criminal Law Amendment Act 1894* (Qld) s 10; *Evidence Act 1977* (Qld) ss 98, 130.

<sup>43</sup> *Police Powers and Responsibilities Act 2000* (Qld) ss 436(3)-(4), 437; For more information on recording requirements, please see the earlier section titled '2.3 Requirement to Electronically Record Questioning'.

<sup>44</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 436(4).

confession or admission, the electronic recording must contain 'everything said by or to the person during the reading'.<sup>45</sup> However, it should be noted that the court has the discretion to 'admit a record of questioning or a record of a confession or admission'<sup>46</sup> that does not comply with the previously stated requirements if the court weighs up the circumstances and believes that it 'would be in the interests of justice'.<sup>47</sup>

Nevertheless, a confession is not admissible if it was 'induced by any threat or promise by some person in authority, and every confession made after any such threat or promise shall be deemed to have been induced thereby unless the contrary be shown'.<sup>48</sup> The court also has general discretions to 'exclude evidence if the court is satisfied that it would be unfair to the person charged to admit that evidence'<sup>49</sup> or to 'reject any statement or representation ... if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted'.<sup>50</sup> These sections have relevance to the court deciding whether or not to exclude improperly obtained confessions and admissions.<sup>51</sup>

### 3.2 Commonwealth Legislation

The *Evidence Act 1995* (Cth) applies to federal courts in Australia<sup>52</sup> and contains several sections that are relevant to the admissibility of improperly obtained confessions or admissions. In general terms, improperly obtained evidence 'is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained'.<sup>53</sup>

Furthermore, a separate and more specific section states that '[e]vidence of the admission is not admissible unless the circumstances in which the admission was made were such as to make it unlikely that the truth of the admission was adversely affected'.<sup>54</sup> When applying this section, the court must consider 'the nature of the questions and the manner in which they were put'<sup>55</sup> and 'the nature of any threat, promise or other inducement made'.<sup>56</sup> Finally, there is another section that states that '[e]vidence of an admission is not admissible unless the court is satisfied that the admission, and the making of the admission, were not influenced by: (a) violent, oppressive, inhuman or degrading

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<sup>45</sup> Ibid s 437(7).

<sup>46</sup> Ibid s 439(1).

<sup>47</sup> Ibid s 439(2).

<sup>48</sup> *Criminal Law Amendment Act 1894* (Qld) s 10.

<sup>49</sup> *Evidence Act 1977* (Qld) s 130.

<sup>50</sup> Ibid s 98(1).

<sup>51</sup> David Field, *Queensland Evidence Law* (LexisNexis Butterworths, 5<sup>th</sup> ed, 2020) 399-401.

<sup>52</sup> *Evidence Act 1995* (Cth) s 4(1).

<sup>53</sup> Ibid s 138(1).

<sup>54</sup> Ibid s 85(2).

<sup>55</sup> Ibid s 85(3)(b)(i).

<sup>56</sup> Ibid s 85(3)(b)(ii).



conduct ... or (b) a threat of conduct of that kind'.<sup>57</sup> Therefore, Commonwealth legislation has several comprehensive sections that can deal with the admissibility of improperly obtained confessions or admissions of varying levels of seriousness.

As illustrated above, Queensland legislation approaches the admissibility of such evidence in a distinctly different manner to Commonwealth legislation. However, it should be noted that the Australian States and Territories of New South Wales, Victoria, Tasmania, Australian Capital Territory, and Northern Territory all have equivalent sections in their Evidence Acts to the previously mentioned sections in the Commonwealth Evidence Act.<sup>58</sup>

