



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 HEARING—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 11.00 am.

CHAIR: Good morning, everyone. I declare open the public hearing for the committee's inquiry into the Crime and Corruption Amendment Bill 2023. My name is Peter Russo, member for Toohey and chair of the committee. I am joined today by Jon Krause, member for Scenic Rim and acting deputy chair; Don Brown, member for Capalaba, who is substituting for Jonty Bush, member for Cooper; and Michael Crandon, member for Coomera, who is substituting for Mark Boothman, member for Theodore. I want to 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.

This hearing 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 or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I remind members of the public that they may be excluded from the hearing at the discretion of the committee.

These proceedings are being recorded 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.

MILLINER, Hon. Glen, Private capacity

CHAIR: Good morning and thank you for joining us. I invite you to make an opening statement, after which committee members will have some questions for you.

Mr Milliner: Thanks very much, Chair and committee members, for the opportunity to appear before you today. First of all, I am not a lawyer and I am a private citizen who strongly believes that the state has a moral obligation not to use the extensive resources available to it and its agencies to do harm to its citizens, particularly those who have not been charged or convicted of any criminal offences. I believe that if this legislation is passed in its current form it would have that very outcome. As I see it, the bill has three aspects to it: one, to reverse the 2018 amendment that omitted the director of prosecutions from section 49 of the CCC act; two, to publish reports into alleged allegations against individuals who have not been convicted of any criminal offences and have those reports tabled in the Legislative Assembly, therefore giving those reports parliamentary privilege and denying those individuals any right to seek redress; and, three, to make those laws retrospective.

On the first point of remedying those defects in the legislation, I have no comment to make. On the second point, I think it is wrong that individuals who have had allegations made against them that do not lead to any criminal convictions have those allegations published and given parliamentary privilege, resulting in their names and reputations being tarnished purely on allegations untested in a court of law but convicted in the court of public opinion. An example of an individual who could have had his reputation severely tarnished if a report into serious allegations into him were to be tabled in the Legislative Assembly would have been the former lord mayor of Brisbane and former premier of Queensland Campbell Newman, who in 2012 had very serious allegations levelled against him that did not lead to any criminal charges or convictions. I think it would be absolutely wrong to have published those allegations, giving them parliamentary privilege. On the third point, retrospective legislation is a very serious matter and should only be considered in extreme circumstances. After reading the newspaper reports on the allegations against a couple of individuals, I do not believe that the circumstances for retrospective legislation to table those reports exist in this matter. Thanks very much, Mr Chairman.

Mr KRAUSE: Mr Milliner, thank you for attending our committee here today. I want to ask a question about something in your submission and then something in the CCC's submission as well. You state that your understanding of the High Court decision is that the Crime and Corruption Act does allow for the CCC to publish certain reports to parliament and the public, but the CCC has submitted to us that at present the CCC has no statutory power to report publicly on its corruption investigations, Brisbane

and it is generally accepted I think that the High Court decision has basically said no reporting on corruption investigations. Do you think that is an appropriate or satisfactory outcome for the operations of the CCC and what it is intended to do under the Crime and Corruption Act?

Mr Milliner: If an allegation has been made against an individual and no charges or convictions are recorded against that person, I just think it is wrong that that then is put in the public domain—those allegations and how serious they could be that could have ramifications on the person that can tarnish their reputation, that can destroy their reputation—and put on the parliamentary record. As I understand it, the CCC can publish reports, but I just think publishing them and giving them parliamentary privilege where it adversely affects an individual is fundamentally wrong.

Mr KRAUSE: Mr Milliner, the way in which the CCC reported on its corruption investigations up until the Carne decision was made was in existence for the best part of 34 years or thereabouts, stretching back to the establishment of the CJC—and I understand you may have been around this place during those years. The Carne decision has basically overturned that understanding of how they operated. Do you think for those 34 years it has all been wrong?

Mr Milliner: The High Court found that they did not have the power to do it.

Mr KRAUSE: No, I understand that, but that is not the understanding of what everyone else thought the CCC did.

