COMMUNITY SAFETY AND LEGAL AFFAIRS COMMITTEE

Members present:
Mr PS Russo MP—Chair
Mr MA Boothman MP
Mr SSJ Andrew MP (videoconference)
Ms JM Bush MP
Mr JE Hunt MP
Mr JM Krause MP

Staff present:
Mrs K O'Sullivan—Committee Secretary
Mr R Pelenyi—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE CRIME AND CORRUPTION AND OTHER LEGISLATION AMENDMENT BILL 2024

TRANSCRIPT OF PROCEEDINGS

Monday, 4 March 2024

Brisbane

MONDAY, 4 MARCH 2024

The committee met at 9.32 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Crime and Corruption and Other Legislation Amendment Bill 2024. My name is Peter Russo. I am the member for Toohey and chair of the committee. I would like 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. With me here today are: Mark Boothman, member for Theodore and deputy chair; Stephen Andrew, member for Mirani; Jonty Bush, member for Cooper; Jason Hunt, member for Caloundra; and Jon Krause, member for Scenic Rim.

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 also 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. I ask everyone to please turn your mobiles phones off or to silent mode.

McWILLIAMS, Ms Gina, Senior Legal Counsel, News Corp Australia; Australia's Right to Know (videoconference)

SCHUBERT, Ms Georgia-Kate, Policy and Government Affairs, News Corp Australia; Australia's Right to Know (videoconference)

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

Ms McWilliams: Good morning, committee. This is Gina McWilliams. I am senior legal counsel at News Corp Australia. I am wearing two hats today, because I am also speaking to you on behalf of Australia's Right to Know. Both News Corp Australia and Australia's Right to Know thank the committee for the opportunity to appear today and supplement our written submissions with the matters we will discuss this morning. For any of you who have not previously dealt with Australia's Right to Know, we are the coalition of media entities whose logos can be found on page 1 of our written submission. ARTK speaks on behalf of the media as a whole whenever state, territory or federal parliament raises a legislative issue important to all of our members, as is the case in relation to the enactment of protections for journalists' confidential sources in relation to Queensland's Crime and Corruption Commission. Our comments today are consequently directed at the parts of the bill relevant to what we refer to as a shield law.

The Queensland government has previously acknowledged the importance of a free, independent and effective media in a strong democracy and that public interest reporting can depend on confidential sources. The thought and effort applied in relation to the bill has shown that these are not mere platitudes but that the Queensland government acknowledges and supports the ethical obligation given by a journalist who has promised the source confidentiality, and for that we thank you. In particular, as we note in our written submissions, ARTK was pleased to find that the burden of proof required to pierce the shield almost always lies with the CCC once the journalist establishes that a confidentiality obligation was given. We believe that this is the correct balance. While ARTK is pleased for this to be adopted in most of the relevant parts of the bill, we would encourage this same balance to be applied for search warrants, where the onus of proof is currently the reverse.

While our written submissions raise a number of outstanding issues, ARTK's principal concern is the various preliminary decision-making powers granted to a deciding commission or presiding officer to determine whether the shield should stand or fall, found in proposed sections 205F through to 205ZG of the bill. Once a journalist raises the shield in response to a demand by the CCC for a document

being answer to a question or any other supply of information, ARTK submits that either the CCC should withdraw the disclosure requirement or the matter be referred to the Supreme Court to determine.

The CCC is a peak investigatory body. It is not in its interests to apply the inherently substantial and onerous bar to piercing the shield that was noted in the recent Federal Court decision in Al Muderis v Nine Network Australia—and that reference is in our written submission—but rather to require disclosure. Despite their best interests, the CCC officers will never be able to make threshold decisions of this kind in the impartial manner that can be applied by the Supreme Court. Our analysis of the factors applicable to decision-making set out in the proposed section 205ZF expand on this point. Leaving such important public interest decisions to the Supreme Court is not an arduous ask. As our written submissions explain, the CCC has many other means of investigating available to it and this will not cause an undue burden to the court, as comparatively few shield cases have been contested since the inception of Australian shield laws in the year 2000. Our written submissions provide suggested drafting amendments that will achieve this outcome, which is our recommendation 1, together with suggested changes to effect recommendations 2, 4, 5, 6 and 9. If there are any other drafting changes the committee would like ARTK to provide, we are happy to take these on board as our homework.

Before turning to any questions you may have of us today, we note two further matters. Firstly, our proposed amendments include the ability for a journalist to meet the requirements to seal a document or thing that is subject to a journalist privilege claim by instead sealing a hard or soft copy of the part of the document or thing to which the claim applies. We have included this suggested drafting because it is often the case in our experience that material the subject of the claim might be in a notebook, a phone or other device, along with other material that is completely irrelevant to disclosure being demanded. ARTK submits that being able to seal a copy is the most practical method by which such material can be retained, and we raise it today as we have said nothing further about that drafting in our written submission.

Secondly, we agree with the Law Society of Queensland's submission—submission 10, I believe, on the website—that sections 81K through 81N should not give the CCC chairperson the power to issue a warrant. We agree that this removes a critical check that is present in the current system where a judicial officer is able to interrogate the reasons for the issue of a warrant and say that this is even more important in a case where a warrant may unearth material disclosing the identity of a confidential source.

Both News Corp Australia and Australia's Right to Know thank you for your time, and I now invite any questions that you may have about our submissions.

Mr BOOTHMAN: My question is in relation to the fact that you are not supportive of section 205ZF(3). Can you explain why you are not supportive of these provisions?

Ms McWilliams: Yes. I appreciate that that particular section, I believe, is consistent with the current drafting in the Evidence Act. I had it open this morning and now I have completely forgotten what the reference is, but it is very similar to the drafting. I think it was section 14V, but do not quote me on that one. The concern we have set out in the written submission is that there might be circumstances where a person who is caught by that section does have possession of documents that would identify a confidential source but is not aware of the fact that a person who is identified through the document is a confidential source. Because that particular section is triggered by 'being aware of' the identity of the source, they could, in certain circumstances, be required to produce a document which makes that kind of disclosure because they are not aware of the person who is the confidential source of the document they have to hand. I do concede, as I said from the start, that this drafting is consistent with what is already in the Evidence Act, but we feel that in cases like this we should raise all points of concern to us. You may be able to do a better job of the drafting than the Evidence Act did, or you may not take this recommendation on board. We are obviously entirely in your hands.

Ms BUSH: My understanding of your submission is that you have concerns around the CCC making a preliminary determination around privilege, but my read of the bill is still that journalists would have the right to take a matter to the Supreme Court for an ultimate decision. Is that your read of that?

Ms McWilliams: Yes, I agree with that. There are two different methods currently for how it gets from point A to point B. One is that, in some circumstances, if the shield is raised, the CCC is obliged to make the application to the Supreme Court. In other circumstances, it is open to the journalist or the journalist's employer to do it on their behalf. I think we have made it very clear in our submission that those were the reasons we are concerned about CCC officers having that initial role, despite the fact that it can ultimately end up in the Supreme Court, and I have repeated those points again this morning.

That really is our No. 1 concern about the drafting as it currently stands. However, again, at this point we are very much in your hands. If you agree with the submission, you may wish to make amendments, and maybe even the amendments that we drafted for you and annexed to our submission—or if not those then something similar.

Mr KRAUSE: Thank you for your submission. My question is more of a general question. It relates to the issue of the CCC making a preliminary decision which could then lead to a journalist having to apply to the Supreme Court in relation to that preliminary decision. I am gathering from your submission that it is more your general view that that process should be reversed and that the onus should be put on the CCC to make application about why a shield should be pierced, so to speak.

Ms McWilliams: Yes, absolutely. That is the drafting that we have essentially suggested in the changes attached as annexure 2. In the perfect world, the way it would work for my client, and also from ARTK's perspective, would be that the CCC makes the demand for information, however that may come. In the course of considering that demand we realise that a confidential source is going to be identified if we comply with the demand. The media entity, whoever it happens to be, writes back to the CCC and says, 'We can give you this, this and this. We cannot give you this because that will disclose the identification of a confidential source and we rely on the shield in relation to this particular thing'—whatever it happens to be. At that point the CCC does one of two things: they either say, 'We are happy with what you have given us and we can investigate another way, so we will withdraw the requirement that you produce that extra thing that would identify the confidential source,' or say, 'Note that we still want that. We are not happy with that.' Then they make the application to the Supreme Court to push on and have the shield pierced at that point.

Mr KRAUSE: Whilst you work for News Corp Australia, does Australia's Right to Know coalition, if I am not mistaken—maybe you can inform the committee—also represent some media operators and journalists who are not employed by such a large entity?

Ms McWilliams: It does. I believe the MEAA represents journalists who are on a much smaller scale than obviously News Corp is. I am trying to open the submission again to see who is in the letterhead. We do change the letterhead from time to time because on occasions some entities are not always aligned exactly with the issues that we wish to raise. Whenever you see this letterhead, everybody you can see there agrees with the position we are expounding.

Mr KRAUSE: I see it is on your letterhead. They are all fairly—

Ms McWilliams: It is pretty thorough. On this particular occasion it is pretty much everyone, both large and small. Obviously this is an issue that would be of more substance to a smaller entity, because as soon as you are engaged with the CCC you really have to have lawyers involved. For my client and for members like the Nine Network—even the ABC has a giant in-house team—that is less of an imposition. As you have correctly put your finger on, it is much more difficult for a smaller—

Mr KRAUSE: That is what I was getting at. If you reverse that process, it makes it easier for smaller operators to deal with the process from a litigation perspective. We obviously have a number of different size media players in the market. Thank you for clarifying that.

Mr ANDREW: Since the introduction of the journalist privilege under section 126K of the Evidence Act 1995 and the amendment act in 2011, how many times have there been cases brought before the Federal Court in relation to privilege?