**Table 1: Comparison of Queensland and Commonwealth Legislation Sections**

Queensland Legislation	Commonwealth Legislation
<p>'No confession which is tendered in evidence on any criminal proceeding shall be received which has been induced by any threat or promise by some person in authority, and every confession made after any such threat or promise shall be deemed to have been induced thereby unless the contrary be shown.'<sup>59</sup></p>	<p>'Evidence of an admission is not admissible unless the court is satisfied that the admission, and the making of the admission, were not influenced by:</p> <ul style="list-style-type: none"> <li>(a) violent, oppressive, inhuman or degrading conduct, whether towards the person who made the admission or towards another person; or</li> <li>(b) a threat of conduct of that kind.'<sup>60</sup></li> </ul>
<p>'The court may in its discretion reject any statement or representation notwithstanding that the requirements of this part are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.'<sup>61</sup></p>	<p>'Evidence that was obtained:</p> <ul style="list-style-type: none"> <li>(a) improperly or in contravention of an Australian law; or</li> <li>(b) in consequence of an impropriety or of a contravention of an Australian law;</li> </ul> <p>is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained.'<sup>63</sup></p>
<p>'Nothing in this Act derogates from the power of the court in a criminal proceeding to exclude evidence if the court is satisfied that it would be unfair to the person charged to admit that evidence.'<sup>62</sup></p>	<p>'Evidence of the admission is not admissible unless the circumstances in which the admission was made were such as to make it unlikely that the truth of the admission was adversely affected.'<sup>64</sup></p>

<sup>57</sup> Ibid s 84(1).

<sup>58</sup> Australian Government Attorney-General's Department, *Uniform Evidence Acts comparative tables* (Report, 27 August 2015) 3-4 <<https://www.ag.gov.au/sites/default/files/2020-03/Uniform-Evidence-Acts-comparative-tables.pdf>>.

<sup>59</sup> *Criminal Law Amendment Act 1894* (Qld) s 10.

<sup>60</sup> *Evidence Act 1995* (Cth) s 84(1).

<sup>61</sup> *Evidence Act 1977* (Qld) s 98(1).

<sup>62</sup> Ibid s 130.

<sup>63</sup> *Evidence Act 1995* (Cth) s 138(1).

<sup>64</sup> Ibid s 85(2).

## 4. REPORTING AND INVESTIGATING ALLEGED CORRUPT CONDUCT OR MISCONDUCT DURING POLICE QUESTIONING IN QUEENSLAND

If corrupt conduct or misconduct occurs during police questioning, such conduct can be reported to the Queensland Police Service (QPS) or the Crime and Corruption Commission (CCC).<sup>65</sup> This is relevant if an improperly obtained confession or admission was associated with corrupt conduct or misconduct during the questioning. If the complainant is unsatisfied with the QPS response to the allegation, they are able to report the incident to the Queensland Human Rights Commission.<sup>66</sup> The following sections will explain the entire reporting and investigating process in more detail. [Appendix A](#) and [Appendix B](#) contain diagrams illustrating the process that occurs when an allegation is reported and investigated.

### 4.1 Queensland Police Service (QPS)

The QPS is the police service that operates in Queensland and provides a law enforcement role.<sup>67</sup> A complaint about the QPS can be made through an online form on the QPS website, via phone call, via post, or in person at a police station.<sup>68</sup> When an allegation of corrupt conduct or police misconduct is received, the allegation must be assessed to determine whether it fits the definition of corrupt conduct as defined by the *Crime and Corruption Act 2001* (Qld) and meets the threshold test of a reasonable suspicion of corrupt conduct.<sup>69</sup> The CCC has published some guides for this process for public sector agencies, such as the QPS.<sup>70</sup> The definition for corrupt conduct<sup>71</sup> is very broad and comprehensive, and one element of it is that it ‘would, if proved, be— (i) a criminal offence; or (ii) a disciplinary breach providing reasonable grounds for terminating the person’s services’.<sup>72</sup>

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<sup>65</sup> ‘QPS Feedback’, *Queensland Police* (Web Page, 18 February 2020) <<https://forms.police.qld.gov.au/launch/feedback>>; ‘Complaints against police officers’, *Crime and Corruption Commission Queensland* (Web Page, 7 June 2021) <<https://www.ccc.qld.gov.au/corruption/police-oversight/complaints-against-police-officers>>.