Mr Milliner: As I said, I am not a lawyer, but I would have thought with the resources available to the CCC, with the number of lawyers they have down there, they would have had an understanding of the CCC and they would have been concerned as to whether they had the authority and the power to do what they were doing. It would appear that an individual, Mr Carne, identified that he believed that they did not have the power and sought to take it to the court and it finished up in the High Court, where they found that what Mr Carne was saying was right, that they did not have the power. It is a bit hard to unscramble the egg, I know, but it would appear that for all those years they have been acting illegally against their act. Let's not beat around the bush: the legislation that has been introduced has been introduced following the High Court decision to have reports into a couple of individuals made public, and I just do not think that is right. I think there needs to be a lot more consideration into how this matter may be remedied if the situation is that those reports that had been submitted to the parliament in previous years have not been legally done so.

Mr KRAUSE: It is the case after the High Court decision that no corruption investigation reports can be made. Incidentally, there were two Supreme Court judges in Queensland who had a different view of the power, so there were even differing opinions in the interpretation of the act, but that is not really the point. The point is: there was a general understanding in the community and in the body of politics in Queensland that corruption investigation reports could be made. There has been a High Court decision about that situation in relation to the present act, so you do not think that needs to be remedied, because we can change the law to make it lawful?

Mr Milliner: Sure. I know you can change the law so in future those reports could be published.

Mr KRAUSE: So you would support it looking forward?

Mr Milliner: No, I am just saying that I am concerned about individuals who have not been charged with any matters, and I think there needs to be a lot of thought put into the publishing of reports on allegations against individuals who have not been charged or convicted. That is my point: I believe that the state has an obligation not to harm its citizens, and that is exactly what happens.

Mr KRAUSE: That takes me to my next question. In your submission you state—

I also understand the Parliament intended that no harm could be done to an individual who has been subjected to those investigations and has been found not to have done anything justifying criminal charges.

It may be a tough question, but can you point to any explanatory note or point when the legislation was introduced which has led you to believe there was an intention from parliament?

Mr Milliner: Sorry, but I am—

Mr KRAUSE: Sorry. I am talking about your statement where you say parliament intended there be no harm done.

Mr Milliner: Yes.

Mr KRAUSE: Can you point to any explanatory note or a speech from a minister that you can point to which says that was parliament's intention?

Mr Milliner: No, I cannot, but when the anti-corruption bodies were introduced in the early nineties—and I was involved in it—everybody was aware of the enormous powers that were given to this body. At the time it was recognised that there had to be an oversight regime, and that is when the

parliamentary committee was introduced to oversee the operations of the then CJC followed by the CCC. That is an indication of the enormous powers that these bodies have, and I am just concerned about what has gone on with particularly things like the Logan councillors. I think they have been very shabbily treated and it has affected those people enormously. They have had their reputations absolutely destroyed and their employment prospects have diminished, and no criminal charges were ever laid. They were not convicted of any criminal offences. I just think it is wrong that an individual's name can be dragged through the mud, they have their reputations tarnished and they have no course of redress.

Mr ANDREW: Mr Milliner, would you agree with the bill's granting of public reporting powers to the CCC if those new powers were not made retrospective?

Mr Milliner: If I understand your question, you are asking if I would support reports in the future being tabled in the parliament.

Mr ANDREW: Yes.

Mr Milliner: I think you have to be very careful about an individual's reputation. Whilst I support reports being tabled in the parliament, I do not support individuals being identified. If an allegation is made against someone, it is wrong that the circumstances around the allegation and the person the allegation is made against are tabled in the parliament. If it is a general report on an allegation, it would have to be very carefully thought through. I am not saying it would be easy, but you have to protect the individuals.

Mr ANDREW: Yes. Thank you.

Mr BROWN: Thank you for your submission today. To summarise it in terms of an example, let's say there is a council of particular individuals. The CCC do not reach their standard of charging them with corruption. Therefore, in your opinion, they should not report on that. But then there is nothing stopping the CCC from doing a report that does not name those councillors but educates and makes recommendations to government on the threats of corruption they have seen. Is that what you envisage?

Mr Milliner: If it is a governance issue, the CCC could report to the director-general and they could report to a number of people on the substance of the matter. My fundamental objection is the fact that these reports are tabled in the parliament and are given parliamentary privilege. The person's reputation is destroyed or tarnished and they have no course of redress.

Mr BROWN: There is also the ability for the CCC—where it does not reach that threshold of corruption—to refer matters to bodies such as the Information Commissioner, the Privacy Commissioner, the Ombudsman or the Integrity Commissioner to investigate.