Ms McWilliams: I believe it is 16. It is on page 3 of our written submission. Sixteen cases have been brought before the Federal Court in relation to privilege. If you are going to ask me the follow-up question of how many times it has been refused and how many times it has stood, I would have to take that as homework, because I do not know the answer to that.

Mr ANDREW: That would be good. I was going to ask what sorts of judgements were made by the court.

Ms McWilliams: I can find that out and come back to the committee.

Mr ANDREW: Do you think there are any circumstances in which the journalistic privilege should not apply?

Ms McWilliams: The first question that the court engages in—which is what we would do with a client as well if the privilege is raised—is: did you actually promise someone confidentiality? If you did, what was the scope of what you promised? Did you say, 'No, I will never name you ever, ever, ever and I will go to jail with my toothbrush in defence of that'? or were there circumstances in which the confidentiality could fall away? You need to test that and determine what the scope of it is. That is the exercise the court undertakes as well when it does this kind of analysis. The Al Muderis judgement—I do not know if you are a legal geek like me—

Mr ANDREW: No, not really, but I do dabble.

Ms McWilliams: It is interesting. Find yourself a legal geek and make them read that judgement for you. In relation to each of the 10 or 12 confidential sources, it is the same thing that happens every time. The judge in each case says, 'Okay. Was confidentiality promised or wasn't it?' If we tick that box, 'What was the confidentiality that was promised? How far does it go? Has it fallen away?' They really do that practical analysis before they get to the point of saying, 'Okay. We definitely have the shield in place here. Do we get to the point of the public interest requiring that to fall away?'

Mr ANDREW: Determination on a case-by-case basis.

Ms McWilliams: Yes, absolutely.

Mr HUNT: In relation to recommendation 2, we are talking about 'a person', 'another person' and 'a relevant person'.

Ms McWilliams: Yes.

Mr HUNT: I have the submission in front of me. I have had a good read, but you are going to have to help me. I would still like you to talk through particularly the 'relevant person' requests.

Ms McWilliams: The concern we have is that to say that nothing in this section is stopping 'a person' from making a disclosure about who a confidential source is includes the journalist and any relevant person who would otherwise have the protection of the shield, whereas if you change 'a' to 'another', what you are saying is that if there is some person who should not have the benefit of the shield—for example, a politician becomes aware of the identity of a confidential source—you have not obtained the information which in any way, shape or form enlivens the shield because you are not a journalist and you are not working for a journalist to the extent that you become a relevant person. That would not stop you from disclosing who the source was if you are right. It is a small change, but we were hoping that that change could be made so it is a little bit clearer that you are not suggesting that a person who is entitled to the benefit of a shield should have to make a disclosure which is contrary to what the shield does.

Mr KRAUSE: On page 3 of your submission—forgive me if you have covered this—you say that the CCC cannot determine claims for privilege in an impartial manner. Could you expand on that for the committee if you have not already?

Ms McWilliams: The problem is that the CCC is, as I said in my opening statement, a peak investigatory body. Its interests are in ferreting out every piece of information that it can to expand as much as possible on the crime and corruption which it is tasked to look at. If you take that as its starting position, it is in complete contradiction to anyone—journalist or otherwise—coming to the CCC and being able to say, 'No. We are not going to give you a particular piece of information because we have a confidentiality obligation which we have to comply with.'

I hasten to add that I am not intending to suggest, and neither is ARTK, that the officers of the CCC would not do their level best to be impartial. I am sure they would. It is just that those two things are so much at odds that it is bound to fail from the start because they want the information and the journalist who has given the obligation of confidentiality does not want to give them the information. Obviously that is unfortunately what happened recently in Queensland in the case of F, which there are judgements about. That is it in a nutshell. I hope that has answered your question.

Mr KRAUSE: I also want to take you to section 205ZF(3)(g). You state that that section requires a subjective analysis by a deciding officer as to whether a journalist engaged in good or bad journalism, not an objective public interest test. Can you tell us more about those concerns? Section 205ZF(3)(g) relates to considerations about whether the journalist verified documents and how they used a document.

Ms McWilliams: Yes. The minute you start digging into the process a journalist applies to how they prepared the article, you are bound to start applying a gold standard of perfection. If you think a journalist should have ticked 10 boxes on a checklist before daring to proceed to publish something but in fact it turns out after questioning that they checked only five or six, then you are bound to say, 'That is bad journalism. You should have ticked all 10 boxes.' I would add that the reason we hold that position is that that is the standard that has already been applied to journalism in relation to the qualified privilege defence in defamation before the 2021 changes came into place and obviously changed those defences quite substantively. It is the reason qualified privilege was in fact a lesser defence for journalists because, every time the court came to analyse it, when they were looking at reasonableness they would engage in that checklist exercise—'You should have done this. You should have done this. You didn't do this. Okay. No. You cannot have the defence'. It is that experience which leads us to make that comment about that type of similar exercise which is being proposed by that subsection.

Mr KRAUSE: I have two more questions in relation to the same section—section 205ZF(3)(i). It is stated that the coalition does not believe that the CCC is the appropriate body to make a determination about risk to national security. Can you tell us more about that?

Ms McWilliams: I think simply that the CCC does not seem to us to hold much of a role in national security issues than state security issues perhaps. We would proceed on the basis that there are bodies that we are currently dealing with in relation to federal secrecy laws to whom it would be more appropriate to direct that type of analysis or inquiry. If we are misplaced in our thinking in that respect then we are wrong.

Mr KRAUSE: That is refreshing willingness to admit error on your part. Sometimes we do not get that in committee.

Ms McWilliams: As an outsider, what the CCC does in the scope of its task is sometimes a bit of a mystery, so if we are wrong about that then we are wrong about that.

Mr KRAUSE: Finally, section 205ZF(3)(d) and (e) relate to considerations around likely adverse effect of disclosing the informant's identity on the informant or another person and whether the informant's identity as the source of the document, thing or information is already in the public domain. Why are you not supportive of those provisions?

Ms McWilliams: I think what we would have to say about that is that any picking around the edges which is going to go so far as to cause the shield to become completely invalidated is something that we would not encourage. In almost all circumstances we would say that the starting point would have to be that there must be an adverse effect on disclosing the informant's identity, because that is the very circumstance in which the shield is offered.

I should probably add here that journalists do not go running around giving confidentiality to everybody, obviously. We cite named sources in what we publish every day. It is reserved for circumstances where the information that is being conveyed cannot be obtained on the record and the journalist, with their consideration of journalist ethics, comes to the conclusion that it is so important to report in the public interest that the confidentiality has to be promised. From that perspective it is kind of a moot question, because there must always be some kind of negative effect on disclosure of the identity of the source.

Interestingly, if the informant's identity is already in the public domain then my slightly facetious response to that would be, 'Then why do you need that information from the journalist?' If you already know who the source is then surely the CCC can proceed against that person without requiring the journalist to breach the shield. Similarly, however, in the Al Muderis case—I am sorry to go back to the case law again; you did get a lawyer in this morning and I tend to do that—what Dr Al Muderis attempted to do in that case in relation to a large number of the confidential sources was to say, 'Well, you have given me information about these things which have indicated to me that this could only be this person because I know that only this person knew particular things or was speaking to particular people,' and even in the face of that the judge in Al Muderis held that that does not actually undo the shield. If the obligation of confidentiality has been given, unless it is withdrawn because the source agrees for it to be withdrawn then it should hold. It is an interesting read in relation to that point.

CHAIR: That brings to a conclusion this part of the hearing. There were no questions taken on notice. Thank you for your attendance and have good day.

JONES, Mr Joshua, Barrister, Bar Association of Queensland

REECE, Ms Laura, Barrister, Bar Association of Queensland

CHAIR: Thank you for coming and joining us today. I invite to you make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Reece: Thank you, members of the committee, for giving the Bar Association the opportunity to come down and give evidence today on this bill. Given the time frame in which the bill has been presented to parliament, we do ask that if there are questions that we cannot answer today we be given the opportunity to take them on notice to consult with our colleagues in the Criminal Law Committee in particular but also with our president of the Bar Association and provide a written response to the committee.

In relation to changes to the Crime and Corruption Act, there has been a series of consultations over a number of years stemming from various inquiries and cases which highlighted some of the difficulties under this act. We in particular support the requirement in the act that advice be obtained from the Office of the Director of Public Prosecutions prior to the commencement of corruption proceedings. We understand that proposal is directly as a result of the Logan City inquiry and other inquiries which have commented on the CCC's processes in that regard.

We are broadly supportive of the protection of journalists anticipated by the new provisions in the act, but, other than commenting on those two particular parts, we are here to provide answers to your questions, but as I said, perhaps on notice if we are not in a position to respond immediately.

CHAIR: There is no issue taking questions on notice.

Mr BOOTHMAN: The Queensland Law Society made a submission. Have you read that submission?

Ms Reece: Yes.

Mr BOOTHMAN: They talk about legal professional privilege and their concerns about the changes. What are your thoughts when it comes to the proposed new sections of 81J, 187 and 191 of the bill?

Ms Reece: I did see that concern and I have looked at the draft bill and the explanatory notes. My understanding is that to some extent there has been a renumbering of the sections which relate to the question of legal professional privilege and that, in fact, the bill does not drastically alter the position as currently exists in the legislation. To that extent, I am not able to comment on the submission of the Queensland Law Society. We have understood the act to create a requirement on individuals who wish to claim legal professional privilege while being questioned in the CCC, under both of its heads of power or its investigative functions, that if they claim legal professional privilege they must provide some information about who it is—the person with whom that privileged relationship exists—but we understand that that has been in force previously. It may be that the Queensland Law Society is making a general policy statement against such provisions, but on our reading of the bill it does not substantially change the position.

Ms BUSH: In your opening statement you acknowledged and leant your support to the provisions of the bill around requesting the CCC seek pre-charge advice from the ODPP. Can you tell us a little bit more about how you have come to that position and the benefits that you see in that broadly for the public interest?