<sup>66</sup> *Human Rights Act 2019* (Qld) ss 65(1)(a)-(b); ‘Making a complaint’, *Queensland Human Rights Commission* (Web Page, 15 September 2021) <<https://www.qhrc.qld.gov.au/complaints/making-a-complaint>>.

<sup>67</sup> ‘Organisational Structure’, *Queensland Police* (Web Page, 14 October 2021) <<https://www.police.qld.gov.au/organisational-structure>>.

<sup>68</sup> ‘QPS Feedback’ (n 65).

<sup>69</sup> ‘Assessing complaints of corrupt conduct: a guide for assessors and decision-makers’, *Crime and Corruption Commission Queensland* (Audit Summary, October 2021) 3 <<https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Assessing-complaints-of-corrupt-conduct.pdf>>; ‘How to classify matters of corrupt conduct pursuant to section 40 directions’, *Crime and Corruption Commission Queensland* (Guide, March 2020) 3-5 <<https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/How-to-classify-matters-of-corrupt-conduct-pursuant-to-section-40-directions.pdf>>.

<sup>70</sup> See ‘Assessing complaints of corrupt conduct: a guide for assessors and decision-makers’ (n 69); See ‘How to classify matters of corrupt conduct pursuant to section 40 directions’ (n 69).

<sup>71</sup> Definition of corrupt conduct:

Corrupt conduct means conduct of a person, regardless of whether the person holds or held an appointment, that— (a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of— (i) a unit of public administration; or (ii) a person holding an appointment; and (b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that— (i) is not honest or is not impartial; or (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or (iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and (c) would, if proved, be— (i) a criminal offence; or (ii) a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.

*Crime and Corruption Act 2001* (Qld) s 15(1).

<sup>72</sup> *Crime and Corruption Act 2001* (Qld) s 15(1)(c).

If the reasonable suspicion test is satisfied, the QPS must determine whether the seriousness of the allegation constitutes Level 1 corrupt conduct or Level 2 corrupt conduct.<sup>73</sup> This is done by comparing the allegation to a list of categories of Level 1 conduct.<sup>74</sup> The QPS specific list is located on the QPS Intranet,<sup>75</sup> and therefore is not publicly accessible. However, the CCC does give some case study examples of Level 1 conduct relevant to public sector agencies and these examples involve 'serious systemic concerns'<sup>76</sup> or a 'vulnerable person being placed at imminent risk of abuse or neglect (e.g. prisoner, detainee, health patient)'.<sup>77</sup> If the allegation does not meet the Level 1 requirements, then it is Level 2 conduct.<sup>78</sup> Level 1 allegations must be reported to the CCC instantly before any investigation is initiated, while Level 2 allegations must be reported to the CCC at the end of the month and investigations can be initiated in the meantime.<sup>79</sup> Depending on the circumstances, the resulting investigation may be conducted by the QPS, the CCC,<sup>80</sup> or a joint taskforce of the two.<sup>81</sup>

The QPS has an Ethical Standards Command Internal Investigations Group that investigates serious corruption allegations and criminal allegations about police officers.<sup>82</sup> The content of the allegations determines whether a disciplinary investigation, a criminal investigation, or both will be conducted by the QPS.<sup>83</sup> The complainant is required to be notified of the progress and outcome of a disciplinary complaint investigation within specified timeframes.<sup>84</sup> Furthermore, the commissioner of police has responsibility for corruption and police misconduct allegations,<sup>85</sup> and is required to inform the complainant of what action is made, the reasons for the action, and the outcome.<sup>86</sup>

Possible investigation outcomes include criminal charges and/or disciplinary action.<sup>87</sup> There are a number of possible disciplinary sanctions for police officers, including dismissal, demotion, probation, suspension, transfer, a fine, community service, and a reprimand.<sup>88</sup> Please see [Appendix A](#) for a diagram illustrating the process that occurs when an allegation is reported to the QPS, investigated, and sanctioned.