Mr Milliner: That is right. I am not au fait with all of that now. I have been out of parliament since 1998. It was pretty basic back in those days. If there are other bodies they can report to, report to those bodies.

Mr BROWN: The way the CCC is now envisaged and set up is with not only high-level crime—above and beyond the police—but also high-level corruption investigations. We have bodies on the corruption side of the CCC to deal with some of these matters.

Mr Milliner: Yes.

Mr CRANDON: You talk about reports coming through to the parliament providing protection, but some of these reports we have seen over the years were intended to clear a reputation. You talk about damaging reputations but often, if I can go back a little bit in time—I have been on the PCCC for some time and perhaps I should make a declaration in that regard. I have been on the PCCC for some time and we were quite critical of the CCC at times for making statements in the media by press release and not providing reports to the committee that could be tabled. They would not give enough information to the people of Queensland, particularly in high-interest areas. Some of these reports coming through the system served to, one, educate and, two, confirm that there is 'nothing to see here'. They confirmed the innocence, if you like, of the individuals who were being dragged through the media, with accusations running rife. What are your thoughts on that aspect? You are talking about one side. What about the other side, the protections?

Mr Milliner: What would happen is: an allegation would be made against an individual, the allegation would become the whole story, and the final paragraph would be that the individual was cleared of those allegations. The banner headline would be the allegation that such and such a person was accused of embezzling millions of dollars. The whole story would be around that allegation, with the final paragraph saying that the allegation was not substantiated.

Mr CRANDON: ‘Not substantiated’ is probably a better way of phrasing it.

Mr Milliner: I am saying that the person’s reputation would be destroyed purely on the allegation.

Mr CRANDON: It follows, then, that if that is the case and that is in the media and we see something come from the CCC that is just a press release that perhaps leaves questions unanswered, a report to the parliament can flesh that out completely and show that the individuals were indeed innocent of the allegations and it is not left up in the air that nothing was proven.

Mr Milliner: That is fine, but the trouble with the media—as you and I well know—is that the media will highlight the allegation and run the story on the allegation, unfairly giving it prominence. Then, as I say, the final paragraph would be saying ‘there is no substance to the allegation’, but the damage is already done.

Mr CRANDON: You and I are arguing on the same side of this. What I am suggesting to you is that the report to the parliament can clear the air so that the people of Queensland do not have to rely on what the media says; they can go to the report and see it all set out. We are both on the same side of the argument in relation to the innocence of an individual.

Mr Milliner: If the people of Queensland want to sit down and read all the parliamentary reports and *Hansard*, well—

Mr CRANDON: Once again, it is a matter of record. The point I am getting to is: do you agree that, in those circumstances, a report to the parliament would be beneficial?

Mr Milliner: I am still concerned about allegations being made public and fleshed out in a report that are not true, that have not been substantiated or where there have not been any convictions. That is the nub of the problem that I see. The person’s reputation is tarnished and damaged purely on the allegation. I have seen that sort of thing happen. There was a case in the early 1980s where someone distributed a scandalous letter about one of their neighbours that was totally untrue. I had a couple of constituents approach me to ask me if we could do something about their kids going to school, because the allegation was that this bloke was a paedophile. There had been a neighbourhood dispute. The letter was anonymous, but it was obvious where it came from. It accused this bloke of being a paedophile. This woman approached me and said, ‘I don’t think his kids should go to our school because he’s a paedophile.’

Mr CRANDON: You probably do not need to go further. I understand where you are going with that.

Mr ANDREW: So what you are saying is that the first release in the media receives the major profile whereas the retraction from the media does not get the same amount of profile. Thus, you are fighting all the way to try to prove your innocence. Is that what you are trying to get at?

Mr Milliner: I am sorry, I cannot hear the question.

Mr ANDREW: In the first instance, the media report on the alleged person always receives more attention than the retraction they make after they have made that mistake. Is that what you are trying to say?

Mr Milliner: Yes, that is what happens. I have seen that happen before, too.

Mr ANDREW: At the end of the day, what you are getting at is that that person has to fight and defend themselves many times over to try to reconstitute their integrity. That is the sad part about it. You are saying that the damage is done and people have formed their opinion in the first instance when the media is put out. Is that where you are coming from?

Mr Milliner: That is right. The report is tabled in the parliament. It therefore becomes privileged. A media report is then published on the basis of the privileged information before the parliament and the person has no redress. They cannot sue for defamation because the media are just reporting on matters that are privileged. I see that as a fundamental principle of fairness.

