

Crime and Corruption and Other Legislation Amendment Bill 2024

Submission No: 2
Submitted by: Local Government Association of Queensland
Publication: Public
Attachments: See attachment
Submitter Comments:



Every Queensland
community deserves
to be a liveable one

23 February 2024

Mr Peter Russo MP
Chair
Community Safety and Legal Affairs Committee

Sent via email: cslac@parliament.qld.gov.au

Dear Chair,

RE: LGAQ Submission to Crime and Corruption and Other Legislation Amendment Bill 2024

The Local Government Association of Queensland (LGAQ) is a not-for-profit association representing all 77 local governments' across Queensland as the state-wide peak body for our sector.

We thank the Community Safety and Legal Affairs Committee (the Committee) for undertaking its Inquiry in relation to the Crime and Corruption and Other Legislation Amendment Bill 2024 (the Bill), introduced by Hon. Yvette D'Ath, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence on 15 February 2024.

From the outset, the LGAQ acknowledges the specific objectives of the Bill, which implement amendments relating to the State Government's response to recommendations from various reports, namely:

- the Parliamentary Crime and Corruption Committee's (PCCC) Report No. 97, Review of the Crime and Corruption Commission (Report No. 97);
- the PCCC's Report No. 106, Review of the Crime and Corruption Commission's activities (Report No. 106);
- the PCCC's Report No. 108, Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters (Report No. 108) (PCCC Inquiry); and
- the report of the Commission of Inquiry relating to the Crime and Corruption Commission (the CCC COI report).

Reference is also made to the CCC's report, *Culture and corruption risks in local government: Lessons from an investigation into Ipswich City Council (Operation Windage)* (Windage Report).

It would not surprise the Committee that the LGAQ and our members have significant interest in relation to the recommendations made in reports from the PCCC Inquiry and the CCC COI.

Overview

The LGAQ and its member councils support high standards of integrity, transparency and accountability.

Queensland councils have a responsibility to comply with appropriate standards relating to applicable governance arrangements to ensure the system of local government is accountable, democratic, efficient, sustainable and transparent. This includes electoral arrangements, financial accountability and reporting, integrity and ethical standards, and oversight by independent bodies including the Queensland Audit Office, Integrity Commissioner, Ombudsman, the Office of the Independent Assessor and the Crime and Corruption Commission.



The local government sector in Queensland both understands and supports the need for a body such as the CCC to provide oversight and to identify, investigate and stamp out instances of corruption. Indeed, it is pivotal to maintaining confidence in both levels of government in Queensland.

There needs to be a high-level of confidence in Queensland's integrity agencies for those who wish to make a complaint, for those who stand accused of a complaint, and for the general public whose taxes fund these agencies as a vital check and balance on our democracy.

This submission makes specific comment on, and states the LGAQ's support for, clauses 6, 7 and 36 of the Bill. The LGAQ does not have a policy position on, and is accordingly unable to make detailed comment on, the remaining clauses of the Bill. We note the amendments contained in clause 4, which relate to recommendations from Operation Windage.

Background

As the LGAQ noted in our submission to the Commission of Inquiry relating to the Crime and Corruption Commission, we have a unique interest in relation to this issue given the LGAQ's complaint to the Parliamentary Crime and Corruption Committee, which instigated their Inquiry that subsequently recommended the formation of the CCC COI.¹

On 31 January 2022, the LGAQ acknowledged the announcement of the CCC COI, headed by Tony Fitzgerald AC QC, as a critical step in restoring confidence in this important institution. The establishment of the CCC COI was a key recommendation of the PCCC Inquiry.²

The LGAQ strongly endorses recommendation 25 of the CCC COI report. The LGAQ sees this as a key measure to preventing what happened in the failed prosecution of the former Logan councillors – the subject of the PCCC Logan Inquiry.

As the LGAQ noted in our submission to the CCC COI, Queensland needs to have a fearless CCC that is thorough, rigorous and robust. But it must have adequate checks and balances to preserve its own reputation and trust with the public, and to ensure it is not abusing its extensive powers.

The LGAQ also notes the most recent report of the CCC, *Implementation and delivery of COI recommendations, Quarterly report number 5: 8 December 2023*.³

PCCC Inquiry

The Bill, at clause 36, implements recommendation 5 from the PCCC Inquiry, in relation to the tenure of senior officers within the CCC, taking into account the CCC's adoption of the PCCC recommendations for a single, non-renewable appointment for CCC Chairperson, Deputy Chairperson and Ordinary Commissioners.