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<sup>73</sup> 'How to classify matters of corrupt conduct pursuant to section 40 directions' (n 69) 3 n 2, 5-6.

<sup>74</sup> *Ibid* 6.

<sup>75</sup> Queensland Police, *Ethical Standards Command: Complaint Resolution Guidelines* (Complaint Resolution Guidelines Version 3, 7 January 2021) 14 <<https://www.police.qld.gov.au/sites/default/files/2021-09/RTI-33360%20FINAL.pdf>>.

<sup>76</sup> 'How to classify matters of corrupt conduct pursuant to section 40 directions' (n 69) 7.

<sup>77</sup> *Ibid*.

<sup>78</sup> *Ibid* 3 n 2, 6.

<sup>79</sup> *Ibid* 3, 9.

<sup>80</sup> Queensland Police Service, *QPS Complaint Resolution Policy* (Policy Document, 23 April 2019) 2 <<https://www.police.qld.gov.au/sites/default/files/2019-08/QPS%20Complaint%20Resolution%20Policy.pdf>>.

<sup>81</sup> 'About investigations', *Crime and Corruption Commission Queensland* (Web Page, 30 September 2021)

<<https://www.ccc.qld.gov.au/complainants/about-investigations>>.

<sup>82</sup> 'Ethical Standards Command', *Queensland Police* (Web Page, 14 October 2021) <<https://www.police.qld.gov.au/organisational-structure/strategy-and-corporate-services/ethical-standards-command>>.

<sup>83</sup> Queensland Police, *Ethical Standards Command: Complaint Resolution Guidelines* (n 75) 27.

<sup>84</sup> *Ibid* 20, 32.

<sup>85</sup> *Crime and Corruption Act 2001* (Qld) ss 41(1)-(2).

<sup>86</sup> *Ibid* ss 42(7)(a)-(b).

<sup>87</sup> Queensland Police, *Ethical Standards Command: Complaint Resolution Guidelines* (n 75) 33.

<sup>88</sup> *Police Service Administration Act 1990* (Qld) ss 7.34(a)-(i).

## 4.2 Crime and Corruption Commission (CCC)

The CCC is an independent organisation in Queensland that was created by legislation and has a number of roles, including a power of oversight over the QPS<sup>89</sup> and an ability to investigate serious corrupt conduct and police misconduct allegations about the QPS.<sup>90</sup> The organisational structure of the CCC includes police officers who have been seconded to the CCC.<sup>91</sup> Allegations of corruption can be submitted by anyone to the CCC through an online form or in writing.<sup>92</sup> The CCC will evaluate the allegation to determine what action to take, and if the allegation merits additional action, they may refer the allegation to the QPS, undertake a joint investigation, or commence their own investigation.<sup>93</sup>

The CCC personally investigates only the most serious corruption allegations due to the legislative encouragement that corruption be resolved in the agency where it occurred and the extensive amount of allegations submitted to the CCC.<sup>94</sup> However, when the CCC does conduct a corruption investigation, it has coercive investigative powers beyond what the QPS has,<sup>95</sup> for example, it can hold a coercive hearing where witnesses do not have the right 'to remain silent'<sup>96</sup> or the right 'to refuse to answer the question on the ground of the self-incrimination privilege'.<sup>97</sup> Furthermore, when the CCC receives and deals with an allegation, the CCC is required to inform the complainant of what the CCC has decided to do and the reasons for that decision.<sup>98</sup>

When the CCC concludes a corruption investigation of a police officer, depending on the circumstances, the CCC may report the results to a prosecution authority for prosecution;<sup>99</sup> or the CCC may prosecute the conduct through the Queensland Civil and Administrative Tribunal;<sup>100</sup> or the CCC or the QPS may take any other lawful action such as disciplinary proceedings.<sup>101</sup> Please see [Appendix B](#) for a diagram illustrating the process that occurs when an allegation is reported to the CCC and investigated.