CHAIR: That brings to a conclusion this part of the hearing. Thank you for your written submission and for your attendance today.

BARBOUR, Mr Bruce, Chairperson, Crime and Corruption Commission

CAUGHLIN, Mr David, Executive Director, Legal, Risk and Compliance, Crime and Corruption Commission

LANDERS, Brigette, Acting Principal Lawyer, Corporate Legal, Crime and Corruption Commission

CHAIR: Welcome. I invite you to make an opening statement, after which committee members will have some questions for you.

Mr Barbour: I thank the committee for the opportunity to appear this morning. On 29 February 2024 we provided a written submission to the committee on the contents of the bill which has been published by the committee. We noted in our submission that since the introduction of the bill the Queensland government has announced an independent review into the Crime and Corruption Commission's reporting powers. Having regard to the terms of reference for the review, we note that the matters traversed by the committee in its consideration of the bill will also have been considered by that review.

The stated purpose of the bill is to remedy the deficiency in the reporting powers under the Crime and Corruption Act 2001 found by the High Court in the decision of *Crime and Corruption Commission v Carne*. The CCC must, in our view, be vested with statutory authority to report in the performance of its corruption function. The CCC must be accountable and transparent to members of parliament, the Queensland public sector and the public generally, given the unique position it holds and the extraordinary powers it exercises.

The CCC is, and always has been, committed to promoting public understanding of its role and confidence in the effectiveness of the organisation. Most importantly, public reporting provides transparency and serves to support the CCC in performing its statutory objectives, which include improving the integrity of and reducing the incidence of corruption in the public sector. Public confidence in the integrity of the public sector is promoted through transparently and publicly reporting on the outcome of its investigations. This may include: through recommendations made to the public sector generally as to corruption risks identified through a particular investigation; through publicly explaining what the CCC found when it investigated a complaint; and by explaining what actions were undertaken in an investigation which concluded that corrupt conduct was not found. This latter scenario can be particularly important for restoring reputations and giving the public confidence that matters have been properly investigated.

The CCC recognises that balancing the public interest in accountability, transparency and public confidence against the private interest of individuals, particularly those who may be adversely affected by publications, is a difficult exercise. A robust statutory regime within which those competing interests can be appropriately balanced is critical. The CCC is subject to various express protections in the Crime and Corruption Act, bound by statutory and common law duties to afford procedural fairness, and is required to act consistently with the rights afforded by the Human Rights Act 2019. At all times decisions and actions taken by the CCC are underpinned by the commission's overriding obligation under the act to act independently, impartially and fairly.

The CCC considers the bill is one example of appropriate legislative amendment that would vest the CCC with power to report about corruption investigations and overcome the legislative deficiency identified by the High Court. In particular, this bill provides the CCC with an express power to report about the investigation of a complaint about or information or matter involving corruption and to do so irrespective of whether the CCC has already reported to certain authorities under section 49 of the act. It provides that commission reports must be given to the Speaker and that the Speaker must table the reports in the Legislative Assembly as soon as practicable, and retrospectively validates reports previously tabled by the CCC and its predecessors.

The CCC notes there are three other matters relevant to reporting powers which are not contemplated by the bill and which we submit warrant consideration: one, the power to report should expressly state that the CCC may report at any time before, during or after the conclusion of an investigation—this is consistent with similar provisions which govern the Victorian Independent Broad-based Anti-corruption Commission; two, a declaration to retrospectively validate preparation of reports by the CCC and its predecessors, in addition to the provision in the bill which validates the tabling of those reports, to make it clear that the reports were within the power of the CCC to make; and, three, express provisions providing what can or must be included in public reports such as findings, opinions and recommendations, as are found in the National Anti-Corruption Commission and

New South Wales Independent Commission Against Corruption provisions. That is not to say that those approaches should be adopted but, given the approach in other jurisdictions, consideration should be given to whether that is desirable.

As you can see, I am accompanied by Mr David Caughlin and Ms Brigette Landers from my office. We are happy to answer any questions that the committee may have for us. Thank you.

Mr KRAUSE: Thank you, Mr Barbour. Prior to the announcement that Chief Justice Holmes would be doing her review into reporting powers and after the Carne decision, did you make representations to the Attorney-General, the department or any other member of the government regarding changes that you see are required to the CC Act?