Ms Reece: It is really arising out of what we have seen from the Logan City investigation. That was obviously an in-depth inquiry into the process behind investigation, charge and prosecution. Ultimately, as members of the committee would be aware, the prosecution was withdrawn at a very late stage and, really, those sorts of eventualities are best avoided if possible. If those situations can be avoided by early and targeted legal advice about potential evidentiary issues, potential bars to prosecution or other matters, then that can only be for the best in the interests of justice and in the interests of integrity of those prosecutorial processes and the rights of the people who are prosecuted under those provisions.

Mr KRAUSE: Thank you for your willingness to answer questions and your brief opening statement. Section 49 relates to reports to prosecuting authorities in relation to corruption investigations. I wondered whether you could give us a perspective about whether public reports should be made in relation to other corruption investigations that may not be leading to prosecution.

Ms Reece: I think this might be the issue the High Court considered in the case of Carne.

Mr KRAUSE: In a general sense, yes.

Ms Reece: I understand that there is both a private member's bill which relates perhaps to that aspect of the act and also a government instigated inquiry to look at the question in-depth arising out of the High Court's decision in Carne. The Bar Association awaits with interest the result of that inquiry and the private member's bill. At this stage I think there is a private member's bill. If you are referring to an issue broadly speaking that relates to the Carne case, then we understand that that matter will be before committee—I think there will be a committee hearing on 25 March. We are not in a position to comment on that today. That does not mean we are holding our cards close to our chest. We are just not prepared to answer those questions today.

Mr KRAUSE: I thought I would ask anyway.

Ms Reece: No, that is fine.

Mr KRAUSE: One of the provisions in the bill provides for appointment of a chairperson of the CCC for a period of seven years. Do you have any thoughts in relation to that particular time frame? This would be an opportune time to make a declaration that I have an interest in that recommendation that was made by the PCCC because I helped to draft it. That does not affect my ability to ask this question. I want to know if you have a view about the length of that person as a chairperson. The recommendation was for a period up to seven years. The bill says for seven years. Do you have any comment around that?

Ms Reece: Certainty of appointment is very important in the corruption space in this highly complex and sometimes politically charged environment of crime and corruption commissions across the country. The Bar Association supports measures like this—greater tenure of those in charge or those charged with leading these organisations—to give them the greater independence that a longer period of appointment offers.

Mr KRAUSE: You have no comment on the distinction between up to seven years or a fixed term of seven years?

Ms Reece: Up to seven years does make it sound—you mean that the government—

Mr KRAUSE: It could be a shorter term.

Ms Reece: Yes.

Mr KRAUSE: But still give certainty.

Ms Reece: Certainty and a longer tenure than has been available would be supported, in our view.

Mr ANDREW: Section 81L of the bill gives the chairperson of the CCC the power to issue a warrant, a power that is usually reserved for a judicial officer. It will remove an important check, I believe, within our legal system where a judge may interrogate the reasons a warrant is being sought. Do you consider the removal of this check appropriate?

Ms Reece: I might have to take that on notice. The explanatory notes do note that that is a recasting of section 73. I would like to be given the opportunity to look at that provision in detail and provide a written response, because I am not sure, by the phrasing of the explanatory notes, whether it is simply a recasting of a previous provision or it is a new power. I would have to take that question on notice.

Mr ANDREW: I refer to the Bar Association's position on clause 25, new provisions which remove the right of commission witnesses to refuse to answer a question or provide information on the grounds it may incriminate them. The right to self-incrimination is another important democratic right. What circumstances would you consider justify such an abrogation of individual rights? What might be the adverse consequences to our legal system of such an abrogation—towards the Human Rights Act is what I am trying to go towards.

Ms Reece: Yes, certainly the powers in the Crime and Corruption Act do have the tendency to abrogate the right to self-incrimination in the sense that witnesses can still be required to answer questions in coercive hearings. The important question then is how that evidence that is gained is used, and the legislation has various protections around that. The fact that people are not able to simply not answer questions on the grounds that it may incriminate them is not a new power under the act, but it is a power which the Bar Association is always concerned to see exercised appropriately, with appropriate checks and balances and ongoing public and legislative scrutiny.

Ms BUSH: I come back to my earlier question around the requirement to get pre-charge advice from the ODPP. The QLS I think raised some concerns around proposed section 49C concerning exceptional circumstances. My interpretation of their submission is that they felt that was a little bit undefined and perhaps could do with some further work, although I note that there are safeguards in that section around the CCC still needing to as soon as practicable come back and get that advice. Do you have any comments on that section?

Ms Reece: I think generally when lawyers hear the words 'exceptional circumstances' they just know that that will always be subject to interpretation and that if there is not a standard clearly set out there can always be argument. The corollary of that is that sometimes we cannot anticipate in legislation every eventuality, so the kind of exception that is carved out there may in fact be the best we can do. Unfortunately, I do not think we could point to a better standard. I appreciate the concerns of the society but I think that is probably the challenge inherent in forming such a provision.

Mr Jones: I just add that exceptional circumstances—something we deal with all the time—are by their very nature exceptional. These regular investigations that result in prosecution or charges and then withdrawal of charges on such regular occasions would be, by its very nature, an exceptional circumstance as it does not happen very often that the advice would not be obtained.

Ms BUSH: Understood. Thank you.

Mr BOOTHMAN: Proposed section 81L relates to the chairperson of the CCC potentially getting powers similar to a judicial officer with regard to issuing warrants. Do you have any thoughts on that matter?

Ms Reece: That is the question on notice. We can provide a written response to that, if that is suitable to the committee. We are not in a position to comment on that today. I have taken that on notice.

Mr HUNT: I am more seeking an opinion than anything else. What do you think is most meritorious and will work best? Are there any highlights of this with which you are most pleased?

Ms Reece: The two matters we highlighted in our opening comments are the ones the bar recognises as representing an important development arising out of difficulties associated with some recent prosecutions. As I said in answer to another question, it is really important, where possible, to provide certainty and to improve processes if they have been shown to be lacking or have fallen down in some way.

The balance of public inquiries, such as the PCCC inquiry and then the following commission of inquiry, would indicate that, for example, the provision of advice prior to charge is a good development and it is one that we support. Similarly, we support the extension of privilege to journalists who have taken in-confidence information from whistleblowers. We see that as a reasonable extension of privilege under the act. It is important, in protecting the integrity of not only our system of justice but also our civil society as a whole, that whistleblowers who have important information to give do not then live in fear of repercussions or that the people to whom they confide are afraid of making public those important things that they might have to say. It is an important protection which we recognise the bill seeks to address.

Mr ANDREW: According to the QLS, provisions in clause 7 of the bill could lead to the CCC commencing prosecutions with involvement from an external body. Does the Bar Association have similar concerns with clause 7 in terms of the CCC effectively being able to prosecute matters or be involved in the prosecution of matters rather than referring them?

Ms Reece: If I understand the question correctly, that relates to the process of taking advice from the Office of the Director of Public Prosecutions prior to commencing corruption proceedings?

Mr ANDREW: That is correct—without involvement from an external body.

Ms Reece: Broadly speaking, yes, the association supports that change in the legislation to require that pre-charge process to take place. We understand the concerns of the QLS in terms of that carve-out provision where it may not occur if there are exceptional circumstances, that the CCC may proceed without that advice in separate circumstances. In our view, ultimately it is a matter for the parliament, obviously. The idea that a provision is drafted with a carve-out clause like 'exceptional circumstances' is not, in our view, so controversial as to be worthy of criticism.

CHAIR: In relation to the Evidence Act that establishes a framework to protect the journalist-informant relationship—known as shield laws—I am struggling with trying to reconcile the amendments in this with the Evidence Act. Is there a need for amendments to the Evidence Act or is that one of those Dorothy Dixers you would rather not hear from me?

Ms Reece: Our understanding is that the amendments proposed in relation to journalists really mimic the protection already provided by the Evidence Act but that the Evidence Act in its current form would not extend those protections to journalists appearing before the CCC. I confess that I had not understood the bill to purport to amend the Evidence Act, but we could take that question on notice and look at it more carefully. From a policy point of view, we understood that this bill sought to extend the protection already afforded by the Evidence Act to the regime of the CCC broadly.

Mr KRAUSE: Is there anything else you want to tell the committee about the bill? Do you have any burning issues of concern?

Ms Reece: No, but I should note—I should have noted it initially—that a written submission was not put in by the Bar Association on this bill. Having taken questions on notice, if we reflect in the next few days on anything we wish to bring to the attention of the committee, we will put that in writing as a matter of urgency. We will consult further with our colleagues, particularly on the Criminal Law Committee, and make sure there is a response in writing for the consideration of the committee in due course.

CHAIR: There are two questions on notice. The first was from the member for Mirani—and I will paraphrase: is the capacity for the chairperson to issue a warrant under section 81L appropriate? Does that reflect the question, Steve?

Mr ANDREW: Yes.

CHAIR: The second one was whether there is a need for the Evidence Act to be amended or whether this extension under this legislation covers what already exists. Could we have those answers by 5 pm on Thursday, 7 March to include them in our deliberations? Thank you for your attendance.

BARBOUR, Mr Bruce, Chairperson, Crime and Corruption Commission

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

COLLINGS, Ms Jean, Lawyer, Crime and Corruption Commission

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

Mr Barbour: Thank you, Chair and committee, for the opportunity to appear this morning. On 23 February 2024 we provided a written submission to the committee on the contents of the bill which has been published by the committee. As set out in our submission, we are supportive of the stated purpose of the bill which is to improve the operation and performance of the Crime and Corruption Commission (CCC) by implementing legislative change.

The bill addresses recommendations arising from three previous Parliamentary Crime and Corruption Committee reports relating to the activities of the CCC as well as recommendations of the commission of inquiry relating to the CCC undertaken by the Hon. Tony Fitzgerald and Alan Wilson. The bill reflects the review of chapters 3 and 4 of the Crime and Corruption Act which the Department of Justice and Attorney-General has undertaken in consultation with the CCC to develop uniform provisions with generic application to the commission's chapter 3 and 4 powers and to clarify the specific privileges which are abrogated or unaffected by the provisions of the act. I take this opportunity to acknowledge the considerable work involved in the consultation undertaken between officers of the department and the commission in this process.