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<sup>89</sup> 'About us', *Crime and Corruption Commission Queensland* (Web Page) <<https://www.ccc.qld.gov.au/about-us>>.

<sup>90</sup> 'Complaints against police officers' (n 65).

<sup>91</sup> 'About investigations' (n 81).

<sup>92</sup> 'Thinking of reporting corruption? Information about making a complaint', *Crime and Corruption Commission Queensland* (Web Page, 16 November 2021) <<https://www.ccc.qld.gov.au/complainants/advice-and-resources-help-you-write-your-complaint>>.

<sup>93</sup> *Crime and Corruption Act 2001* (Qld) ss 46(1)(b), 46(2)(a)-(g); 'How we assess complaints', *Crime and Corruption Commission Queensland* (Web Page, 23 September 2019) <<https://www.ccc.qld.gov.au/complainants/how-we-assess-complaints>>.

<sup>94</sup> 'The Devolution Principle', *Crime and Corruption Commission Queensland* (Web Page, 20 September 2019) <<https://www.ccc.qld.gov.au/node/641>>.

<sup>95</sup> 'Our powers', *Crime and Corruption Commission Queensland* (Web Page, 20 September 2019) <<https://www.ccc.qld.gov.au/about-us/our-powers>>.

<sup>96</sup> *Crime and Corruption Act 2001* (Qld) s 192(2)(a).

<sup>97</sup> *Ibid* s 192(2)(b).

<sup>98</sup> *Ibid* ss 46(5)(a)-(b).

<sup>99</sup> *Ibid* s 49(2)(a); 'Our powers' (n 95).

<sup>100</sup> *Crime and Corruption Act 2001* (Qld) s 50(2).

<sup>101</sup> *Ibid* s 51(1).

The CCC publishes general data on the allegations that it receives, and it has reported that between 2015 and 2022, it received 41 QPS related allegations<sup>102</sup> under the category '[f]orce, threaten or verbal to obtain confession/evidence'<sup>103</sup> during an investigation.<sup>104</sup> However, it should be noted that this published data only shows the allegations, not the outcomes.<sup>105</sup> Nevertheless, as illustrated above, when the CCC undertakes an investigation, they have strong investigative powers and there are a number of possible investigative outcomes.

### 4.3 Queensland Human Rights Commission

The Queensland Human Rights Commission is an independent organisation that was created by legislation and has several roles, including receiving human rights complaints and resolving them via dispute resolution.<sup>106</sup> The power of the Queensland Human Rights Commission in resolving human rights complaints is limited to conducting a conciliation conference.<sup>107</sup> However, it does have the power to enforce attendance in a manner similar to a court order.<sup>108</sup> It should be noted that the Queensland Human Rights Commission can only accept complaints if they were previously made to the public entity which the complaint is about and a specified period of time has passed.<sup>109</sup>

Human rights that are potentially relevant to an improperly obtained confession or admission during a QPS investigation include the right of '[a] person charged with a criminal offence'<sup>110</sup> to 'not to be compelled to testify against themselves or to confess guilt'<sup>111</sup> and the general rights to not be 'subjected to torture'<sup>112</sup> or 'treated or punished in a cruel, inhuman or degrading way'.<sup>113</sup> However, as shown above, the power of the Queensland Human Rights Commission in regard to individual human rights breaches is quite limited.

## 5. CONCLUSION

The risk of confessions and admissions being obtained through coercive questioning practices is addressed in Queensland through both deterrence and enforcement. The legislation that regulates questioning practices deters coercive practices by prohibiting the use of threats to produce confessions; giving suspects the right to contact another person and have them attend the

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<sup>102</sup> 'Corruption allegations data dashboard' *Crime and Corruption Commission Queensland* (Web Page, August 2022) within 'Activity related to alleged conduct' table <<https://www.ccc.qld.gov.au/corruption/corruption-allegations-data-dashboard>>.