Mr Barbour: Yes, I wrote to the Attorney-General on the day of the High Court decision being handed down and indicated, in my view, the need for urgent legislative amendment to correct this issue. My public evidence to the PCCC committee has provided confirmation of that.

Mr KRAUSE: Was there just that one written submission?

Mr Barbour: It has been discussed several times. In the lead-up to the review being announced, yes.

Mr KRAUSE: With members of the government or the Attorney-General?

Mr Barbour: With the Attorney.

Mr KRAUSE: How many times?

Mr Barbour: I am not sure.

Mr KRAUSE: Did you receive any response to those submissions that you made to the Attorney-General?

Mr Barbour: I think the review is the response of the government.

Mr KRAUSE: In your discussions with the Attorney-General, Mr Barbour, about the required changes as you see it, can you tell us what was the indication given from the government about their view of your submissions? Did they agree with them, not agree with them or give any indication of where they were at in relation to the reporting powers?

Mr Barbour: Firstly, I do not propose to discuss confidential discussions with the Attorney-General. I can say in broad terms that I certainly made clear my position in relation to the need for amendments. What I also did was acknowledge, as I have done in my public evidence to the PCCC, that this is a complex area and one which now provides the opportunity for a holistic approach to amendments rather than simply just correcting, within the existing statutory framework, what is identified as a problem by the High Court decision. I think that is why the review terms of reference contemplate a slightly broader approach to looking at some of these issues than simply trying to correct them within the specific framework of the current act.

Mr KRAUSE: Were you advised prior to the appointment of Chief Justice Holmes's review that it would be occurring?

Mr Barbour: I understood that was one of the options that was being considered, yes.

Mr KRAUSE: But you were not advised specifically before it was announced?

Mr Barbour: To be honest, I cannot recall—certainly not the details of the terms of reference. I became aware of the actual content of the terms of reference at the same time as everybody else.

Mr KRAUSE: In relation to your submissions to this bill—and we thank you very much for that—is there any difference in the submissions you have made to this bill and submissions you made to the independent review?

Mr Barbour: I think they are different for obvious reasons. Our submissions to this bill focus very much on what is put forward in the bill and what the proposed amendments are. The review terms of reference are much broader, and so our initial submission to that review is, as a consequence of that, broader in scope. Certainly our submission to this committee in relation to the bill and our submission to the review are entirely consistent.

Mr KRAUSE: In your submission you refer to the importance of the retrospectivity of the legislation when it comes to reporting powers following the Carne decision. I know that we have discussed this in the PCCC, but for the purpose of this inquiry could you highlight the importance of that a little further, please, Mr Barbour?

Mr Barbour: Yes. I think the importance of retrospectivity is directed at ensuring that not only the work of the CCC in the preparation of reports but also the reports themselves is obviously seen as having been a lawful exercise of the commission's powers. I think this issue also goes to reputation of

the organisation. I think leaving any of those elements undetermined would continue to provide the opportunity for people to question the validity of how we have approached particular issues. Clearly, reports that have been tabled in parliament are going to have all of the protections associated with parliamentary privilege; however, there well might be arguments put forward that the preparation of those reports was not permitted given the High Court's decision. It seems, in our view, most appropriate to remove any doubt in relation to any aspect of the preparation of those reports and their tabling.

Mr KRAUSE: Mr Barbour, in your oral opening you mentioned that it was about remedying a deficiency in powers as identified by the High Court, or words to that effect. If the situation remains as it is, do you think it undermines the CCC's overall mission as set out in this legislation in relation to corruption prevention?

Mr Barbour: Absolutely. I see the capacity to publicly report on our corruption investigations being fundamental to our mission. It is absolutely inherent to the public interest and confidence of the public in the work that we do. It would, without remedy, not permit us to report to elected representatives so that they know exactly what is happening in the commission and what work we are doing. To my mind, it is absolutely fundamental. Importantly, it is also clearly set out in the provisions of every other anti-corruption agency across the country and the new national body. Were this not to be remedied it would make Queensland an outlier, and it would mean that we would have quite literally legislation that was, in my view, not fit for purpose and not consistent with the best principles of public administration.

Mr KRAUSE: A retrograde step back to the old days.

Mr Barbour: I think I used the words 'retrograde step' in a previous PCCC meeting.