We are generally supportive of both the purpose of the bill and the manner in which it achieves its purpose. I draw one particular aspect of the bill to the committee's attention. The bill introduces new tenure provisions for CCC commissioners and senior executive officers. The tenure provisions for CCC commissioners, including the chairperson, reflect the recommendation of the Parliamentary Crime and Corruption Committee in its five-yearly review of the CCC for a single fixed term. We support that change. As to the tenure provisions for senior executive officers, we have detailed our position in relation to the bill provisions for tenure for senior executives in our submission. In summary, we have submitted that the tenure provisions for senior executive officers should be consistent with the tenure provisions for all senior executive officers in the Queensland Public Service.

I note the Attorney-General's comment in the statement of compatibility accompanying the bill that there is a strong public interest in the effective performance of the CCC's various functions under the Crime and Corruption Act including its crime function, corruption function and civil confiscation function. We consider the provisions of the bill will support the effective performance of the CCC's functions under the Crime and Corruption Act.

Finally, I note that the bill makes substantial changes to chapters 3 and 4 of the Crime and Corruption Act which will have a significant impact on the way that commission officers go about our operations. The bill provides for most of the provisions to commence on a date to be fixed by proclamation rather than commencing upon assent. This will allow a period for the CCC to transition to the new provisions in the act. Transitional arrangements will involve amendment to the CCC's operations manual and other policies and procedures to reflect the changes and then education and training for all commission officers. It is an operational imperative for the CCC that the date fixed by proclamation for the commencement of the bill provisions should allow for six to 12 months for this to occur.

I am accompanied today by Mr David Caughlin, the commission's Executive Director, Legal Risk and Compliance. Mr Caughlin has been involved in the detailed negotiations over the bill with staff from the Department of Justice and Attorney-General. We are both very happy to answer any questions that the committee has for us today.

Mr KRAUSE: I want to take you, firstly, to a part of your submission around the perjury provisions in proposed section 197. It is noted that in recommendation 12 of report 106, which is the five-year review, there was a call for an amendment of section 197 to ensure clarity around it. Are you aware whether or not the government has undertaken that review?

Mr Barbour: We certainly have raised this issue repeatedly in our negotiations with the department. The department does not share our view that there is a need for amendment. The department believes that the issue will be appropriately litigated at some point in the future. We do not

disagree that that might be a possibility, but we believe that amendment is first and foremost the most appropriate way to proceed both in the interests of being able to prosecute such a matter and also in the interests of a witness being able to defend themselves effectively.

Mr KRAUSE: The department has essentially said, 'We're just going to leave it as it is at the moment and let the courts decide on a case-by-case basis'?

Mr Barbour: Essentially, yes. We are left with a District Court decision which clearly is offering some binding precedent for anybody who is looking at that. We believe that is inappropriate. We do not believe that that is the interpretation that should be applied. We think it is particularly narrow. It puts at risk such prosecutions and also limits the effectiveness of somebody's defence capabilities.

Mr KRAUSE: Chair, I put on the record for completeness my declaration that I have an interest in these recommendations that are being implemented in the bill through my role with the PCCC, but I do not think it impedes my ability to ask questions here today.

In relation to the CEO tenure, you have made some comments that there should be no limit on the number of possible reappointments for the CEO and senior executive positions. Can you explain for this committee please why you hold that view?

Mr Barbour: If I can put it this way, I am yet to understand a public policy explanation or reason they should be distinguished from any other position. All senior appointments are basically, as in the public sector for senior appointments, made on a five-year contractual basis. That is an appropriate time to consider whether or not somebody is meeting the obligations of the position and to determine whether or not they ought to be reappointed. I see considerable risks for the organisation in the loss of expertise and it seems inconsistent in regard to any other organisation, including integrity agencies, within the state. If I can put it this way, I am yet to be persuaded with a reason it should be introduced and I do not understand why it needs to be there.

Mr KRAUSE: You do support the amendments to the terms and tenure of commissioners including the chairperson?

Mr Barbour: Yes.

Mr KRAUSE: You do not see any issue with it being mandated that your term or any other commissioner's term will be for seven years rather than potentially, say, five years fixed non-renewable or four years or six years?

Mr Barbour: I think there are arguments for and against all of those. I think a seven-year term strikes a balance, certainly when looked at in a comparative way with other jurisdictions and other corruption commissions. I note the point you raised earlier with questions of the Bar Association around the language of the particular provision and whether it can be appointments up to or whether it needs to be a full seven-year term. Once again, there can be arguments to support both of those.

Mr KRAUSE: One of the arguments for limited tenure for commissioners but also officers is that it was a recommendation arising out of the Fitzgerald inquiry and that unlimited tenure can lead to corruption risks and cultural issues within an organisation, and that argument would be put in relation to the CCC. How would you address those issues or respond to those concerns?

Mr Barbour: As I say, they are not replicated in any other agency. You can look at other law enforcement bodies, you can look at other integrity agencies and you can look at the broader public sector. Each potentially has exactly those risks that you have identified present but nobody has moved to introduce changes to the tenure provisions. It is a little difficult to understand why only one organisation, the CCC, ought have these restrictions placed on it and potentially limit the capacity for it to have the best possible staff within senior positions that it can have.

Mr ANDREW: The tenure was an issue. Historical data is always a good thing for the CCC. New section 49C introduces a provision that allows the prosecuting authority to commence a prosecution without the need to seek the advice of the ODPP in exceptional circumstances. The term 'exceptional circumstances' is really not defined in the bill and only one broad example is provided. What is the justification for the provision and why has no definition been given in the bill? Could you give me an example of an exceptional circumstance?

Mr Barbour: Yes, certainly. Let me deal with the issue generally and then maybe I can come to it specifically. Firstly, exceptional circumstances is a concept that is used in a number of pieces of legislation. It is because it is very difficult to obviously prescribe in detail in legislation exactly every single type of circumstance that might arise and, as a result, without some sort of catch-all for exceptional circumstances it is impossible to deal with circumstances that might fit into that category. Clearly I think, as the Bar Association mentioned, exceptional circumstances are just that and they are only going to arise in very exceptional circumstances, particularly in the context of corruption investigations and the legislation as it currently stands.

One specific example I can think of would be in circumstances where in the course of a corruption investigation a particular person of interest who is the subject of investigation was about to leave the country, flee the jurisdiction. It may be absolutely essential to prevent that happening to ensure they remain within the jurisdiction of the state for the purpose of any prosecution. That could be an example where exceptional circumstances would arise. I do not envisage them arising often, but they are by their very nature and language exceptional and there does need to be that within the legislation.

Mr ANDREW: I have a question about seconded police officers and deploying seconded police officers to carry out functions. How many police officers are seconded to the commission at any given time to fulfil their role with the CCC?

CHAIR: Is that an appropriate question?

Mr Barbour: It is not relevant to the bill.

Mr ANDREW: It is not that hard—they are not ashamed of anyone. It talks about the training and—

CHAIR: In relation to the overall functioning, does it—

Mr Barbour: I will not disclose anything of a confidential nature.

CHAIR: No, I did not think you would.

Mr Barbour: If I can answer it this way, seconded police officers perform functions in multiple areas across the organisation: our covert and overt surveillance units, physical surveillance and electronic surveillance units, our witness protection functions—multiple functions are performed across the commission by seconded police officers. The focus, of course, that has come in relation to these amendments and issues relating to changes in the charging procedure relates purely to our corruption investigations. In that area there are recommendations for us to reduce over time the reliance on seconded police officers for our corruption investigations area, and that is something we are actively pursuing in terms of our work. Currently, altogether across the organisation we have approximately 86 seconded police officers, but multiple functions—indeed most of them—would be outside the corruption investigations area.

Mr ANDREW: You touched on, as did the member for Scenic Rim, the appointments over the seven-year tenure for management in these roles—the CEO and upper management. Is there anything that should be put into the bill to protect the community? Should there be things like declarations of interest or anything else that could stop that corruption long term, to give oversight for the long term or to stop the creep of corruption into these areas? Do you think that should be incorporated in the bill?

Mr Barbour: There are a range of existing protections within the legislation which relate to any misconduct or inappropriate conduct on the part of staff within the organisation. I think those amply deal with the situation. I do not think there is a need for further amendments to cover those issues.

Ms BUSH: I want to circle back to the member for Mirani's question on proposed section 49C, on the matter of exceptional circumstances. My reading of that section is that there are a number of safeguards captured in that section around 'as soon as practicable the CCC is to seek advice and to present that written advice to the prosecuting authority or the Attorney-General'. I am after your views on whether you are comfortable with that balance of agility and protections to still meet the public interest test around ensuring that the DPP has involvement in the pre-charge advice.

Mr Barbour: There are inbuilt protections, as you say, in circumstances where those exceptional circumstances come into play. Obviously those steps are taken after the event, but the idea behind them is to ensure that, nonetheless, the decision that has been taken to charge is appropriate. It provides an opportunity for the DPP to provide advice quickly in relation to the nature of that particular charge. As I said earlier, I do not envisage it being used very frequently, if at all. Certainly if it is, there are those protections in place.

Ms BUSH: Out of an abundance of caution, I should acknowledge that up until the last parliamentary sitting I was on the PCCC and interacted with Mr Barbour and others in that capacity, but that will not impact my ability to work on this bill today. You mentioned significant rewrites of chapters 3 and 4 and the need for transitional arrangements to exist from six to 12 months so that the CCC can do some work in getting prepared for that. You have touched on it, but step us through the size of the kind of cultural and policy change that is required in this proposed bill.