<sup>103</sup> Ibid within 'Alleged conduct sub-categories' table.

<sup>104</sup> Ibid within 'Activity related to alleged conduct' table.

<sup>105</sup> 'Frequently asked questions', *Crime and Corruption Commission Queensland* (Web Page, 21 August 2019) <<https://www.ccc.qld.gov.au/corruption/corruption-allegations-data-dashboard/frequently-asked-questions>>.

<sup>106</sup> 'About us', *Queensland Human Rights Commission* (Web Page) <<https://www.qhrc.qld.gov.au/about-us>>.

<sup>107</sup> *Human Rights Act 2019* (Qld) s 79.

<sup>108</sup> Ibid ss 81(2)-(3).

<sup>109</sup> Ibid ss 65(1)(a)-(b).

<sup>110</sup> Ibid s 32(2).

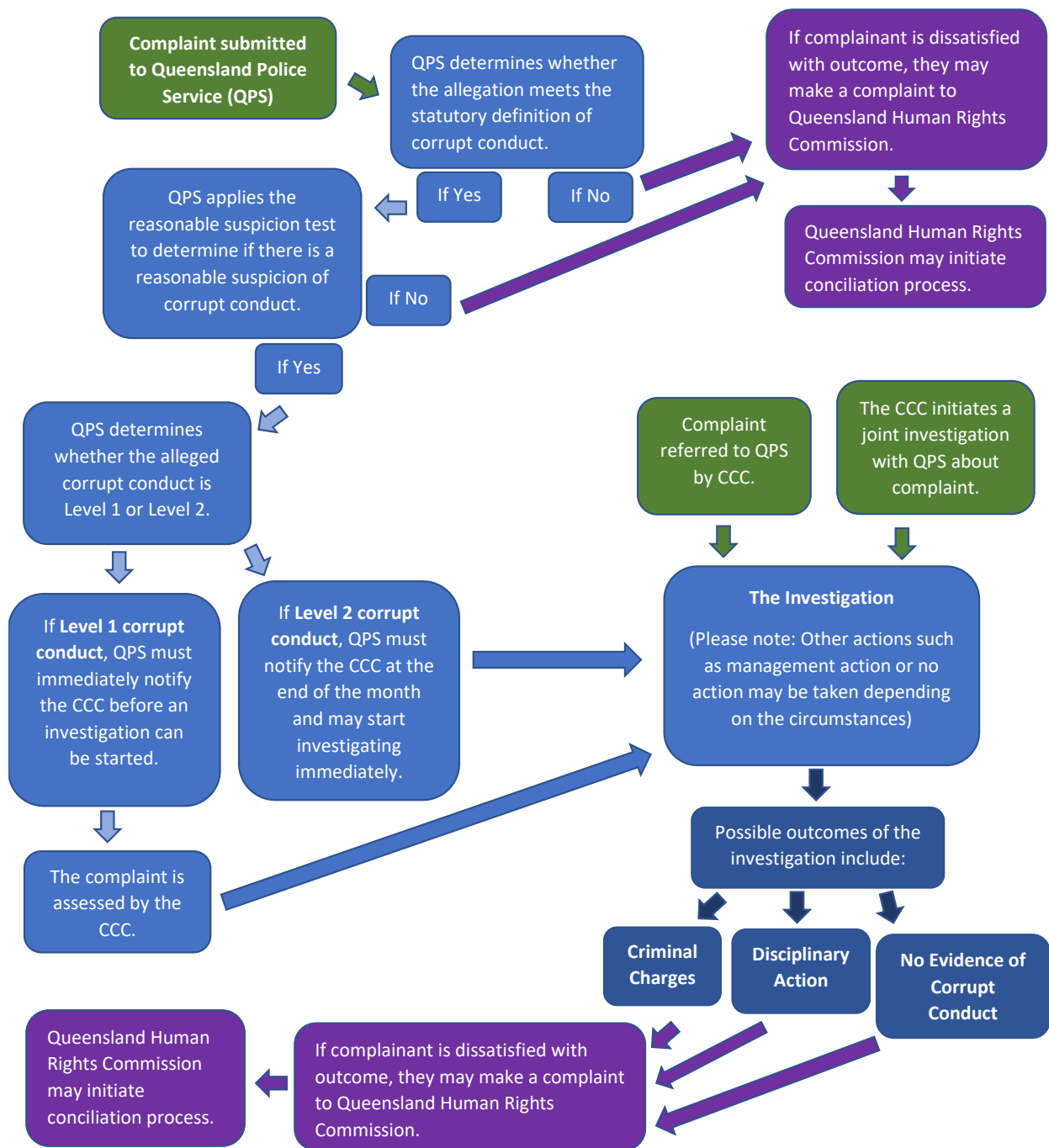
<sup>111</sup> Ibid s 32(2)(k).

