

Crime and Corruption and Other Legislation Amendment Bill 2024

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Community Safety and Legal Affairs Committee
Parliament House
George Street
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SUBMISSION - Crime and Corruption and Other Legislation Amendment Bill 2024

To whom it may concern,

I am one of the 7 former Logan City Councillors that was the subject of impartial and malicious actions undertaken by the Queensland Crime and Corruption Commission that resulted in myself and 7 other innocent people being charged for fraud.

As you will be well aware, those ridiculous charges were thrown out with the DPP stating in the Brisbane Magistrates Court that there was “no evidence to offer”.

Accordingly, I wish to make the following submission to the proposed Crime and Corruption and other Legislation Amendment Bill 2024.

THE PUBLIC SUBMISSION PROCESS

The lack of notification and time to respond for submitters to this proposed Bill is really disappointing.

As an obvious party to various legal and Parliamentary processes that have occurred since 2019, and resulted in various recommendations forming the heart of this proposed Bill, it would be assumed that I would be an obvious stakeholder in this process.

I have not been contacted or notified of this Bill being advertised for submissions.

I found out about this by accident.

I would have thought that as one of the 7 severely impacted Logan Councillors that were the subject of a PCCC inquiry and submitter to the CCC COI, that I would have been afforded the respect to be identified as a stakeholder in this process and accordingly notified.

Further, to allow potential submitters only 5 or so days to make a submission from the initial release of the draft Bill is bizarre. I have seen various government Bills go out for submission over many years and never have I seen such a short timeframe for a public submission period.

I have four questions that need answers.

1. Were there any stakeholders identified as part of this important process?
2. If there were, who were the stakeholders?
3. Why are the former Logan Councillors, whose case triggered this whole CCC review process, not identified as core stakeholders?
4. Why is this timeframe for public submissions so short?

The proposed overarching objective of the Bill is to improve the operation and performance of the Crime and Corruption Commission (CCC) through making a range of legislative amendments, principally to the Crime and Corruption Act 2001 (CC Act).

The majority of the Bill's amendments implement the Government's response to various recommendations in various reports brought to the government, including but not exclusive to:

- 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); and
- the report of the Commission of Inquiry relating to the Crime and Corruption Commission (the CCC COI report).

My submission will focus on the proposed Bill's amendments to implement the governments response to the **PCCC's Report No. 108, Inquiry into the Crime and Corruptions Commission's investigation of former councillors of Logan City Council; and related matter (Report No. 108)**

REPORT No. 108

The PCCC's Report No. 108 made 14 findings and six recommendations.

These findings and subsequent recommendations were made with a view to ensuring what happened to the Logan City Councillors would not occur again.

There were several very damning findings that came out of this inquiry and report.

Just some of these findings are summarised as follows;

Finding 1. *The Crime and Corruption Commission's actions were not in accordance with the Public Interest Disclosure Act 2010 and exceeded the specific limits on the Crime and Corruption Commission's powers under that Act.*

Finding 2. *In assisting Ms Kelsey as a public interest discloser within the Queensland Industrial Relations Commission process the Crime and Corruption Commission acted outside its specific powers in the Crime and Corruption Act 2001.*

Finding 5. *The committee finds that the totality of the steps taken by the Crime and Corruption Commission to assist Ms Kelsey in her Queensland Industrial Relations Commission proceeding, including with respect to her desire for reinstatement, breached its duty to act, at all times, independently and impartially pursuant to section 57 of the Crime and Corruption Act 2001.*

Finding 8. *The committee considers the conduct of Detective Sergeant Andrew Francis (that was rightly criticised by Counsel Assisting) to be an example of and symptomatic of the culture of the Crime and Corruption Commission*

Finding 10. *The committee finds that the discretion to charge the 7 Logan City Councillors and Mayor with fraud was affected by a desire to assist Ms Kelsey.*

Finding 14. *The committee finds that as Chairperson, Mr Alan MacSporran QC, did not ensure that the Crime and Corruption Commission acted, at all times relevant to the matters the subject of the inquiry resolution, independently and impartially. That failing is serious and reflects poorly on the Crime and Corruption Commission.*

The recommendations of that report were as follows.

Recommendation 1 *The committee recommends the Queensland Government review the effectiveness and appropriateness of protections afforded to public interest disclosers under the Public Interest Disclosure Act 2010, including the roles of the Crime and Corruption Commission and other relevant entities.*

Recommendation 2 *The committee recommends that the Queensland Government review the broad scope of both the present section 60 and former sections 60 and 62 of the Crime and Corruption Act 2001 to ensure an appropriate balance is reached between the Crime and Corruption Commission being able to utilise information in pursuance of its functions and the rights of other parties to not be detrimentally impacted by the dissemination of that information, in particular that obtained by use of the Crime and Corruption Commission's extraordinary powers.*

Recommendation 3 *The committee recommends the Queensland Government review section 49 of the Crime and Corruption Act 2001. Furthermore, consideration should be given to a requirement that the Crime and Corruption Commission obtain the recommendation of the Director of Public Prosecutions, or a senior independent legal advisor, before exercising (through seconded police officers) the discretion to charge serious criminal offences (including disqualification offences under the Local Government Act 2009) in the exercise of its corruption function.*