Mr Barbour: Firstly, there are a number of provisions contemplated within the bill that would be commencing immediately. It is really only in relation to the procedural matters within chapters 3 and 4 that we need some additional time to be able to do that. In regularising and bringing the provisions into

greater consistency from what they were previously and what they are currently, there will be a lot of work done in terms of rewriting procedural manuals and training people in terms of the new procedures. Those processes take time, obviously.

For example, whether it be the provision of notices, the execution of particular activities or functions, making sure that we have processes in place to appropriately go to the DPP in relation to pre-charging advice, they will all take a little bit of time. We cannot start to engineer those or introduce those ahead of the bill because we do not know whether there will be any changes to it. As soon as the bill goes through in its final form, we will be in a position to action that as quickly as possible, but we just want to make sure that we are in a place where we are not exposed to criticism for not, in fact, being able to adhere to the new processes effectively and that we can make sure all of our staff are properly across them and trained.

Ms BUSH: Do you want to make a comment about the proposals around the CCC making preliminary decisions around the shield protections for journalists? Obviously, we have received responses from submitters who query the impartiality of that and whether that is appropriate. Do you want to make a comment on that?

Mr Barbour: Firstly, I do not see that there is an issue around partiality in terms of making those decisions. I think there are different procedures in place for matters that relate to prehearing processes and those that relate to hearings. I think the importance around those issues is simply to reflect that what is being introduced is ensuring a consistent approach across all forms of privilege that might be claimed or reasonable excuse that might be claimed. Once again, that is desirable to add consistency to the process.

It also allows for greater efficiency. When claims are made, whether they are relating to the privilege asserted by journalists in relation to informants or other claims of privilege, it allows the commission to make a decision at an appropriate level about whether it supports that claim or not. If it supports the claim then the claim does not get pressed and we are able to move forward without any need to go to the Supreme Court. That is clearly a more efficient way of doing business and, as I say, it is consistent with the other provisions. It is currently in the act already for most of those claims so it is not extending the role as such; it is merely introducing it in a more formalised way.

Mr BOOTHMAN: My question relates to a question to the witness from the Bar Association. It is to do with section 81L and the chairperson's power to issue warrants and, therefore, usurp the position of another judicial officer from actually doing that. Why is that necessary?

Mr Barbour: I think it is important to put on the record that the submission made by the Law Society is not accurate in relation to what it is putting forward because this is already an existing power—and has been for quite some time—vested in the chairperson. Current section 73 is the relevant section. This is just a renumbering of the section, so it is not introducing any new powers. Indeed, the briefing note that has been prepared by the Department of Justice and Attorney-General makes it clear that this process is not designed to give any new or additional powers in any way to the CCC where it is not required specifically for the provisions. It is really just about ensuring the provisions are offering more continuity and they are regularised across all of our procedures and functions. I think the premise that has been put forward in the submission by the Law Society is not correct. That is the only way I can really answer that question.

CHAIR: Steve, do you have a question?

Mr ANDREW: No, Chair. I am alright, thank you.

CHAIR: I would like to ask about section 197. Do other jurisdictions have a way of dealing with the issue that was raised in the District Court decision of McDougall?

Mr Barbour: That is a very good question. I cannot speak on behalf of other jurisdictions and, to be honest, I have not researched that particular issue. We have only dealt with it in the context of that decision and that decision effectively narrowing what we understood to be what was available. I can provide an example. If the decision is enforced in terms of a decision by the Director of Public Prosecutions et cetera, what that might mean is that the very limited answer to a question on its face, without looking at any other context, may in fact not be adequate to establish the offence. In our view, it is necessary to look at all of the answers and the context in which all of the answers have been given or documents provided during the course of the hearing to assist in determining whether or not the answer is actually inappropriate. Similarly, if that narrow interpretation applies to a witness, the witness does not have the benefit of being able to utilise any of the other information that they have provided during the course of the hearing as a defence to the argument that they may have perjured themselves.

In our view, it really does not work either way. As to what the impact is in other jurisdictions, I am afraid I cannot answer that question. If you would like a response, we are happy to take that on notice and see what we can find.

CHAIR: No, that will be okay, but thank you for the offer. In relation to the proposed changes in relation to having to consult the DPP prior to either institution issuing charges, do you think this will have some overall benefit to your workings?

Mr Barbour: I think it will and I am supportive of it. If I can answer this in a fairly general way, it was not unusual in the past to have had regular interaction with the DPP in the lead-up to potential charging during the course of an investigation. That would happen in our crime jurisdiction. It would also happen in our corruption jurisdiction. It certainly would not have happened in all cases in our corruption area. I think it is desirable to do that, provided we have an efficient process in place and it is timely and it does not further delay matters.

I am pleased to say that we have already entered into an MOU with the DPP. We entered into that MOU on 1 August. That presents particular time lines within which we produce a brief of evidence for the DPP and they get back to us with advice in relation to charging. From our perspective, that process is a good process and it will certainly add weight to the decisions around whether or not somebody should be charged.

What it will not do, though, is change potential outcomes of matters not proceeding to full hearing. This is something that I think is very important to mention. Once the DPP has seized the matter and is prosecuting a matter, our criminal justice system requires the DPP to take matters to committal hearings. At those hearings a whole lot of additional information becomes available. There is the opportunity to cross-examine witnesses. Witnesses are questioned heavily in relation to the evidence that they have given in their statements and circumstances can change. That is the nature of our system. If things do change during the course of a committal hearing then the DPP will usually make a decision not to proceed, but that does not mean that the charging was unsafe or inappropriate to start with.

It is an important issue, I think, to raise. I think this will alleviate lots of concerns about whether charging should commence or be issued, but it is not going to be a complete panacea or resolution to some of the other issues that flow from our criminal justice system.

Mr KRAUSE: Mr Barbour, are there any other changes to the reporting process and powers for the CCC that the CCC would like to see?

Mr Barbour: I am on record as saying that I think it is important for the issues identified in the Carne decision to be dealt with and to be dealt with as quickly as possible. I note that this committee has before it the private member's bill and that will be coming up for hearing shortly. We have made a submission in relation to that. The government, of course, recently announced a review that is looking at in what circumstances the CCC ought to be able to make public reports or public comments. That review is headed by the former chief justice. It has only just commenced and we anticipate engaging with that review in a very productive way.

Mr KRAUSE: Mr Barbour, on your understanding of the bill before us, is it that the seven-year term fixed as set out in the bill will not apply to you?

Mr Barbour: It is funny: we were just talking about that prior to coming up to give evidence. At the end of the day, my term, as you are well aware as chair of the PCCC, was for three years. There are 16 months to go. I am not exercised in terms of my circumstances at this stage. Ultimately, once the bill goes through then obviously that will apply to me in those circumstances.

Mr KRAUSE: You are not going to resign and seek a seven-year term?

Mr Barbour: I do not anticipate doing that, no.

Mr KRAUSE: I am sorry. I had to ask, Mr Barbour.

Ms BUSH: I will go back to the initial question that the member for Scenic Rim asked about fixed tenure time frames for senior executives. I think in your submission you mentioned that you have processes in place to assist with institutional capture and things like that. Can you speak a little to that? How do you deal with that as an organisation? How do you manage those risks in your senior staff levels?

Mr Barbour: We understand that the provisions would affect eight senior staff at executive director level and above. I take the CEO position out of it because it has a different regime. Those appointments, like all senior appointments within the public sector, are governed by contract now. Those contracts are typically for a period up to five years and they would be renewable at that time.

There are performance development plans and appropriate strategies in place that are worked out with the managers of those people. In addition, we have a regime, as you would be well aware from your role on the PCCC, of ensuring that any issues of concern are raised with appropriate oversight bodies and/or are investigated by the CEO.

It is very difficult for me to see who is going to capture these officers. Having worked in the organisation now for over two years, I can see how the organisation works. We have a lot of review and a lot of reform underway and the capacity for senior officers to move from one area to another I think is critical to the best performance for the organisation, so limiting that and having those staff know that it is limited, which means that they may well look to other organisations where there are no such restrictions, means that I think it is counterproductive for us. I would have no hesitation, if I saw a genuine risk there, in recognising the importance of having some limitations, but I think the contractual arrangements in place, the performance elements that are within the organisation and the other elements do not suggest to me that there is a significant risk there. If there is a significant risk in the CCC in that area, I do not see why it would not be replicated in many other law enforcement and/or integrity agencies.

CHAIR: That brings to a conclusion this part of the hearing. Thank you for your attendance and thank you for your written submission. I understand that there were no questions taken on notice.

BRUNELLO, Mr Dominic, Chair, Criminal Law Committee, Queensland Law Society

COOK, Ms Bridget, Senior Policy Solicitor, Queensland Law Society

FOGERTY, Ms Rebecca, President, Queensland Law Society

CHAIR: I welcome representatives from the Queensland Law Society. Thank you for joining us today. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Ms Fogerty: Thank you for inviting us here today. In opening, I respectfully acknowledge the traditional owners and custodians of this land. The Law Society is the peak professional body for our state's legal practitioners. We are independent and apolitical. At the outset, we record that there has been a very short period of consultation for what were difficult statutory provisions. Our written submission raised concerns with the continued abrogation of individual rights and privileges such as legal professional privilege and the privilege against self-incrimination. To clarify, these reflect our longstanding opposition to the abrogation of these principles. We acknowledge that this bill is an attempt to clarify and redraft powers that are already in existence and does not substantively amend the current statutory principles.

We are generally supportive of the cautious approach taken in respect of proposed section 197. Our main concerns with the bill relate to the circumstances in which the CCC may commence proceedings without getting the prior advice of the director's office and the circumstances in which warrants and search and entry powers may be exercised. I am joined today by Dominic Brunello, who is the chair of our Criminal Law Committee, and Bridget Cook, who is the senior policy solicitor in our legal policy team. Thank you.

Mr BOOTHMAN: Going to one of your concerns, which is 81L—which apparently, according to the previous witnesses, was formerly section 73, I believe—when it comes to the ability of a CCC chairperson to issue warrants, you obviously have some deep-seated concerns about that. Could you elaborate on them and how that could potentially cause issues when it comes to the carrying out of justice—for instance, if you are not seeking a second opinion?