<sup>112</sup> Ibid s 17(a).

<sup>113</sup> Ibid s 17(b).

questioning; and requiring questioning to be electronically recorded. The legislation on the admissibility of evidence deters coercive practices and enforces permitted practices by requiring confessions and admissions to be electronically recorded and allowing the exclusion of improperly obtained confessions and admissions. On the occasions when these measures are insufficient to prevent corrupt conduct or misconduct from occurring, there are avenues for reporting, investigating, and sanctioning through the Queensland Police Service, Crime and Corruption Commission, and Queensland Human Rights Commission. In conclusion, these are the methods through which the risk of improperly obtained confessions and admissions are addressed in Queensland.

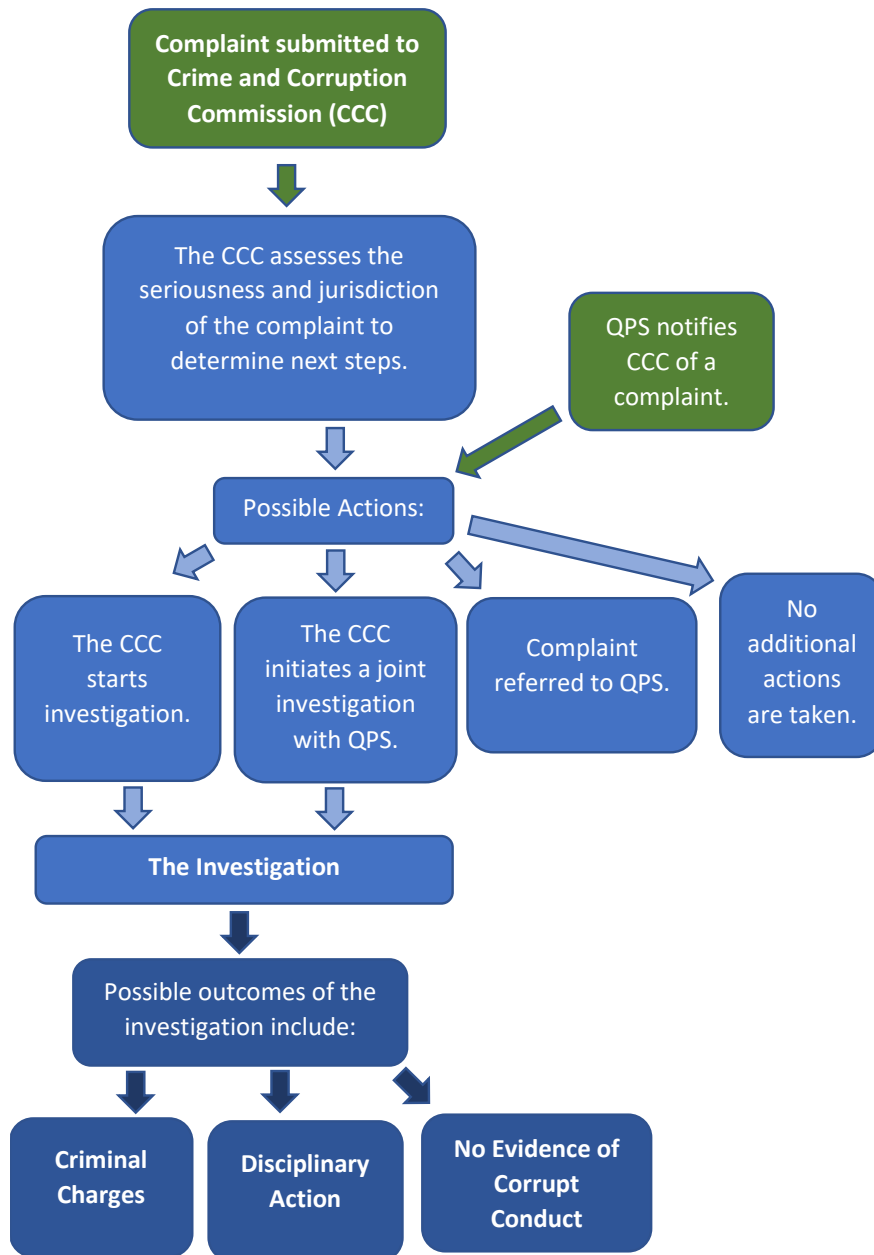
**APPENDIX A: Process When Complaint Submitted to Queensland Police Service<sup>114</sup>**