Recommendation 4 *The committee recommends that the Crime and Corruption Commission engage in reform of culture (including seeking external advice) to assist in creating a best practice organisational culture that aligns with the purpose, functions and goals of the Crime and Corruption Commission under the Crime and Corruption Act 2001, and to enhance public confidence in the organisation.*

Recommendation 5 *The committee recommends the Department of Justice and Attorney-General consider issues regarding the tenure of senior officers, and take into account the Crime and Corruption Commission's (CCC) adoption of the committee's position in relation to single, non-renewable appointments for the CCC Chairperson, Deputy Chairperson and Ordinary Commissioners, in conjunction with its consideration of relevant recommendations of the committee's Report No. 106, arising from the five year review, tabled on 30 June 2021.*

Recommendation 6 *The committee recommends the Queensland Government instigate a review of the CCC's structure in regards to its investigatory and charging functions, and the role of seconded police officers at the CCC, as a Commission of Inquiry or similar, to be headed by senior counsel of sufficient standing to consider this structural basis of the CCC that has its roots in the Fitzgerald Inquiry.*

On 31 January 2022, the Queensland Government response to Report No. 108 was tabled in Parliament, supporting all recommendations directed to Government.

In the words of the authors of this proposed Bill, the changes proposed in this Bill are supposed to improve the CCC's culture, role, processes and governing legislation, enhancing public confidence in the CCC's performance and ensuring that where mistakes have been made, they are not repeated in the future.

The Parliamentary Inquiry and the subsequent CCC COI were also supposed to be mechanisms that would lead to reform of the CCC to ensure the failures recognised above would never happen again.

Despite two public inquiries exposing the CCC and its conduct and acknowledgements by the previous and current Premier and other elected MP's of the hurt and suffering caused by the CCC's actions, the CCC still has not admitted to or publicly apologised to the 7 former Logan Councillors and their families for their misconduct, bias and malfeasance.

Nothing appears to have changed.

The culture and mindset of the CCC that has caused all these historical issues still has not been addressed and festers to this day.

If it has changed then why has the Chairperson of the CCC not sought a meeting with me or others to give us the confidence that things are being set right?

Why has the CCC not apologised for their actions?

With that in mind I believe with the silence and unwillingness of the CCC to reach out to victims of their actions, there is little to zero confidence that the CCC will change its internal culture and direction without strong leadership and equally strong legislative changes that will compel the organisation to be transparent and act impartially in their conduct.

Whilst the proposed Bill does propose changes to strengthen the legislation, I do not believe the proposed changes in this Bill go far enough.

That being said, I make this submission in the hope that something somewhere will change to ensure that what happened to the former Logan City Councillors and our families never happens again.

QUALIFICATIONS FOR ORDINARY CHAIRPERSON, DEPUTY CHAIRPERSON, COMMISSIONER'S & CEO

Any appointment of any of the above should be one of a non-political nature with the person having no ties or connections to any political party. This ensure a confidence form the public and a trust.

Whilst it would also be desired by some to appoint a person with such extensive experience and knowledge, there is a fair counter argument to suggest that an appointment of these grounds could also be a detrimental to the role. Allow me to explain.

The person in this role does not need know everything and have a bag full of degrees.

Whilst some knowledge is desired, what is most needed is a person that can surround themselves with the appropriate expertise when required, and who has the ability to test and challenge the internal thinking of the organisation without fear or favour.

Respectfully, In my experience of 25 plus years of working with numerous people in government who have had the extensive experience and university qualifications, I have found a fair percentage of

them that tend to lose the ability to be able to consider matters weighing up a public interest, and could not bring themselves to question or challenge issues that did not tick a box in a manual.

The PCCC in its considerations has previously articulated that they believe that there should be representation from other sectors.

It is glaringly obvious from history of the last 7 years that the CCC desperately needs people that can and are allowed to challenge the groupthink and tunnel vision that has permeated this organisation.

We have already seen the corruption body corrupted by incestuous thought processes in their carriage of the former Logan Councillors matter. After nearly 5 years, not one single person in the CCC has been brought to account for that fiasco and innocent people are still suffering.

TENURE OF CHAIRPERSON, DEPUTY CHAIRPERSON, ORDINARY COMMISSIONERS AND CEO

Currently, under section 231 of the CC Act the maximum term of appointment of the Chairperson, Deputy Chairperson, Ordinary Commissioners and the CEO is 10 years. This period can be made up of multiple terms of up to five years.

I believe that this period of 5 years is far too long for a single term. I submit that the appointments of these positions be limited to 4 year terms which should also align with the term of the State Government.

Such appointments should also be limited to two consecutive 4 year terms maximum.

Any renewal of these appointments if applicable should occur following a performance review of the person in that position by the newly appointed PCCC in the new term of government.

