



# ***COMMUNITY SAFETY AND LEGAL AFFAIRS COMMITTEE***

**Members present:**

Mr PS Russo MP—Chair

Mr JM Krause MP

Mr SSJ Andrew MP (virtual)

Mr DJ Brown MP

Mr MJ Crandon MP

Mr JE Hunt MP (virtual)

**Staff present:**

Ms M Westcott—Committee Secretary

Mr R Pelenyi—Assistant Committee Secretary

## **PUBLIC BRIEFING—INQUIRY INTO THE CRIME AND CORRUPTION AMENDMENT BILL 2023**

### **TRANSCRIPT OF PROCEEDINGS**

**Wednesday, 27 March 2024**

**Brisbane**

## WEDNESDAY, 27 MARCH 2024

---

### **The committee met at 12.04 pm.**

**CHAIR:** Good afternoon. I declare open this public briefing for the committee's inquiry into the Crime and Corruption Amendment Bill 2023. My name is Peter Russo. I am the member for Toohey and chair of the committee. I am joined by Jon Krause, the member for Scenic Rim and acting deputy chair; Don Brown, the member for Capalaba, who is substituting for Jonty Bush, the member for Cooper; and Michael Crandon, the member for Coomera, who is substituting for Mark Boothman, the member for Theodore. I respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share.

The purpose of today's briefing is to assist the committee with its inquiry. This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath but I remind you that intentionally misleading the committee is a serious offence.

These proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask you to turn your mobile phones either off or to silent mode.

### **NICHOLLS, Mr Tim, Member for Clayfield, Parliament of Queensland**

#### **OMROD, Ms Katie, Private capacity**

**CHAIR:** I ask you to commence with an opening statement, after which committee members will have some questions for you.

**Mr Nicholls:** Thank you, Mr Chair, and good afternoon to you and the committee members. Thank you for the opportunity to make some remarks in relation to the private member's bill that I put into the House in October. In his original 1989 report, Mr Tony Fitzgerald QC, as he then was, said—  
Another recurring theme is the need for a free flow of accurate information within a society. Such a flow of information is needed if public opinion is to be informed. Public opinion is the only means by which the powerful can be controlled.  
However, there is a conflicting right of individuals to privacy. In some circumstances, such privacy results in the secrecy which allows corruption to breed and official misconduct to escape detection.  
Self-assessment and self-regulation are aspects of such secrecy. Where there is no opportunity for external appraisal and criticism, either because of a lack of suitable mechanisms or an absence of information, the possession of authority can result in a self-fulfilling cynicism. This cynicism both causes and, in turn, is magnified by misconduct. Institutions become corrupt or inefficient because of the attitudes of those who work within them, and the corruption and inefficiency are factors which cause such attitudes to persist.

In chapter 10.2 of that report, the chairman, Mr Fitzgerald, recommended the establishment of the CJC, the Criminal Justice Commission, which was the precursor to the current CCC. It was said in that report—

The CJC will report:

- on a regular basis;
- when instructed to do so;
- when it decides it is necessary to do so.

Mr Chairman and committee members, that scheme was largely put into practice through the Criminal Justice Act 1989. That act specifically provided for a production of reports and for those reports to be provided to the Parliament of Queensland.

I introduced this bill because I believe, as does the LNP opposition, that following the recent High Court decision in *CCC v Carne* there is an overwhelming necessity for curative action by the parliament to restore integrity and openness to the conduct of the public affairs of this state by those

entrusted with powerful public office. The LNP believes that the Queensland public values transparency and integrity in government. We are concerned that the current government does not share these values given that it has failed to promptly act legislatively to address this matter.

The bill I introduced is clear, concise and introduces no controversial or novel features to the existing legislative scheme. In this respect, I note that there are only three submitters. The most substantive of those is the CCC, and we have heard from the Chair, Mr Barbour. The CCC submission supports the objectives of the bill. Incredibly, the Attorney-General's department has made no submission at all. A department made up of lawyers cannot even be bothered to make a submission to a parliamentary inquiry into legislation it administers. The public of Queensland would regard this as farcical. The necessity for amendment as proposed by the bill is also supported by the CCC, as we have just heard from Mr Barbour this morning, and others including the Clerk of this parliament.

The delay by the government in addressing the issues raised by the High Court in the Carne decision appears deliberate and unfathomable. In this regard, a brief history is useful. The court process occurred over a number of years and the outcome delivered by the High Court was always a possibility.

