

## Crime and Corruption and Other Legislation Amendment Bill 2024

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Committee Secretary  
Community Safety and Legal Affairs Committee  
Parliament House  
George Street, Brisbane QLD 4000

Via email: [CSLAC@parliament.qld.gov.au](mailto:CSLAC@parliament.qld.gov.au)

Dear Committee Secretary

**RE: SUBMISSION ON THE CRIME AND CORRUPTION AND OTHER  
LEGISLATION AMENDMENT BILL 2024**

Thank you for the opportunity to provide a submission on the *Crime and Corruption and Other Legislation Amendment Bill 2024* (the Bill).

The primary intent of the Bill is to improve the operation and performance of the Crime and Corruption Commission (CCC) by implementing legislative change principally in response to recommendations arising from three previous Parliamentary Crime and Corruption Committee (PCCC) reports relating to the activities of the CCC, as well as a recommendation of the Commission of Inquiry relating to the CCC undertaken by Tony Fitzgerald and Alan Wilson.

The CCC is generally supportive of both the purpose of the Bill and the manner in which it achieves its purpose.

The CCC notes 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 CC Act, including its crime function, corruption function and civil confiscation function*".

The provisions of the Bill will support the effective performance of the CCC's functions under the *Crime and Corruption Act 2001* (CC Act), save for the following matters which the CCC submits warrant consideration by the Committee:

**1. Duration of tenure of senior CCC officers and the Chief Executive Officer**

The Bill introduces new provisions in the CC Act which relate to the tenure of Commissioners, senior officers and the Chief Executive Officer (CEO). The CCC notes those amendments are intended to address recommendation 4 of the PCCC's Report No. 106 – 57<sup>th</sup> Parliament, *Review of the Crime and Corruption Commission's activities*

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(Report No. 106) and recommendation 5 of the PCCC's Report No. 108 – 57<sup>th</sup> Parliament, *Inquiry into the CCC's investigation of former councillors of Logan City Council and related matters* (Report No. 108) that consideration be given to amendments to provide for a single non-renewable appointment for the Chairperson, Deputy Chairperson and Ordinary Commissioners of the CCC not exceeding seven years, and that the Department also consider "issues regarding the tenure of senior officers".

The Bill addresses the recommendations made in respect of the Chairperson, Deputy Chairperson and Ordinary Commissioners.

In respect of the issues arising from the tenure provisions of senior officers, the Bill amends section 247 of the CC Act as it applies to all senior executives employed by the CCC whose principal duties relate directly to the performance of the commission's prevention, crime, corruption, research or intelligence functions or the giving of legal advice to the commission. The maximum period of tenure for these officers is extended from 10 to 15 years. There is no change to the statutory requirement that these officers must be engaged by contract of employment for a term not longer than 5 years. The Bill does not extend the maximum tenure duration of 10 years for the CEO .

#### *Senior officers*

The CCC notes the Explanatory Memorandum to the Bill states that the amendments "*represent an appropriate balance between providing for increased flexibility in senior executive appointments to allow for retention of corporate knowledge and a succession pipeline for more senior positions and the need to guard against stakeholder capture and other corruption risks within the CCC as a core integrity agency in Queensland*".

It is the CCC's position that the practical effect of the amendments will in fact impede the effective performance of the CCC's functions for the following reasons:

- There are inherent challenges to the CCC retaining corporate knowledge and ensuring operational continuity in circumstances where the Chairperson of the CCC and its commissioners are appointed for fixed term tenure;
- Senior executive positions are limited by the 5 year contract provisions, which reflects the orthodox approach adopted in the Queensland public service. However senior executive positions at the CCC<sup>1</sup> are also limited by duration of tenure provisions, with the result that there are regular and repeated breaks in the continuity of senior leadership overseeing the CCC's operations;
- When recruiting for these senior executive positions, the disparity of employment conditions between the CCC and the public service creates challenges in attracting eligible candidates. The CCC is a less attractive employer than other Queensland public sector entities and integrity agencies in other jurisdictions where positions do not have the same tenure limitations. The CCC also encounters difficulty retaining senior executives for the full duration of tenure, since candidates will inevitably start to look for other opportunities some time before the expiry of a fixed term contract;

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<sup>1</sup> Other than senior executives whose duties support the commission's functions such as officers whose principal duties relate to information technology, finance or HR functions.

- The tenure provisions do not allow a sufficient ‘pipeline’ to offer senior executives the opportunity to develop broad experience across the CCC’s prevention, crime, corruption, research and intelligence functions which would be desirable for the positions of the Senior Executive Officers (Crime) and (Corruption) and the Chief Executive Officer of the CCC.