Mr Brunello: The customary legal process behind an authority being provided to an investigative agency to enter, search and seize is that some material be put before an independent functionary that satisfies the functionary that a statutory test for some base level of suspicion is met such as to justify the incursion on the privacy of the place or person to be searched. This is a check and balance. It is a safeguard against the use of a power like that without proper grounds. We concede that this power is pre-existing—it existed before this bill—but it nevertheless creates a risk that the authority will be given without some oversight. Part of the impetus behind this bill is some increased oversight by entities independent of the commission before it acts in a way that can cause harm.

Mr BOOTHMAN: In other words, you are saying that it potentially gives an individual too much power?

Mr Brunello: It gives the chairperson of the commission, as we see it, a broad-ranging discretion to just issue warrants to the commission's employees or the often seconded police officers to go and enter, search and seize from official premises. We recognise that official premises are something different to a private premises and this is in a corruption context only; however, it is still not often onerous. It is unusual for it to be overly onerous to seek a JP to issue a warrant and we wonder why in those circumstances. Again, Ms Fogerty has pointed out that this is a pre-existing power and it is a position that the Law Society has taken prior to now.

Mr BOOTHMAN: Thank you.

Mr ANDREW: In your submission you state that there may be a potential for confusion, I think it is, as to which provisions in the bill are intended to operate in retrospectivity. Can you set out the provisions in the bill that you have identified as potentially having that retrospective effect?

Ms Fogerty: The submission sets out that it is the proposed new part 20. I will take that question on notice and provide that in writing rather than what may be a tedious process of reciting provisions from statute.

Mr ANDREW: That is okay. Maybe you could elaborate on the principle of it—the retrospectivity—with a reference towards how its inclusion in this bill may constitute a breach of maybe the fundamental legislative principle.

Ms Fogerty: Are you asking us to comment on the principle of retrospectivity—

Mr ANDREW: How it may constitute a breach of the fundamental legislative principles.

CHAIR: Steve, that is—

Mr ANDREW: Maybe not. Sorry. It was just a question. Maybe it is not in order.

CHAIR: No, I am not saying it is out of order. It may be a question that you could direct when we get our briefing on the fundamental legislative issues. They are due to come and speak to the committee, so it might be a question you can put to them.

Mr ANDREW: Right. Thank you.

Ms Fogerty: Thank you.

Mr HUNT: What are the difficulties you have with the definition of 'exceptional circumstances'?

Ms Fogerty: That is a good question and it has been an issue that has exercised us at the Queensland Law Society. The point is that we take no issue in principle with the idea that proceedings need to be able to be initiated without being subject first to advice from the Director of Public Prosecutions. There has to be some degree of flexibility to allow for emergent situations, and we accept that. I think our point is more directed in that we query whether there is potential for there to be more guidance as to what really does constitute an exceptional circumstance. It must be, in our view, more than circumstances that would authorise a warrantless arrest as outlined in section 365 of the Police Powers and Responsibilities Act. We are concerned about a situation where even though the act requires some remedial action if proceedings are commenced in the absence of advice from the DPP just that human tendency for post-hoc approval once the decision to institute proceedings has already occurred that is outside of that advice-seeking process which is one of the core reforms contemplated in this legislation. Do you have anything to add?

Mr Brunello: It is unclear to us at the moment whether if the authorised officer at the CCC initiated a proceeding in purportedly exceptional circumstances and that was then found to not meet the test—that is, there were not in fact exceptional circumstances—will have any effect on the validity of the prosecution, so there will not be a remedy for a defendant wronged by an error in that regard. In those circumstances we ask that consideration be given to—I am being repetitious here with what my friend Ms Fogerty has said—including some more guidance as to just how high that test is.

Ms Fogerty: And acknowledging, of course, that there are good reasons for why exceptional circumstances is not the subject of definition by convention in statutes. We acknowledge that, and that is important to bear in mind as well in terms of getting the balance right.

Mr HUNT: What would more guidance look like, in your view?

Ms Fogerty: We would not want a situation, for instance, where perhaps if there was delay—delay in getting the opinion of the DPP—that then meant that was used to justify arresting a person or commencing a process. It is about ensuring it is tethered to immediate situations. As again we indicated, section 365 of the PPRA we think provides a good touchstone for what that might be, and perhaps there is a question that consideration should be given for whether or not, for the purposes of this act, that touchstone should be higher.

Mr HUNT: Thank you.

Mr KRAUSE: Ms Fogerty, there has been a lot of talk about exceptional circumstances, and I note your comments in the submission about the explanatory notes justification being insufficient to justify a departure from the recommendations of the PCCC inquiry. Is it fair to say that some or all of your reservations about the exceptional circumstances clause relate to the role played by seconded police officers within the CCC—some or all of those concerns—and the ambiguity identified in your submission about that role?

Mr Brunello: I think that is right.

Ms Fogerty: I think so. I think that is right, yes.

Mr Brunello: In our experience, it is those officers who make the ultimate decision as to whether to charge. We have previously expressed our concern about the way in which seconded police officers are used and incorporated into the operation of the commission. I believe the answer to your question simply put is yes.

Mr KRAUSE: There was a lot of evidence given around that process during the Logan City Council inquiry in 2021. In your submission, you helpfully point out the process for DPP to charge in Victoria, New South Wales, South Australia and Tasmania. My further question is: would some of your concerns around the exceptional circumstances clause be allayed if we had a situation in Queensland where police officers seconded to the CCC were not laying charges within the CCC?

Ms Fogerty: I think we would prefer that, although I do not think we could go so far as to indicate there should be an unbreakable rule in that regard.

Mr KRAUSE: Okay. Victoria sort of show the way there in that they have a memorandum between IBAC and the DPP which says the DPP will handle all indictable matters and prosecute some summary matters but leaves the door open for [IBAC to lay some charges. We do not have that sort of set-up here in Queensland. Thank you for clarifying that. I think the member for Theodore asked some questions about the issuing of warrants and also the abrogation of privilege. Are you merely expressing your long-held, highly principled concerns, or have you identified new provisions that go further than before?

Ms Fogerty: In relation to the abrogation of self-incrimination and legal professional privilege and any other privileges, I acknowledge that the submission was inelegantly worded and that we were expressing our long-held opposition to the abrogation of those privileges in the context of coercive hearings and investigations.

Mr KRAUSE: So not identifying new ones?

Ms Fogerty: That is correct, thank you.

Mr KRAUSE: Thank you for clarifying. I note at the end of the submission the QLS notes that there have been a lot of inquiries into the CCC in recent years. You state—

… when the requisite information has already been obtained and the issues ventilated, further inquiries on these same issues can lead to unnecessary delays in achieving results.

What brought about that statement? Could you expand on that?

Ms Fogerty: I do not think I am in a position to expand on what brought about that. We note that there is another review commencing and we are concerned that perhaps some of these issues are premature in light of the fact that there is a new, comprehensive inquiry to be undertaken. It can be difficult to be able to participate meaningfully in the process of feedback and policy when there is an inquiry that is yet to be undertaken and further findings are yet to be published.

Mr KRAUSE: Thanks.

Ms BUSH: I think a lot of the questions I had have been covered, and I apologise if I missed something while I was out of the room. You touched on the concerns that you had around LPP and some of the drafting around legal professional privilege. Is there anything else you want to add to that?

Ms Fogerty: There is nothing to add to that.

Ms BUSH: You also touched on the clause 25 amendments and the refusal to answer through self-incrimination. Is there anything additional you feel you need to inform the committee of that has not been touched on by other committee members? We have talked about exceptional circumstances, and I feel like we have canvassed that, as well as the seconding of police officers and the shield laws. They were the questions I had, so I do not have anything to add.

Mr ANDREW: I was going to ask about the legal professional privilege and how it is important and how it should be balanced with the CCC's role in exposing corruption.

Ms Fogerty: Thank you. We love the opportunity to talk about legal professional privilege. We think it is one of the most cardinal principles. For us, any attempt to come between the privilege that exists between a solicitor and their client has the potential to undermine that relationship and broader protections that civilians receive in society. That said, we acknowledge that to a certain extent, when it is in the context of the CCC and coercive hearings, that horse has bolted and the privilege has been abrogated by statute in certain limited circumstances.

Mr ANDREW: While we are speaking of privilege, what sorts of limits and safeguards do you think might be introduced to ensure the bill's changes are not abused, with specific reference maybe to the state's Human Rights Act and such?

Ms Fogerty: The abrogation of legal professional privilege is arguably inconsistent with the state's Human Rights Act. I am not a human rights lawyer, but that is within the power of parliament to legislate on that. Our position is that there should not be abrogation of legal professional privilege and it is a fairly black-and-white issue.

CHAIR: If there are no further questions, we will let these good people get back to their busy lives.

Mr KRAUSE: I do not know if I got this on the record before. I want to ask if there is anything else they would like to add.

Ms Fogerty: There is nothing further we have to say.

CHAIR: Thank you. There was one question taken on notice—that is, which provisions does the Law Society understand will apply retrospectively? Could we please have the response to that by Thursday, 7 March at 5 pm so we can include it in our deliberations?

Ms Fogerty: You will receive it.

CHAIR: Thank you for your attendance and thank you for your written submission. You are always helpful.

PIDGEON, Mr Phil, Private capacity

SCHWARZ, Ms Trevina, Private capacity

SMITH, Mr Laurence, Private capacity

CHAIR: Good morning. Thank you for joining us today. I invite you to make an opening statement of up to five minutes, after which committee members will have some questions for you.

Mr Pidgeon: Some of what we have to say here today may not sit well with some people, but I think we must be allowed to speak the truth as part of this process. I will start out by saying something that we all know: absolute power corrupts absolutely. In my long experience, past behaviours are very accurate predictors of future behaviours, and this has never been more true than in our CCC. Based on the previous shocking conduct that came from the CCC, there is nothing they have done, in my opinion, since the two inquiries that convinces me they have actually changed their ways. If they had, they would not be having to do outcomes with the threat of legislation hanging over their head to compel them to do so; they would do it proactively without the need for legislation.