Mr ANDREW: Could the commission provide details concerning all of the legal action it has engaged in since 2018 on the issue of publishing its investigation reports? Would you have that information?

Mr Barbour: I do not have that specific information at hand, but there really are only two matters that have been the subject of litigation, and they relate to what has already been publicly commented on. That is a report in relation to the former public trustee and a report which relates to the former premier. Both of those reports were the subject of separate litigation.

Mr KRAUSE: Former deputy premier.

Mr Barbour: Former deputy premier, my apologies.

Mr ANDREW: This could be more of an estimates question, but do you know the cost of defending those cases all the way to the High Court, the payment of legal costs to other parties and so on? I have read that we agreed to pay one of our members' legal costs before. I think it was Ms Trad. I just wondered, that is all.

Mr Barbour: The figures in relation to costs associated with those matters borne by the CCC have been provided previously at the PCCC meetings. If this committee requires that information, I am happy to provide it in addition.

Mr ANDREW: If it is there, I will go forward. That is fine, thank you.

CHAIR: Just to clear it up, are you saying that if the representatives from the Crime and Corruption Commission have that information here you will accept it; if they do not, you are not worried about it?

Mr ANDREW: I would not mind seeing it. I just wanted to see how the commission actually decides whether the costs involved are justified or not—how it all works, that is all. I am trying to get to the bottom of that. If you could help me, that would be great.

CHAIR: What are you trying to get to the bottom of?

Mr ANDREW: How the commission decides all the different costs involved and how they justify them.

CHAIR: In legal proceedings, often costs follow the result.

Mr ANDREW: Would I be able to see the costs then, if you do not mind? You said it was in the PCCC meeting. Could you dig that out for me? I would like to actually see that.

CHAIR: That is a question on notice. Is that something that can be provided to the committee?

Mr Barbour: No, Chair, and perhaps I can answer it this way: those issues and the quantum involved in those matters is a matter of public record, having already been released to the PCCC. I do not have those figures on me so I cannot actually quote them, but it is difficult for me to see the relevance of those figures to today's proceedings and what we are here to talk about, to be honest.

CHAIR: I take on board the relevance question. Steve, as it is outside the scope of the private member's bill, perhaps it is, as you said earlier, something that you could raise in estimates.

Mr ANDREW: I am just trying to make a correlation between the bill and probably some of the costs and a retrospective look at what the costs were to say—

CHAIR: Steve, it is outside the scope of the bill, so if you want to raise it you can raise it during estimates.

Mr ANDREW: Thank you.

Mr BROWN: Thank you for your submission, Mr Barbour and the CCC. In your recommendation that the commission may report at any time during an investigation and after, can you envisage an example of beforehand where you would like to see that power used?

Mr Barbour: I think it would be used in relatively rare circumstances. It is more about being provided with the opportunity should particular circumstances arise, and it is not dissimilar to what is currently in the provisions of the IBAC legislation in Victoria. One could imagine that there were significant multiple issues that were under investigation and it might be necessary to issue a preliminary report very early on in the process to be able to advise both parliament and the broader community about elements of that investigation as it stands at the moment, so being able to have the capacity to report at any time during that process provides that degree of flexibility.

Mr BROWN: Like if there are a number of parties to a matter or—

Mr Barbour: Potentially, or a number of issues—or there might be matters which require much more detailed investigation and others that do not require as much investigation, so you might pare things off and you might report on slightly different time frames.

Mr BROWN: Also in your submission you talked about the need for holistic amendments. Potentially, could you see a clash with this bill, if passed, and the outcomes of the review? Having been on the PCCC for a long time, I suppose there has been a lot of chopping and changing over the history of the different iterations. Is it the fact that your support is for a holistic review of these amendments?

Mr Barbour: Firstly, can I say that I just want the problem fixed. If that is this bill or if it is as a consequence of the review, I am very happy with either outcome. It is true to say that the terms of reference of the review provide the capacity to look at issues more broadly, I think, than what is presently before the committee in terms of this bill. However, in saying that, the bill does remedy the problem that has been identified by the High Court and, with those additions that I have mentioned that might be able to be looked at in the context of this review, it would certainly serve to fix the immediate problem. I suspect that the benefit of the review is that, in looking at things a little bit more holistically, it can look more broadly at a range of factors that sit around public reporting, so things like the making of public statements, the timing of reporting, what might go into the reports and so forth which is not specifically addressed in this bill.