The CCC commenced an investigation into Labor mate Peter Carne in 2019. On 17 June 2019, the CCC informed Carne of its investigation and requested Carne attend a formal disciplinary interview and a separate criminal investigation interview. After many months of toing and froing, Carne was given a show cause notice in December 2019. No interviews were conducted. After several extensions to the show cause notice and just before the final date for Carne to respond in July 2020, Carne resigned. Effectively, that stymied the show cause proceedings. In October that year and prior to a report into the investigation being tabled in the parliament, Carne began legal proceedings. After hearings in the Supreme Court and the Court of Appeal, the matter went to the High Court in December 2022. The case was heard over two days in June 2023. By mid-2024, this year, this matter will have been ongoing for five years.

At almost the same time as the investigations into Mr Carne were underway, an investigation was underway by the CCC into allegations that the then Labor deputy premier, Jackie Trad, improperly interfered in the independent appointment process of former under treasurer Frankie Carroll. A report, we are told, was prepared but, again, never saw the light of day as Ms Trad, using an indemnity granted by the government, sought similar declarations to Carne. Indeed, that application, funded by taxpayers, was so secret that it could not even be mentioned in estimates in this place. The suppression order was finally lifted in March 2022. I do note that no criminal charges have been preferred against any party in respect of those two investigations.

Returning to Carne and the CCC, the opposition raised the potential for this decision to be made by the High Court with the government in estimates hearings in August last year. In fact, I asked the questions. After a series of questions by the opposition, the Attorney-General indicated legislation would be introduced in the first half of this year. We are still waiting. The government obviously cannot be trusted. We now have an inquiry by former chief justice Holmes. It will, as the CCC says in its submission and has been reiterated again today, cover many of the same issues as this parliamentary inquiry—not all but many.

Mr Chairman, an inquiry by a past judge is no substitute for policymaking by a government and an inquiry by this parliament, by your committee. It is not the role of former judges to make these policy prescriptions; it is the role of the government. Otherwise, what is it doing? Why is it even there? This government is abdicating its responsibility to an unelected former judicial officer—no matter how well qualified—who is unanswerable to the people of this state. Why, we ask, do we have an Attorney-General and a department if they cannot do this job—a department, as I have noted, that has not even made a submission on this bill, and an inquiry that does not deliver a report until May? Quite obviously, the government has abdicated responsibility for governing as well as responsibility for transparency and openness.

In this regard, I note the statements made by the chair of the Crime and Corruption Commission immediately after the High Court decision on 13 September last year and earlier comments about the need for public reporting by the CCC following investigations made in answer to questions I asked in estimates in August 2023, as well as statements made to the parliamentary committee and in media statements. That proposition, which should in no way be controversial, has been reiterated in the CCC's submission to this inquiry, where on page 3 of the submission it says—

There is a need for urgent legislative amendment to address this to avoid the corruption risks which may follow.

After dealing with the provisions of the bill that I submitted, the CCC goes on to say—

The CCC considers the proposed provisions would effectively provide the CCC with appropriate public reporting powers.

There you have it—both urgent and effective, as supported by a very clear and unambiguous statement by the chair of the CCC.

Importantly, these amendments introduce nothing new. What is proposed is in effect a scheme of reporting that had been believed by all political parties to be within the power of the CCC for 35 years. Reports produced by the CCC on these matters can only benefit the public. The Clerk of the Parliament, Neil Laurie, has argued—

Without statutory amendment, the public will remain ‘in the dark’ about the outcomes of a large number of corruption investigations where a decision does not result in criminal proceedings, but nonetheless contain lessons for, and usually recommendations to reduce the incidence of corruption or misconduct in Queensland’s public sector. Also, the very real benefit in some people under investigation, who may have been wrongly accused or slurred, to have a public report clearing their name cannot be understated.

Turning to the amendments in the bill, clauses 3 to 5 amend sections 35, 49 and 64 to leave no doubt that the CCC has freedom to make reports into investigations of corruption and corrupt conduct of individuals. The amendments to section 64 leave no doubt that the CCC may report on an investigation of a complaint about, or information or matter involving, corruption regardless of whether criminal or disciplinary proceedings have been commenced. This addresses a fundamental issue raised in the Carne matter.