The LGAQ has long supported this recommendation and welcomes its introduction. Safeguarding issues such as 'group-think' within any organisation is fundamental into maintaining its integrity and balanced decision-making processes.

This was canvassed extensively in the PCCC Inquiry and also the CCC COI report.

¹ https://www.cccinquiry.qld.gov.au/__data/assets/pdf_file/0011/726347/local-government-association-queensland.pdf

² <https://documents.parliament.qld.gov.au/tp/2021/5721T2051.pdf>

³ <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/coi-implementation-quarterly-report-5-dec-2023.PDF>



CCC COI report

As outlined previously, the LGAQ strongly supports the implementation of recommendation 25 of the CCC COI report and is pleased to see this recommendation adopted in clauses 6 and 7 of the Bill. The current practice of the CCC in Queensland is not replicated in NSW.

The NSW method whereby its Office of the Director of Public Prosecutions (“ODPP”) provides advice about whether to charge and what to charge would provide an earlier intervention in the prosecution process that should improve the prosecution process. Given that the CCC is not a prosecuting authority in Queensland, involving the ODPP at an earlier stage in the prosecution process should ensure that matters are only pursued if there is a reasonable prospect of success of criminal conviction.

Report No 57 of the PCCC, dated June 2016, constitutes the outcome of a review of the CCC by the PCCC as at the date of that report⁴. At the time of that report, section 49 provided that if the CCC investigates a corruption matter, it may report on the investigation to the office of the ODPP for the purposes of any prosecution proceedings. At pages 33 and 34 of Report No 57, there is a discussion about the operation of, and recommendation for amendment to, section 49. This recommendation became recommendation 5 of that report, and section 49 was subsequently amended, to remove the option for the CCC to report to the ODPP, prior to the commencement of a criminal prosecution in relation to corrupt conduct. This amendment took effect on 9 November 2018.

It has long been the LGAQ’s submission that section 49(2) needs to be amended to require, prior to the laying of serious criminal charges about corrupt conduct, the CCC to report on its investigation to the ODPP, in which report there must be detailed all relevant information, required by subsection (4) of section 49, known to the CCC that supports: -

- a. The laying of the charges; and
- b. A defence that may be available to any person liable to be charged.

To be clear, it is the LGAQ’s submission that section 49 of the *Crime and Corruption Act 2001* in its current form is not appropriate and sufficient and should be amended, as proposed by the Bill, to prevent what happened to a number of former councillors of Logan City Council, Moreton Bay Regional Council and other councils, from ever occurring again.

The CCC COI Commission of Inquiry also recommended the CCC works with the Director of Public Prosecutions (DPP) to develop a process for conducting post-prosecution reviews (recommendation 24). We are still waiting for this process and recommendation to be finalised.

The LGAQ has previously stipulated that section 49(2) should be amended to require an intended CCC decision to lay criminal charges for a "disqualifying offence" (see section 153(6) of the *Local Government Act 2009*) to be first subject to a report to, and review by, the DPP (or senior independent legal advisor), prior to such charges being laid.

The Bill amends section 49, and inserts sections 49A to 49G (inclusive) of the *Crime and Corruption Act 2001*, to give effect to recommendation 25 of the CCC COI report. Specifically, clause 7 (proposed sections 49A to 49G (inclusive)) provides that when commencing prosecution against a person for a corruption offence arising from a corruption investigation, the prosecuting authority must be in possession of written advice from the ODPP that the person should be prosecuted for that corruption offence.

The LGAQ notes proposed section 49C in relation to exceptional circumstances. The exceptional circumstances provision in relation to the implementation of recommendation 25 of the CCC COI still ensures that there is ODPP oversight, as soon as reasonably practicable. This is strongly welcomed.

⁴ <https://documents.parliament.qld.gov.au/tp/2016/5516T1027.pdf>



The guidance as to where an exceptional circumstance may be necessary, as outlined by the CCC COI, is also welcomed.

The amendments proposed by clauses 6 and 7 of the Bill are the only specific legislative recommendations as outlined in the CCC COI. These amendments are fully supported by the LGAQ.

Windage report

The LGAQ notes clause 4 of the Bill, which amends section 20 of the *Crime and Corruption Act 2001*, giving effect to recommendations from the CCC report entitled, Operation Windage.