Mr BROWN: That, I suppose, goes towards the importance of public confidence in this, so having a holistic review of it and not chopping and changing in-between gives more public confidence in the future of the CCC; is that correct?

Mr Barbour: I think it depends on the outcome of the review. That is assuming we are going to agree with it. It may not be something that we find resolves things in the way that we would like, so I cannot really speak to that. I am certainly optimistic that out of the review we will have a much more holistic approach, but what I cannot say or commit to is that that is necessarily going to be something that is going to be better or that it will necessarily provide greater confidence for the community.

Mr BROWN: That gives you the opportunity to look at other items as well.

Mr Barbour: Potentially, yes. If the review looks at those items and takes up the issues that we put forward, that is certainly possible.

Mr CRANDON: Thanks, Mr Barbour, for attending today. I once again declare that I am a member of the PCCC and so am privy to a few things and I have to be careful what I say. In your correspondence though to the Attorney-General and others regarding the review, were you the instigator? What I mean by that is: did you put forward the need for the review?

Mr Barbour: Yes. As I have previously provided evidence to the PCCC in its hearings, I wrote to the Attorney on the day the decision was handed down and asked for there to be a process of moving forward in relation to amendments.

Mr CRANDON: Okay, so a review?

Mr Barbour: Yes. It has ended up as a review. I did not suggest a review.

Mr CRANDON: Okay, so my next question was going to be: did you put forward a suggestion that there should be someone from the legal fraternity do a review of some description?

Mr Barbour: No. Firstly, clearly the person conducting the review is an extremely eminent jurist and somebody who is perfectly suitable and appropriate to conduct the review. I had no involvement in the review terms of reference being drafted or any of those kinds of things. To be perfectly frank, I did not see the need for a review. To me the issues are very clear-cut. There is a significant common practice amongst all jurisdictions in the country. There is a lot of legislation that is out there. The principles that underpin this are very clear and there was a very clear understanding and coalition of thought about the previous capacity for us to report, so it was not my initial thinking that there was a need for a review. However, the government has determined to initiate a review. I am very positive in relation to that and we will cooperate and assist the review in any way we can.

Mr CRANDON: Once you became aware that there was a review under Justice Holmes, did you then put forward some recommended terms of reference or those sorts of things?

Mr Barbour: No. The terms of reference were drafted without direct consultation with me.

Mr CRANDON: Okay, without direct consultation. So in that respect you wrote to the Attorney-General on day one—the day that the decision came down from the High Court—and then there was no correspondence in relation to discussions around reviews et cetera between you and the Attorney-General, but ultimately the government has announced a review and announced who is going to be doing the review and you were not involved in any way, shape or form in any of the terms of reference for that?

Mr Barbour: I did not have any role in the drafting of the terms of reference, but I do not have a problem with them.

Mr CRANDON: Okay. Thank you. That is it from me, Chair.

CHAIR: In relation to the explanatory notes dealing with section 49—no doubt you have a copy of the explanatory notes?

Mr Barbour: Yes.

CHAIR: In relation to that, it says that in a 2018 amendment it omitted the director of prosecutions, and I will not read it all out. I was just seeking some clarification from you in relation to what is in the explanatory notes and obviously in the private member's bill.

Mr Barbour: Yes. Firstly, we note what is contained in the explanatory memoranda in relation to section 49 and the amendments. That does not appear to have actually been taken up and put into the bill itself, so there does not appear to be any correlation between that and what is actually directly in the bill. However, in relation to that issue, the committee had and has before it the Crime and Corruption and Other Legislation Amendment Bill that details very specific amendments which go to the heart of the relationship with the DPP and the requirement for the CCC to seek advice of the DPP prior to the implementation of any charging. So those issues, effectively, have been taken up in that other legislation in any event.

CHAIR: All right. Thank you.

Mr BROWN: Just going back to your comments about you being frank about getting it fixed, Mr Barbour, are you saying that you are fully dismissive of the Court of Appeal and the High Court in their reasoning on the Carne matter?

Mr Barbour: No, not at all. I cannot imagine anything that I have said that would give you cause to think that.

Mr BROWN: It seems to me that you want the quick fix but you are not taking in any of the detail of how we got here.

Mr Barbour: No, I completely reject that.

Mr BROWN: Okay, because I think we should make sure we are taking in the lessons of the Court of Appeal and also the High Court in making sure that governments of the future are not in this spot again down the track. Is that correct?