The CCC submits that there is no greater risk of institutional capture or corruption risk at the CCC than in the Queensland public service, and no differential approach to the employment of senior executives is necessary or appropriate.

#### *Chief Executive Officer*

The CCC submits that duration of tenure provisions for the position of CEO should be consistent with the tenure provisions for its other senior executive positions. It is noted that the CEO of the Independent Commission Against Corruption New South Wales is appointed for a term not exceeding seven years and is then eligible for reappointment with no limit on the number of possible reappointments.<sup>2</sup> In Victoria, there are no legislative limits placed on the tenure of a CEO of the Independent Broad-based Anti-Corruption Commission. The CEO of the National Anti-Corruption Commission is appointed for a term of no more than five years and there is no limit to the number of possible reappointments.<sup>3</sup>

The CCC acknowledges the importance of mitigating any risk of institutional capture within an anti-corruption agency, however, as with the other jurisdictions mentioned, this is best achieved by engaging senior executives on 5 year employment contracts rather than imposing an arbitrary limit on duration of tenure.

## **2. Amendment to section 197**

The Bill amends section 197 of the CC Act for the purposes of giving effect to recommendation 6 of Report No. 97 – 57<sup>th</sup> Parliament, *Review of the Crime and Corruption Commission* (Report No. 97) for the purposes of consolidation of chapters 3 and 4 of the CC Act. However, the Bill does not address the changes to section 197 which were set out in recommendation 12 of Report No 106. The CCC submits that the Bill should take up the recommendation that section 197 of the CC Act be amended to address an issue arising from *R v McDougall*<sup>4</sup> in respect of the use of CCC hearings material as evidence in proceedings for perjury. This is a matter of some priority for the CCC’s operations.

In *R v McDougall* the Court adopted a narrow interpretation of section 197(3), determining that only the allegedly perjured answer of an individual is admissible in perjury proceedings and not evidence otherwise provided in the relevant hearing (such as the entire testimony of the individual). The CCC considers that such evidence may provide necessary context for the charge of contempt.

As a result of that decision, the CCC considers section 197 unreasonably constrains its ability to ensure the integrity of the evidence it gathers via investigative hearings and may prevent the successful prosecution of perjury proceedings in the future. While departure from the approach applied by the Court may be possible or reasonably justified in the future, there is a reasonable chance this decision,

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<sup>2</sup> *Independent Commission Against Corruption Act 1988 (NSW) s 104(5)*.

<sup>3</sup> *Independent Broad-based Anti-Corruption Commission Act 2011 (Vic) s 33; National Anti-Corruption Commission Act 2022 (Cth) s 254(4)*.

<sup>4</sup> *R v McDougall* [2020] QDCPR 42.

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while not binding, will be applied by any prosecuting entity or authority as guidance in determining what evidence may be admissible in such a prosecution.

In this regard, the CCC submits that amendment to section 197 should be made to clarify that any answer, document, thing or statement produced at a hearing is also admissible in a proceeding about the falsity or misleading nature of another answer, document, thing or statement produced at the same hearing. Such an amendment would address the CCC's concern that if only the alleged lie told by a witness is admissible in perjury proceedings, and other answers that are relevant and give context to the lie are not, then such a narrow interpretation of section 197 fundamentally undermines the proviso upon which a witness is afforded protection by the section. It necessarily follows that a prosecution of the witness for perjury is likely to fail.

The CCC notes that the narrow interpretation of section 197 is also fundamentally unfair to a witness prosecuted for perjury. This is because when evidence is ruled inadmissible for the prosecution it is equally not admissible for the accused. That is, if they wish to do so, the narrow interpretation prevents a witness accused of perjury from relying upon their other answers to support their defence.

While it would be important for the drafters of any amendment to confirm that nothing in the provision is intended to override the court's general discretion to decide admissibility of evidence on the basis it is prejudicial to the accused, the CCC submits that amendment to section 197 according to recommendation 12 of Report No. 106 is appropriate. There does not appear to be a clear policy reason as to why this recommendation has not been addressed in the Bill.

### 3. Other matters

The CCC notes the Bill will amend section 281 of the *Public Sector Act 2020*. As the amendment does not appear to relate to the CCC or its functions and operations, the CCC makes no comment about it.

The Bill does not address recommendation 15 of Report No. 106, to consider amendments required to reconcile the powers under section 255 of the *CC Act* with section 325 of the *Police Powers and Responsibilities Act 2000* in respect of surveillance device warrants. The CCC understands that this may be considered in a future legislative review. The CCC will welcome the opportunity to provide submissions on how these sections may be amended and harmonised.

If you have any queries regarding the CCC's feedback, please do not hesitate to contact my office.

Yours sincerely,



**Bruce Barbour**  
Chairperson

This submission is suitable for publication.