It is further noted that this amendment has been identified as a breach of fundamental legislative principles, in that the amendments do not have sufficient regard for the institution of Parliament (due to the prescription of a unit of public administration under subordinate legislation).

As the explanatory notes outline, the *Crime and Corruption Act 2001* provides a mechanism whereby entities may be prescribed as units of public administration, bringing them within the jurisdiction of the CCC. However, there are no council controlled entities (or any other entities) currently prescribed. We would ask the Committee to consider adding a consultation component with the relevant council CEO into the public interest test established in clause 4 of the Bill, to ensure there is adequate understanding of the relevant council control entity under consideration by the Minister as a unit of public administration.

Consultation

The LGAQ was not consulted as part of the drafting of this Bill. However, it is noted that there was significant public consultation and input into the recommendations that led to many of the changes being implemented. The LGAQ had significant input through submissions to both the PCCC Inquiry and also the CCC COI report.

As noted above, the PCCC Inquiry was instigated following a complaint of the LGAQ.⁵

Other related issues

At the 2022 LGAQ Annual Conference, Queensland councils endorsed the following resolution:

The LGAQ calls on the State Government to ensure alignment of Public Interest Disclosure Act 2010 (Qld), Defamation Act 2005 (Qld), Parliament of Queensland Act 2001 (Qld) and Local Government Act 2009 (Qld) to ensure protections for councillors against claims when responding in good faith to requests from integrity agencies to participate in councillor conduct complaints investigations as part of their obligations under the Local Government Act.

Protections against reprisal are sought to ensure councillors are comfortable and willing participants in the process of reporting matters as part of their required participation “on request” from the Office of the Independent Assessor (OIA), Crime and Corruption Commission (CCC) and potentially other agencies in response to dealing with councillor conduct complaints.

There have been numerous reports of councillors feeling a form of decision paralysis in recent years due to the many examples of councils and councillors caught up in investigations with many questions raised about the quality of advice and conduct of various integrity agencies.

⁵ <https://documents.parliament.qld.gov.au/committees/PCCC/2021/InquiryCCCLCC2021/cor-5May2021.pdf>



In this context, there is increasing concern that councillors and staff in local government may be less willing to report matters of concern, for example breaches of the *Local Government Act 2009*, due to the increasing examples of councillors who have unfortunately been on the receiving end of negative outcomes, despite fulfilling their obligations under the *Local Government Act 2009*.

As the explanatory notes outline, recommendation 6 of Report No. 97, which was supported in the Queensland Government response, required a review of Chapters 3 and 4 of the *Crime and Corruption Act 2001*.

The key objectives of the review undertaken further to this recommendation were to:

- rationalise the existing legislative provisions that set out the coercive powers available to the CCC when performing its functions with a view to developing uniform provisions with generic application to CCC functions, where appropriate;
- clarify which privileges are either abrogated or unaffected by the provisions of the *Crime and Corruption Act 2001* with the objective of rationalising claims that may be made in the exercise of the CCC's powers; and
- streamline processes and procedures where possible to minimise confusion, reduce inconsistencies and improve operational effectiveness.

It is understood that the focus of this review was not about strengthening the powers of the CCC but about clarifying the application of the power and privilege provisions where possible and appropriate.

Conclusion

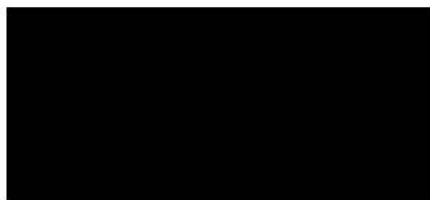
Overall, the LGAQ welcomes changes that implement recommendations of the PCCC Inquiry and CCC COI. It should never be forgotten that people's lives were destroyed and the reputation of our chief corruption watchdog was brought into significant disrepute.

It has been over 18 months since that report was handed down, which included key recommendations urgently needed to overhaul the remit of our State's corruption watchdog. Queenslanders deserve to have a corruption watchdog that is unbridled from its recent failings, not a pile of reports that simply gather dust.

The LGAQ and our members support a strong and independent anti-corruption agency as a vital check and balance on democracy in Queensland. We also must not forget the real human cost of the litany of failed CCC prosecutions. There has been no apology, and no compensation paid to date.

For further information in relation to this submission, please contact Mr Nathan Ruhle, Manager – Intergovernmental Relations on [REDACTED] or [REDACTED]

Yours sincerely,



Alison Smith
CHIEF EXECUTIVE OFFICER