Mr Barbour: That is always desirable, but certainly there is no view held by me or the Commission that we want to subvert in any way an appropriate process; it is just that the statutory construction point that the High Court relied on is a very simple, very straightforward point and is contrary to decades of experience and understanding across parliament, the parliamentary committee, the oversight committee and the CCC. Remedying that does not have to be a difficult exercise, but if we are going to look at it more holistically then obviously there is an opportunity to improve other areas to make it much clearer.

Mr BROWN: Thank you, Chair.

CHAIR: I just need to seek your permission for us to go a little bit over time.

Mr Barbour: Sure.

CHAIR: We were supposed to finish at 12, and I acknowledge the member for Clayfield. I do not think he will mind if we just go a little bit longer, seeing he is here.

Mr Nicholls interjected.

CHAIR: Yes, I understand that, but there are a couple more questions. If that does not cut into your time, we would seek your indulgence.

Mr Barbour: No, that is fine, and can I thank the committee as well for agreeing to put the time a little bit later than what was originally scheduled. It allowed us to complete commitments this morning.

CHAIR: We do our best.

Mr KRAUSE: For the record, do you maintain, Mr Barbour, that the Carne and Trad reports prepared previously by the CCC should be published?

Mr Barbour: Yes. I see no reason they should not be—

Mr KRAUSE: Mr Barbour—

Mr Barbour:—subject to amendments that permit that, of course.

Mr KRAUSE: Of course. Mr Barbour, it has been expressed to me by some people that the review may be a way of preventing the Carne and Trad reports coming out. Do you hold any suspicions to that effect?

Mr Barbour: I am always very wary of questions that refer to ‘some people’. I always like to know who those people are. However, I do not hold any views in that regard. I see no reason to believe that the review is not a very genuine effort to consider multiple issues that not only relate to public reporting but also sit around that, and I think the person conducting the review is eminent and beyond reproach and I see no risk in relation to that.

Mr CRANDON: I was one of those people who had that thought—

Mr Barbour: Now, why doesn't that surprise me, Mr Crandon?

Mr CRANDON:—for the record, and it has nothing to do with Justice Holmes but has everything to do with my 15 years in this place. Just coming back to the questioning that I had of you a short while ago, were you consulted in relation to your views about the review or were you simply told that a review was going to happen?

Mr Barbour: As I say, I am not going to get into discussions that I have had with the Attorney. I do not think that is appropriate and I do not think it is relevant to today's consideration of the bill. In general terms, over conversations around this issue it became clear that one of the things the government was considering was a possible review. It ultimately decided to move forward in relation to that and, as I said, I did not have any role in the drafting of those terms of reference.

Mr CRANDON: Okay, so there was discussion backwards and forwards. I just wanted to clarify that. Thanks, Chair. I am all done and dusted.

CHAIR: Steve, I understand you may have a question?

Mr ANDREW: Yes. I accept that in the interests of transparency the reports for high-level public servants and members of parliament be publicly released. I do have concerns with the bill's retrospective application, particularly in terms of whether it is fair, in terms of procedural fairness, for government entities with the CCC's powers to move the goalposts retrospectively in this case. Would you be willing to remove that retrospective application of the proposed bill?

Mr Barbour: There are multiple examples of legislation being amended in a way to ensure that those amendments apply retrospectively. It has happened in our own legislation several times and I have noted that in our submission. Clearly, there is a balancing exercise and a weighing exercise when you consider doing something like that. Our view is as indicated in our submission. We believe that is appropriate to ensure the community and parliament have confidence in the fact that what has been undertaken by the commission and its predecessors in the past was legitimate and lawful. It will remove the risk in the future of there being any criticism that there was conduct which was inappropriate and not permitted by the statute.

CHAIR: That brings to a conclusion this part of the hearing. Thank you for your attendance once again and thank you for your written submissions on the private member's bill.

Mr Barbour: Thanks very much.

CHAIR: I hope you have a good afternoon.

Mr Barbour: Thank you, and to you.

CHAIR: That concludes this hearing. Thank you to everyone who has participated today and to all those who have helped organise this hearing. Thank you to our wonderful Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. I also thank the secretariat for their hard work. I thank all of my committee members and members who have subbed in for today. I declare this public hearing closed.

The committee adjourned at 12.03 pm.