Clause 6 amends section 69 to revert to a process for tabling CCC reports similar to the previous Criminal Justice Act 1989 and which authorised the former Criminal Justice Commission, the CJC, and the Crime and Misconduct Commission, the CMC, to report directly to the parliament. The Clerk of the Parliament outlined the need for changes of this section in his 2021 submission to the PCCC, stating—

I see no valid reason for the restrictions placed on the CCC by s.69(1). In accordance with s.69(1) the CCC is impliedly restricted to only reporting directly where there have been a public hearing on a matter. All other reports (a research report or other report) must first receive the sanction of the committee. This requirement impinges on the independence of the CCC and places the committee in an invidious position.

Enhancing appropriate checks and balances in the corruption sphere should not limit procedural fairness. Importantly, clause 7 replaces section 71A to strengthen the procedural fairness provisions and ensure protections are in place. Clause 8 ensures, as discussed above—

- (a) the report entitled ‘An investigation into allegations relating to the former Public Trustee of Queensland: Investigation Report’;
- (b) a report arising from the commission’s investigation of allegations of corrupt conduct in relation to Jackie Trad and her involvement in the appointment of Frankie Carroll as Under-Treasurer.

These reports have been completed and proper process to ensure procedural fairness can be assumed to have taken place. In this regard, I note neither Carne nor Ms Trad have raised this issue—that is, the procedural fairness issue—in any of the proceedings.

In summary, the bill ensures the legislative scheme of the Crime and Corruption Act works as intended and indeed as it was thought it did prior to the High Court decision in Carne. It also allows publication of past reports that the CCC believes ought to be published to educate against corruption risks and otherwise highlight failings in public administration—a position Mr Barbour reiterated again today. Mr Barbour made reference to suggestions he has made in his submission. I consider those submissions are worthy of consideration in relation to timing and also validation of the preparation of reports. Passage of this bill will ensure confidence in Queensland’s important institutions and ensure the public is informed that the operations of their government are being conducted fairly and openly and provide transparency with respect to the operations of government. Thank you.

**Mr CRANDON:** Thanks for the overview. You mentioned towards the end comments around Trad and Carne not raising the matter of procedural fairness. Have you considered procedural fairness in your bill?

**Mr Nicholls:** Yes. I can take you to the bill at clause 7, ‘Report containing adverse comment’. It sets out a time frame so that if there is someone who is likely to be adversely mentioned in a report they have an opportunity—30 days—to respond and the commission must provide the person with procedural fairness, which is a concept well understood at law these days. They have to give the person a copy of the report. They have to invite them to make a written submission. They must give them 30 days. It also allows a person to make an application to the Supreme Court for an extension of time in which to make submissions if there is insufficient time. It is important to note that, even then, an

aggrieved person who feels aggrieved can seek a review of the CCC's actions under the Judicial Review Act. The capacity for judicial supervision of the actions of the CCC in the preparation of its report remains untrammelled and an individual who is aggrieved still has very extensive rights to seek review of the CCC's position in the Supreme Court.

**Mr CRANDON:** You also commented on section 49. Could you outline the importance of including the Director of Public Prosecutions as a prosecuting authority under section 49?

**Mr Nicholls:** Section 49 stems from previous investigations by your committee, if I understand, in your report. That is in relation to referring the matter to the DPP for prosecution. That flows from also Tony Fitzgerald's report. Mr Fitzgerald in his second report on the CCC also says for prosecutions to be referred to the DPP as a body outside the investigative body, which is the CCC, to consider the evidence, consider the material and consider the prosecution of those people. I know the Logan council matter, for example, has been raised here—

**Mr CRANDON:** Famous.

**Mr Nicholls:** A famous matter—and the matter not proceeding on the doorstep of court, effectively. If the matter had been referred to the DPP prior to that time, it may well be the case that it would not have got to the extent that it had.

**Mr BROWN:** While you were sitting in on the oral submission from the CCC earlier, did you pick up the comments that the CCC chair made about section 49?

**Mr Nicholls:** Which comments are you referring to?

**Mr BROWN:** About the deficiency in your bill and how it is more addressed in the government's bill.

**Mr Nicholls:** Yes, I heard that.

**Mr BROWN:** Do you agree with that?

**Mr Nicholls:** Absolutely, yes.

**Mr BROWN:** Is this bill urgent, in your opinion?

**Mr Nicholls:** It is urgent, in my opinion. I think I have made that abundantly clear in my opening statement. This is a matter that has been outstanding for five years. The government has known of the possibility of this for a considerable period of time. The Attorney-General has indicated in media statements in the past that legislation will be introduced this year—in the first half of this year, if my recollection is correct—as had the Premier. At the moment we have the statement by the CCC that says the inability to report publicly leads to a very real risk of corruption. There are two matters outstanding—one involving Peter Carne and one involving the former deputy premier—where there is a high level of public interest and public welfare in knowing the outcome of those reports. There is a degree of urgency in moving this through in a prompt and effective fashion that the government has ignored.