I note that some wording of this bill proposes to give the CCC even more power by allowing them to bypass some judicial processes that are well accepted. That, in my view, is a very big mistake and it simply does not pass the pub test. We are all sitting here today because the CCC's previous unfettered, unchecked abuse of power resulted in numerous innocent people being the target of malicious witch-hunts. The CCC could not even accord us the respect to remain seated in this room to hear our views today, and that speaks volumes for me.

My family's life has been torn apart and changed forever by the CCC's malfeasance that still has not seen anybody in the CCC brought to account—not a single person. Why not? We have heard the eloquent words of the chair of the CCC here today about how they are making all this progress. Five years after the CCC started their witch-hunt on the Logan councillors, and three years after we were exonerated, seven innocent people and their families are still waiting for closure. We are still waiting for justice. We are still waiting for a phone call from Bruce. We are waiting for the CCC to reach out proactively and set things right. So much for the progress.

The CCC made it very clear in their previous PCCC inquiry that they did not believe the law applied to them. It is important to note that the CCC has never recanted that statement, and that should ring big alarm bells with everyone here as well as with the broader government. I believe that unless stronger mechanisms are put in place the CCC will continue to attempt to find every possible loophole in this bill and other pieces of legislation to avoid oversight and to manipulate a process for their own ends. An example of that is the wording in this bill before you which specifically just talks about corruption investigations and corruption charges. The former Logan councillors were not charged with corruption; they were charged with fraud, which was later dismissed. There is a major flaw, in my view, in some of the wording in this bill that will need more work, because I do not have any confidence that the CCC will amend their ways, particularly if they have their eye on getting a scalp. I would urge the committee to hasten with caution, review the bill wording carefully and please strengthen the bill to not allow any loopholes, or minimise loopholes where possible, so that we do not see an abuse of process as has happened previously.

No-one is above the law or accountability, and we must ensure our premier corruption body, which we do need—we do need a corruption entity here—is accountable. They cannot form the opinion that they do not answer to anybody. As former councillors, the seven of us humbly reach out to you and plead with you to please help get this right so that we do not see this happen to somebody else. Thank you.

Mr Smith: Thank you, Chair, for inviting us to present today. I previously have submitted two submissions and I will now give a bit of a verbal overview. As an honest, law-abiding person, I was devastated when I was charged with the very serious criminal charge of fraud. How could I go from making a reasonable management decision regarding a person's employment and then charged with dishonestly causing a detriment? I was perplexed where in any way, shape or form I was obtaining a benefit. To me, fraud meant carrying out deception to gain something of value, usually money. What benefit did I gain? I was sacked from my job with immediate loss of income, I was unable to contest the 2020 local government elections, I suffered and continue to have significant mental distress which has affected my health and wellbeing and that also of my family, and I had my reputation and good standing within my local and broader community destroyed.

The investigation, or lack thereof, highlighted that even the CCC could act in a biased manner and act on personal beliefs rather than cold, hard facts and actual reality, as they were obliged to. The travesty and miscarriage of justice perpetrated against me, my colleagues and others within the local government arena must never be allowed to happen again. In my opinion, it is necessary to ensure: investigations are unbiased, impartial and professionally pursued; allegations are rigorously investigated, verified or disallowed if they do not provide plausible evidence; and the person who has had the allegations made against them is afforded natural justice as well as the whistleblower/complainant. Hence my suggestion for a devil's advocate, a peer review panel, to act as oversight on all investigations and the appointment of a retired judge as chairman to assess the merits of each case for the handing over to the DPP and QPS prosecutorial team for processing.

There must be penalties for frivolous and vexatious complaints. The CCC should no longer make media statements or announcements. They need to be the silent partner of any investigation and, by using their coercive powers, assist QPS and the DPP for successful prosecutions. Two months short of five years, no-one has been held accountable for what was maliciously done to us by employees of the state of Queensland. Even now the CCC continues to act aggressively towards us through their legal representatives in our ongoing legal journey. The broader community could question why the Police Commissioner has not launched an internal inquiry as to the performance of the investigators attached to the CCC based on the number of cases dismissed at committal or overturned on appeal. In fact, there was 21 out of 23 which failed, which is about an 8.29 per cent success rate.

Our community needs have its faith restored in the CCC and know that it rigorously questions itself, its behaviours, attitudes, ethics and operational protocols and never again gets caught up in a zealous pursuit of belief. Thank you.

Ms Schwarz: I would like to thank the chair, committee and Kathryn for inviting us to be here today also. I would like to refer to my submission to this committee, but also I would like to request that the three submissions that I forwarded to the PCCC be read in conjunction with that, particularly for those who are not PCCC members. I am happy to make those submissions available to this committee if need be. One of them was confidential, which was my personal impact submission, and the other one was from my lawyer which was made confidential for some unknown reasons. I think you will find those submissions very telling and possibly beneficial for making this amendment bill.

Without revisiting all of my colleagues' comments, I do think the comment made by Laurie Smith is quite deserving of consideration—that is, the chairman of the CCC be a retired judge. I believe this could bring some real value to the CCC, its board and its members. The inclusion of two ordinary commissioners to have ability in community affairs public administration and organisational leadership is welcome. I believe that a five-year term on the board is more than appropriate and that they be unable to reapply until a leave of absence of a full term. I would request that the committee ensures a person is unable to be re-employed in this institution under a different job title or, broader than that, ensure they are unable to return as an external contractor until they have permanently left for a minimum period, and there needs to be some sort of parameter around what that 'permanently left' is.

The CCC is surrounded already by legislation, guidelines and procedures and has immense powers not duplicated by any other jurisdiction. It failed miserably to use those in the Logan case. The CCC itself ignored a court order and also stated that the legislation is not a rule book. I believe that the CCC, including its culture, has lost its way, but this has come at immense cost to innocent people's lives, both financially and psychologically. The Logan case may be positioned as the most significant travesty of justice served by the CCC. The Logan councillors were not afforded natural justice, and the CCC's decision was made about bias and partiality and it wilfully ignored facts.

The concern that we have, and I am sure the concern the government has, is that the malicious charging of the Logan councillors is never repeated. For these reasons I most certainly welcome the amendment to the legislation and the requirement of the inclusion of the DPP into CCC's legislation, including that the DPP appropriately review the CCC's investigation to ensure the validity of the accusations; that those accusations are founded and have merit; the sufficiency of the evidence and scrutinise the potential defence and public interest; and that the DPP must support the charging, but also the nature of the charge, however much of that detail is going to be within the MOU.

In Australia, people are innocent until proven guilty, and caution needs to surround the ability of the CCC to publicly report whilst there is an investigation and a matter before the court. Transition for this legislation should sit within three to six months. I do not believe they would need any more than that.

On the day we were charged, the then chair of the CCC made an unusual—let's say exceptional; that word has been thrown around this morning, and rightfully so—media announcement, followed by responding to journalists' questions and using congratulatory language towards those people who made unfounded accusations. Throughout the investigation, both before and after we were charged, we wondered how the *Courier-Mail* often published information, including what could be considered as confidential, either at the same time or before we were advised. Questionably, the CCC has stated—

According to the *Courier-Mail* report, which is the traditional bible of what was going on in the commission at the time ...

That was stated by the CCC. The then chair, Mr Alan MacSporran, better known, as he claimed himself, the 'top dog of the watchdog', spoke at the Institute of Public Affairs and Administration conference and publicly exploited us as 'disgraceful' and 'dishonest'. Some five years on and two years after the delivery of the scathing PCCC report, where was our protection and where is our justice?

Thank you, I am happy to respond to any questions that you may have.

CHAIR: Thank you, Trevina, Phil and Lawrence.

Mr BOOTHMAN: I need to declare and put on the record that I have had personal and professional dealings with the individuals in front of us today during my time as the member for Albert, through their work as local councillors and prior to that. My question goes to section 81L, which was previously section 73, about the chairperson being able to issue warrants and, therefore, they could use the ability of the seconded police officers to conduct investigations and use the exceptional circumstances provision. Going to that question, do you feel that this legislation would make any difference in preventing what happened to you from ever happening again?

Mr Pidgeon: As I stated previously on the inclusion of that particular proposal in the bill, whilst I think well intentioned, we are all human and the CCC have demonstrated that with their bias in the past and allowed human bias to interfere with what should have been proper decision-making. I believe that leaves the door open for abuse of process. I think it would be a mistake to not have a check and balance of some sort in place prior to a chairman or chairperson running off and issuing warrants.

You can use the former Logan councillors' case. You can imagine that happening again with a chairman not having a check and balance in place and going and issuing warrants. The question will come up later: 'Why didn't we have a check and balance in place? How did it get this far?' We must have something in place there. I think, honestly, it is a mistake to give that body more power. As Trevina stated and we all know, they have enormous power and they have existing legislation that gives them that power that they have not previously administered properly.

Ms Schwarz: I think it removes a critical judicial process that ordinarily would have to take place. It actually removes that. When you use the wording 'exceptional circumstances'—I understand that legislation cannot deal with every single possible mechanism; however, I still think 'exceptional' needs to have some sort of parameters around it. Otherwise, legislation is written for a personality. Everything about the Logan case was exceptional, so that could then fall under that category. I believe 'exceptional' needs to have parameters. For example, if somebody is fleeing the country there needs to be something sitting underneath that.

Mr Smith: I would like to add that I do not know if the Commissioner of Police has the authority to issue a warrant. They are probably the highest law officer in the state, so if they do not have it then I do not think the commissioner or chairman of the CCC should have that power. There should be checks and balances, as previous people have said here this morning.