PLEASE NOTE: This diagram is intended as an illustrative guide only and may contain inaccuracies due to generalised information.

<sup>114</sup> The diagram was created with information from: 'QPS Feedback' (n 65); 'Assessing complaints of corrupt conduct: a guide for assessors and decision-makers' (n 69) 3; 'How to classify matters of corrupt conduct pursuant to section 40 directions' (n 69) 9; Queensland Police, *Ethical Standards Command: Complaint Resolution Guidelines* (n 75) 19; 'About investigations' (n 81); *Human Rights Act 2019* (Qld) ss 65(1)(a)-(b), 79.

**APPENDIX B: Process When Complaint Submitted to Crime and Corruption Commission<sup>115</sup>**



*PLEASE NOTE: This diagram is intended as an illustrative guide only and may contain inaccuracies due to generalised information.*

<sup>115</sup> The diagram was created with information from: 'How we assess complaints' (n 93); 'How to classify matters of corrupt conduct pursuant to section 40 directions' (n 69) 9; 'About investigations' (n 81).



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## ICJR PROFILE

**Institute for Criminal Justice Reform**, abbreviated as ICJR, is an independent research institution that focuses on criminal law reform, criminal justice system reform, and general legal reform in Indonesia. One of the crucial problems facing Indonesia during the current transition period is reforming the law and its criminal justice system toward more democratic direction. In the past, criminal law and criminal justice were more used as a means of supporting authoritarian power, beside used as social engineering purposes. Now is the time for the orientation and instrumentation of criminal law from a tool of authoritarian move towards a pillar for the operation of a democratic political system that respects human rights. These are the challenges faced in the context of restructuring criminal law and criminal justice in the current transitional period. To answer those challenges, a planned and systematic effort is needed to answer these new challenges. A grand design for reform of the criminal justice system and law in general must be initiated. The criminal justice system as it is known have a very strategic place in the framework of building the Rule of Law and respect for human rights. Because democracy can only function properly if there is institutionalization of the concept of the Rule of Law. Reform of the criminal justice system which is oriented towards protecting human rights is a “conditio sine quo non” with the process of institutionalizing democratization in the current transitional period. Steps in transforming the law and criminal justice system to make it more effective are currently underway. But this effort needs to have wider support. The Institute for Criminal Justice Reform (ICJR) is trying to take the initiative to support these steps. Providing support in the context of building respect for the Rule of Law and simultaneously building a culture of human rights in the criminal justice system. This is the reason for the ICJR's presence.

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