**Mr BROWN:** Did you move that this be an urgent bill when you introduced it?

**Mr Nicholls:** No. I put it into the House because I expect the government to act responsibly. If a government does not act responsibly, there are other venues. I have asked the Attorney-General a number of times, including in estimates, whether she was contemplating action prior to the decision in Carne and she said, 'It's a bit hypothetical.' With all due respect to the Attorney-General, it is certainly not hypothetical; it was a realistic proposition. The CCC could either win or lose. It lost. A decision against the CCC was entirely foreseeable, yet the government failed to prepare itself and failed to bring action, as I say. That is what executive government is for. If it is not doing its job, why is it there?

**Mr BROWN:** You had the opportunity to move that this be an urgent bill but you did not.

**Mr Nicholls:** The bill was introduced in October. If memory serves me, I introduced it on 9 October. The process has been now we are sitting here in mid-March. Since I introduced the bill, the government did nothing until early February, when it announced a three-month review on matters that predominantly—not entirely, but predominantly—cover exactly the same matters. You have just heard the chair of the CCC say there is nothing wrong with this legislation in terms of what it does. He just wants the problem fixed. I would say to you, Mr Brown, that if you want the problem fixed recommend the bill be passed.

**Mr BROWN:** You had the opportunity in the parliament after introducing this bill to move that this be an urgent bill to fix it straightaway, but you did not take that option up.

**Mr Nicholls:** Mr Brown, can I say this. Here is the response to that question. If the government wants this bill passed and believes it ought to be passed, your committee can make a recommendation the bill be passed and it can be brought on as urgently as the government of the day wants it brought on.

**Mr BROWN:** But you could have sent a strong signal to the Queensland parliament—

**CHAIR:** Member for Capalaba—

**Mr KRAUSE:** I think the question has been asked and answered.

**CHAIR:** Member for Capalaba, the question has been answered.

**Mr BROWN:** I will move on. With regard to the response by the CCC about the other matters they are talking about—report timing and findings and recommendations—in relation to the additional clauses, you agreed with further amendments being made to ensure the reporting powers of the commission are validated at every opportunity. Does that mean you are accepting of the holistic review of the government? Do you agree with that review?

**Mr Nicholls:** I do not know how you can possibly say that. I simply said that I agreed with what Mr Barbour's and the CCC's submission to this committee on this legislation recommended. I said there is value in considering those submissions, as it is with every bill that comes to this place, Mr Brown, as you would no doubt be aware. Your committee will make recommendations. The person who is responsible for the bill will consider those recommendations and either accept or reject them. There are many recommendations made in relation to many bills in this place where the mover or the introducer of the bill considers or rejects them. There is nothing unusual in that at all, Mr Brown.

**Mr BROWN:** So you are accepting of the additional clauses that—

**Mr Nicholls:** I have said they are worthy of consideration. If your committee makes a recommendation that the bill should be passed with those matters, I will consider those matters and they can be matters brought forward. On their face, I do not find anything wrong with them. None of them is particularly controversial. The first one says 'consistent with the IBAC act the CCC may report at any time'. Mr Barbour made some valid points about that. It may narrow the scope of an investigation; it may widen the scope of an investigation; it may remove people who have otherwise been accused of something from that investigation. I have no difficulty with that. What can be included in public reports is perfectly fine and the form of those is fine. The inclusion in relation to the validation of the preparation of those reports, as opposed to the tabling of those reports, makes sense in that it validates the exercise of the power by the CCC. I think reasonably, and considering the recommendations, there is nothing wrong with that.

**Mr BROWN:** So you are against the review?

**Mr Nicholls:** You keep trying to put words in my mouth. I have simply responded—

**Mr BROWN:** Are you supportive or not of the holistic review—

**CHAIR:** Stop. Allow the member to answer the question. Don, do you want to ask it again?

**Mr BROWN:** Are you supportive of the holistic review that is currently underway by the government?

**Mr Nicholls:** I have indicated that I think the review is a delaying tactic and that it is the responsibility of executive government that has known about the potential for this to occur for many years—considering this matter first started in the Supreme Court in October 2020—to take steps to cure the matter. It is passing strange that in February, four months after I introduced a bill and two months after the Attorney-General had previously said she hoped to introduce legislation, we are now having a review that covers many of the same matters.