When we talk about 'exceptional', in our issue we had a situation where the detectives who were involved in the case had a meeting and said, 'We need to charge Smithy and a few of his mates before 2 May.' Does that constitute an exceptional circumstance for warrants to be issued for our arrest? The problem with the definition of 'exceptional' is that the ones who are going to issue the warrants are the people who decide what is exceptional, so it is a very open-ended box.

I am sure there are enough judges and justices of the peace around who could look at the evidence being presented and make a determination. That is one of the reasons I said to maybe have a retired judge as the chair, because they have been judges in a wide range of court cases so they will have a lot of acumen to say, 'What you're presenting to me doesn't really cover factual evidence or plausible evidence. Go away and get something.' If a drug dealer is going to leave the country then that is a totally different kettle of fish to seven councillors. It is horses for courses.

Ms BUSH: Thank you, Phil, Trevina and Laurence, for your written submissions and your verbal submissions today. It is a really important voice that we hear. I note a lot of what you have said, and some of that may not be remedied through this bill. Specifically going to the bill that we are looking at today, I am keen to hear your views on how you feel. You mentioned it should go further and be

strengthened. I am inferring from your submissions that you think the current advisory panel should become a peer reviewed panel, that there be the appointment of a retired judge as chair, and that you support the fixed-term contracts. Trevina, you mentioned having breaks before reappointment as a contractor and that you support the ODPP review. Is there anything else that you want to speak to?

Mr Pidgeon: Very briefly, I think the wording in revised section 49, where it compels the CCC to liaise with the DPP, is too narrow in the sense that it only talks about corruption investigations and corruption charges. In our case, we were not charged with corruption. If you were to put me in that position and, say, play a role game: if I am the CCC I am going to come back and go, 'We didn't have to report to you, DPP. We didn't have to liaise with you because the bill specifically mentioned corruption and not fraud.' Can you see, hopefully, the common sense in that? The wording might need to be amended to capture the broader context so that we do not leave any loopholes there. I am not against that legislation. I just think it needs to have the ability to capture it so that nobody can make an excuse to get around it.

Ms BUSH: To that point, the definition of a corruption offence in the CCC Act expands to misconduct as well.

Mr Pidgeon: Does it? Okay.

Ms BUSH: It would capture some aspects of fraud.

Mr Pidgeon: That is what concerned me, as a person reading this. Having been through this experience and seeing—I have to say this—the interpretation of how some people have applied certain criminal codes or acts or fraud charges or whatever, I do not want to see that twisted or happen again in the future.

Ms BUSH: Understood.

Mr Smith: One of the other things that you need to look at is how you measure the effectiveness of the CCC. It cannot be taken on how many people they have charged, because you are just going to have a department going out and charging people if they are going to be measured on the number of charges. Is it the number of prosecutions or is it the number of involvements with cases that led to successful convictions? We need our CCC but we need it to act with the highest levels of integrity and professionalism that you can have. Your challenge and the PCCC's challenge is: how do we measure the effectiveness and robustness of the entity that is the Crime and Corruption Commission? That is the challenge that you will all have to give some serious thought to because, to me, if you cannot measure it then you cannot fix it or alter it or improve it.

Mr Pidgeon: If I might finish on this point: we heard the chair of the CCC, who was sitting here before, talking about the process and how they wanted to make it better. In talking with the DPP, I still do not believe, having heard the chairman this morning, that they fully understand or appreciate what needs to happen and when. Maybe I have misinterpreted what I have heard, but when the CCC is investigating a Phil or a Laurie for whatever it is that somebody has complained about, it appears to me that we need to be very clear about what the process is and when you have to liaise with the DPP and at what point. It is not after you have gone out there publicly in the media and told people that you have this investigation going, because then you have already destroyed their careers and destroyed their lives. With all this sort of stuff, like Trevina said, you are innocent until proven guilty.

In this particular sense, if we use the former Logan councillor situation as an example, I had nothing to hide. I am happy for somebody to investigate me, but do not go out there publicly and tell everyone about it unless there is actual evidence and the DPP has actually said to them, 'Yes, go ahead. We're going to support you. We're going to back you.' With the Logan case, in the PCCC inquiry the director sat up—and I think you were there—and said, I think the words were, 'We would not have charged them. Had the CCC spoken to us, we would have given that advice.' It is all about timing. I think in the wording of your proposed bill it may need to be made clearer as to what the timing is.

I have to say, it is very sad that we have to sit here today to put wording on paper to direct a premier corruption body in this country and tell them what to do. They should know. These are qualified, experienced, expert people. They should know what is right and wrong and they should not need it mapped out for them but, unfortunately, we are here doing that. If we are going to do that then we need to make sure we are very clear as to the timing and when you have to consult with the DPP before you go and destroy somebody's life.

Ms BUSH: Phil, going to your point—and it is a good point—we had the chair here, and obviously they are working through an MOU process now. Is there anything that you want to get on the record today about key critical moments or something captured in that process?

Mr Pidgeon: Absolutely. I did not want to speak over my ex-colleagues here, but I think there needs to be full disclosure. We have seen examples in our process where information has been withheld to suit an outcome. That is not on. That is not acceptable. If you are going to have an MOU between them then the DPP must receive all information and not part of it to suit a narrative. That is very important as part of a fair judicial process.

Mr KRAUSE: Before I ask a question, I declare that I have had professional and personal associations with these former Logan city councillors when they were councillors owing to the boundaries of the electorate that I represent and represented. That does not impact my ability to ask questions here today. Thank you, Phil, Trevina and Laurie for coming in. I have never before heard anyone call you 'Laurence'.

Mr Smith: I was going to put 'Laurie' on my tag but thought I had better put 'Laurence'.

Mr KRAUSE: Thank you for your evidence. I want to ask you only one question, really. Trevina, you mentioned something about malicious charging and how it must not be able to happen again. Phil, you said that you think it is a bit sad that we need to legislate to tell a peak corruption body how to operate. Cultures can improve in organisations and sometimes they can deteriorate as well. This is about putting in place guidelines and guardrails for how the CCC operates. I am getting to a question, Chair. I am channelling Michael Crandon here.

When we spoke to the Queensland Law Society earlier, they had a lot of concern about the term 'exceptional circumstance' for when charges may be laid and how that relates to seconded police officers and their powers. Looking back at the PCCC's inquiry into the Logan City Council matter, at page 115 there is a reference to Detective Sergeant Francis saying something was 'time critical', which was the time-critical nature of charging the seven Logan councillors prior to 2 May, the set date for submissions to the Queensland Industrial Relations Commission. There was conjecture that it was a hurried charge because of that hearing coming up. The question now is: do you have a fear that the exceptional circumstances provision could very well result in a similar situation arising to that situation should the culture of the organisation deteriorate again to the point where they do those things?

Mr Pidgeon: Nobody here today can predict what will happen in five or 10 years time with different personnel there. I think you very much need to put a fence around the 'exceptional circumstances' provision. You probably need to qualify what that means and to what extent that would apply. If it does go to a certain point, I think you need to also articulate a set of rules. You need to do that; otherwise, we could see another abuse of process, and nobody wants to see that.

Mr Smith: I spoke to that a couple of minutes ago, citing that as an example of an exceptional circumstance within the detective's investigations. They felt that they needed to charge us prior to the QIRC oral submissions. Did that constitute an exceptional circumstance? That is why I have suggested that they must have a peer review for that to happen. Detectives are human and they can get caught up in what they are investigating. There is a need to rush and suddenly they have blinkers on. They need a couple of people to say, 'Whoa. What evidence are you going to present to us to justify the action you are asking us to give you approval to now go and do?' If you have someone always pulling back that enthusiasm or acting as a devil's advocate—as much as you have a team investigating a group or a situation, there is another person who is questioning what they are bringing in on behalf of that person who is being investigated. They can say, 'Don't get clouded by all this extraneous stuff that is coming in and the five or six other people who are making comments to the detriment of the people we are investigating. Let's investigate those people as well to find out if there is any untoward ambition in that area.'

CHAIR: I am conscious of time and of the fact that we all have other commitments. Unless someone on the committee has a burning question I will end it here, but I will hand over to Laurie, Trevina and Phil if they want to add anything before I close.

Ms Schwarz: Mr Krause asked if we believe the CCC could do this again under this new amendment bill, if I understood correctly. There is no reason they could not, so it is still open. I think 'exceptional circumstances' needs to be clarified more because, depending on the personality, it can be read as anything.

From reading the amendment bill and hearing the CCC this morning, it still appears that senior officers can be employed for in excess of 10 years. I think that really needs to be led with caution. That still allows for culture issues to disseminate—exactly what has happened here—and it stays there. Even if the head changes, those senior officers underneath obviously keep that culture that is still there, which feeds down through the whole institution. Also, who will be starting to report on these senior officers? We had a similar issue in council. You cannot have somebody who is an inferior person by title doing the probation on a superior person by title. It just does not work. That is why we removed the process from council and we had an external body do that, which we were criticised for.

Mr Pidgeon: Apart from our comments, whether they have validity or not, if you really want to get into the meat of this—from a person who has done this—you want to see how the legislation could have loopholes in it or be twisted. Try to put yourself in the position of a person who wants to do the wrong thing and look at that legislation and ask, 'How could I get around this?' and think like a criminal or a person who does not want to do the right thing. I think that is the best way, at the end of the day, respectfully. If you put yourself in that position, that is when it will start illuminating itself to you a little bit better so you can say, 'Right, we need to close this up or tighten this wording up because I can see now where it could be distorted or twisted.' People are human—we all have biases; we all have failures—and we have a human element involved in the application of this process at the end of the day. Thank you.

Mr Smith: I do not have anything more to add. Thank you very much, Chair.

Ms Schwarz: Thank you to the committee, once again, for allowing us to be here today.

CHAIR: Thank you for your written submission. Thank you for being here today, and thank you for addressing the committee. Have a good afternoon.

That concludes this hearing. Thank you to everyone who has participated today and to all those who helped organise this hearing. Thank you to our wonderful secretariat, thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public hearing closed.

The committee adjourned at 12.05 pm.