IMPLEMENTING THE CCC COI RECOMMENDATIONS – FITZGERALD 2.0

The Commission of Inquiry relating to the Crime and Corruption Commission (CCC COI) commenced on 7 February 2022. The Honourable Gerald Edward (Tony) Fitzgerald AC KC was appointed as Chairperson and the Honourable Alan Wilson KC as Commissioner. The CCC COI handed its report to Government on 9 August 2022.

Recommendation 25 of the CCC COI report recommended that the CC Act be amended as necessary to give effect to the following changes:

- other than in exceptional circumstances, before a charge is laid by a seconded police officer during, or following, a corruption investigation, the CCC must seek the opinion of the DPP concerning whether a charge may properly be brought having regard to the two-tier test in the Director's Guidelines;
- notwithstanding any other law or any other provision of the CC Act, if the DPP advises that a charge should not be brought, the seconded police officer must not charge contrary to that advice;
- if the DPP advises a charge may properly be brought and a decision is made by the seconded police officer not to charge, the CCC must report to the PCCC and the Parliamentary Commissioner about the decision made; and

- if, because of exceptional circumstances, charges are laid without the DPP having first provided its opinion on whether charges may properly be brought, the CCC must, as soon as reasonably practicable, report to the DPP in relation to the charge laid and obtain the DPP's opinion about the soundness of the decision to charge.

Recommendation 26 of the CCC COI report was that the CCC and the DPP develop a ***Memorandum of Understanding*** outlining the practices and procedures for the referral of matters and the provision of advice, including timeframes. Recommendations 27 and 28 of the CCC COI report require the CCC to report to the Minister, PCCC and the Parliamentary Commissioner regarding the arrangement for the provision of advice by the DPP to the CCC, and about the effectiveness and utility of the Memorandum of Understanding, including timeframes and timeliness of the advice provided by the DPP.

With regards to the above, there may be a flaw in these recommendations and in the proposed Bill wording under consideration.

The recommendations and subsequent Bill terminology in the proposed Bill, Section 49B (1),(2)b, (3), (5)b and 49C (1), 49D (1) and 49E (1)b specifically refer to ***“corruption offences”*** or ***“corruption investigations”***.

The watershed case of the former Logan Councillors that exposed the disgraceful impartial and malicious conduct of the CCC did not involve corruption.

It must be remembered that the Logan Councillors were charged with fraud under Section 408C of the Criminal Code because in the words of the CCC officers, in the “actions of voting to sack a probationary CEO we dishonestly caused a detriment exceeding \$100,000 to that person”.

If the CCC is allowed to continue to prefer charges for fraud then the proposed Bill wording must be changed to recognise other indictable offences in Section 49B,C, D and E and other sections in the Bill to which charges against parties may be brought by the CCC in consultation with the DPP.

By doing so this will legislatively compel the CCC to confer with the DPP on all indictable offence charges other than just for the corruptions offences and corruption investigations. If the Bill wording is not changed to expand or clarify the requirements for the CCC to confer with the DPP then we potentially could see another Logan Councillors case.

If it is the view that the CC Act confines the CCC's powers to corruption investigations and charges only and not to preferring fraud charges for sacking a poorly performing employee, there is obviously no issue.

Further, when considering the MOU and its powers, there must be performance benchmarks and reporting provisions placed onto the DPP to ensure that the DPP has undertaken all possible actions to ensure the CCC has acted according to the CC Act, has acted impartially and acted properly when considering whether to further charges against potentially innocent parties.

In the case of the former Logan Councillors, as evidenced in the PCCC Report No. 108, and in the CCC COI Report, the CCC had demonstrably failed in their duty to act impartially, acted with malice, and failed to carry out basic investigatory actions that would have revealed the evidence they were given or gathered was highly questionable or had no substance or merit at all.

The ability for the DPP to have had the final say on the CCC's trumped up case prior to them preferring charges and destroying lives would have stopped this.

PENALTIES FOR MALFEASANCE and MISCONDUCT

Reading the proposed Bill I see no clauses or provisions for the discipline or any other penalties for officers of the CCC (including Chairperson, Deputy Chairperson, Commissioners and CEO) who act with malfeasance or commit misconduct or miscarriage of their duties.

In the case of the former Logan Councillors the most senior hierarchy of the CCC under questioning admitted in the PCCC hearing that they believed they were above the law and that the law did not apply to them. WOW!

Subsequently, several findings identified various actions by the CCC that should have brought misconduct charges or disciplinary measures. In the nearly five years since the former Logan Councillors were charged, not a single officer in the CCC has been brought to account for the disgraceful conduct in their case against the former Logan Councillors.

Why not??

The question poses itself as to whether there needs to be more work done on this Bill to introduce a new section in this Bill or in the CC Act addressing disciplinary and penalty measures for CCC officers in the event that they fail to fulfill their duties in accordance with the CC Act.

In closing I would humbly request that all efforts are made to ensure that in placing this proposed Bill into law,

Would you please take careful consideration of the amendments and suggestions for refining the proposed Bill, recognising the damage that the CCC has already done to not only the innocent former Councillors of Logan and their families, but to the many other innocent parties who have had to suffer over the past few years..

Yours Faithfully

Phil Pidgeon

Former Logan City Councillor