**Mr BROWN:** Have you given a submission to the review?

**Mr Nicholls:** I have not been asked to.

**Mr BROWN:** Do you intend to?

**Mr Nicholls:** I do not know that they are taking public submissions. They are going around making their own inquiries. That is why I say it is the province of this place to pass legislation and it is the province of your inquiry to make inquiries about the appropriateness of legislation. Notwithstanding the undoubted qualifications of the former chief justice, it is the job of government to govern—not unelected former judicial officers.

**Mr BROWN:** So you have not reached out to the former chief justice?

**Mr Nicholls:** I have already given you an answer to the question, Mr Brown.

**Mr BROWN:** I am not trying to upset you, member for Clayfield.

**Mr Nicholls:** I know exactly what you are trying to do.

**Mr BROWN:** What am I trying to do?

**CHAIR:** There will be no arguments, please.

**Mr ANDREW:** Member, thank you for such a concise witness statement. Given that the bill grants enormous powers to the CCC to potentially tarnish a person's reputation with no course of redress, as we heard from Mr Milliner this morning, can you please elaborate on the bill's procedural fairness safeguards that you have referenced?

**Mr Nicholls:** Yes, certainly. Mr Milliner—I did listen to him quite carefully this morning—made a number of reflections. I regret to say that Mr Milliner was wrong in a number of the things he said. The original Fitzgerald report of 1989 actually recommended the statutory power to report on these matters. Mr Milliner in his statement also says—

I also understand the Parliament intended that no harm could be done to an individual who has been subjected to those investigations.

With respect to Mr Milliner, his understanding is not supported by any law of statutory interpretation, or indeed the original provisions of the Criminal Justice Act or indeed any of the debates at that time. The only way you can interpret statutes and bills is by looking at the words as they are printed in black and white on the paper—that is the only way—so Mr Milliner is quite wrong when he says there is some intention 'that no harm could be done'. The intention is determined by looking at the words of the legislation. Legislative intention 'is not an objective collective mental state. Such a state is a fiction which serves no useful purpose.' That is a decision of the High Court in a case called *Lacey v Attorney-General of Queensland* of 2011. The intention of the parliament in relation to public reporting is as set out in the legislation.

In terms of the other comments Mr Milliner made, his complaint is about the media reporting. His complaint is not about the CCC act, the CMC act or the CJC act. Allegations are often made in the media well before any report at all is even provided. An allegation that a certain member of parliament has behaved inappropriately or has engaged in misconduct is often reported before anything is done by the CCC. That has occurred on many occasions. He, in fact, referred to a report by the then CMC regarding the then candidate for Ashgrove and subsequently premier of Queensland, premier Newman. I recall that matter very clearly. Those allegations were allegations that were made by the then premier at the time, premier Bligh, for political purposes. They were investigated by the CCC, and the CCC in fact issued a public media statement as a report clearing the then candidate for Ashgrove of any wrongdoing. There was no report tabled in the House.

Mr Milliner is quite wrong, both in his idea of statutory interpretation and in his concern about matters being ventilated in the House that would not otherwise be covered, because history tells us and common experience tells us that most of the time they are already in the media before the CCC gets a look at them.

**Mr ANDREW:** Thank you for clearing that up, member for Clayfield.

**Mr Nicholls:** That is a pleasure, member for Mirani.

**Mr KRAUSE:** Before I ask a question, I make a declaration that, as a member and chair of the PCCC, I have an interest in the matters referred to in the bill but I do not consider it affects my ability to participate in this public briefing and to ask questions. Mr Barbour said, if I recall correctly, that there was no need for the independent review or he thought it was unnecessary. Do you agree?

**Mr Nicholls:** It is certainly unnecessary in terms of fixing the problem that has been identified by the High Court in the *Crime and Corruption Commission v Carne* matter. I made a note of his comment there. He said he wants the problem fixed. He said more broadly this bill fixes the problem. He referred to the additional matters that he has suggested in his submission and he said his view is that there was no need for a review in the first place.

**Mr KRAUSE:** Chair, before you close, I want to apologise if I should have made that declaration in the previous public hearing.

**CHAIR:** Thank you for putting that on the record. Mr Nicholls, thank you for your attendance and thank you for the written material you have provided to the committee over the course of this inquiry. Thank you, Hansard. Thank you, secretariat. That concludes this public briefing. Thank you to everyone who attended. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public briefing closed.

**The committee adjourned at 12.39 pm.**