Crime and Corruption and Other Legislation Amendment Bill 2024

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Office of the President

28 February 2024

Our ref: KB:OD

Committee Secretary
Community Safety and Legal Affairs Committee
Parliament House
George Street
Brisbane QLD 4001

By email: cslac@parliament.qld.gov.au

Dear Committee Secretary

Crime and Corruption and Other Legislation Amendment Bill 2024

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

The Queensland Law Society (**QLS**) is the apolitical peak professional body for the State's 14,000 legal practitioners.

The Society's Occupational Discipline Law Committee has contributed to this submission.

At the outset, we record that there has been insufficient consultation time since the Bill was introduced to Parliament on 15 February 2024. We note a public hearing is to be held next Monday, 4 March 2024, with a public briefing scheduled for Friday, 8 March 2024. We request that the Committee allow a reasonable period for supplementary submissions if necessary.

Proposed sections 81J, 187, 191 – Legal professional privilege

We do not support the proposed new sections 81J, 187, 191. The CC Act should not be amended to restrict a person's ability to claim legal professional privilege (**LPP**). We refer to the arguments set out by the Law Council of Australia in its submission to the inquiry examining the National Anti-Corruption Commission legislation which noted:

> "170. Legal professional privilege is a substantive right of the client and so can only be waived by the client and not their lawyer. When it is asserted by a lawyer, it is the lawyer doing so either in discharge of professional obligations to the client, or, on occasions, on the client's behalf.
>
> ...

> 180. In addition, there can be no denying that corrupt conduct can have an eroding effect on the community's trust in public administration. However, that does not make an abrogation of legal professional privilege appropriate."[1]

In considering these specific provisions, it may be the case that if the CCC (for example) considers there is a waiver, but there is a challenge to that view, the dispute needs to be determined by the courts.

Section 191(3) makes it an offence for a person to fail to disclose the name and address of the person to whom a legally professionally privileged communication is waived. We think that this is overreach, particularly for legal practitioner witnesses, who should not be compelled to name their clients via this process.

Any legislative attempt to undermine the sanctity of legal advice is of critical concern.

Division 3A – new sections 81K – 81N

Proposed section 81L effectively gives the Chairperson of the CCC the powers that a judicial officer has to issue a warrant. This is inappropriate and 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. Further, it is difficult to understand how these proposed powers sit with the other powers given to judicial officers in relation to search warrants under the CCC legislation.

Refusal to answer question

Clause 25 replaces Chapter 4, part 2, divisions 2 to 4 with new provisions. We record our longstanding position that witnesses appearing before the commission should be able to refuse to answer a question or provide information to a Commission on the grounds that such information may incriminate the person.

New Part 20 and retrospective effect

This part sets out how and when the amendments will apply following the passage of the legislation. It includes provisions which will have retrospective effect. There is potential for confusion, in our view, as to which provisions are intended to operate retrospectively, for instance, based on when an investigation commenced or a notice was given.

The provisions breach the fundamental legislative principle that legislation should not impose obligations retrospectively.[2] However, this breach is not dealt with the in the EN. This omission should be remedied.

Pre-charge advice from the Director of Public Prosecutions

QLS acknowledges the intent of the provisions contained in clause 7 of the Bill, namely to address the need to ensure decisions about commencing prosecutions are not made by the CCC without the involvement from an external body. QLS contends that new subdivision does not address our previously submitted concerns with the CCC effectively prosecuting matters, or

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[1] Law Council of Australia submission on the National Anti-Corruption Commission Bills 2022 to the Joint Select Committee on National Anti-Corruption Commission 14 October 2022, accessed via: https://lawcouncil.au/publicassets/7d0e586a-6e4e-ed11-9475-005056be13b5/2022%2010%2014%20-%20S%20-%20NACC%20Inquiry%20-%20final%20PDF.pdf

[2] Refer to section 4 of the *Legislative Standards Act 1992* (Qld)

being involved in the prosecution of matters, where these matters should be referred, and left with, a prosecuting authority to determine the next steps.

The CC Act, when read as a whole, clearly outlines that it investigates matters and, if it considers there should be criminal charges following an investigation, refers the matter to a prosecuting authority. We observe this is explicitly provided for in new sections 49B and 49C of the Bill.

While there is a specific provision in section 50 of the CC Act outlining the limited circumstances when the CCC can prosecute a matter, section 49 necessitates that a prosecution following a corruption investigation should be undertaken by a prosecuting authority and not by the CCC itself.[3]

Furthermore, new section 49C introduces a provision that allows the prosecuting authority to commence a prosecution, without the need to seek the advice of the DPP in "exceptional circumstances". We cannot identify any justification for this provision from the inquiry from 2021 and, our view, the EN are insufficient to justify a departure from the recommendations of the inquiry. The EN refer to the Commission of Inquiry report noting, "the CCC COI suggests that this may be in emergent situations where an arrest is essential". This is not, without more criteria being satisfied, an exceptional circumstance. Arrest is a power to be exercised with discretion.

Turning to the drafting of the provision, the term 'exceptional circumstances' is undefined and only one broad example is provided. Our strong view is that this is problematic, particularly as the circumstances of a corruption offence are inherently considered exceptional. QLS contends that the facts and circumstances that must be established in order to satisfy 'exceptional circumstances' should be clearly set out in the drafting of new section 49C. These factors should not be left to the Memorandum of Understanding to be developed between the DPP and CCC and should be in the primary legislation.

Our members also recommend the expansion of new section 49D(1)(a) to include particular details of the name of the prosecutor who prepared the advice referred to in 49D(1)(a)(i) and a description (e.g. the title and date of document) of the material referred to in 49B(2)(a) and (b). The inclusion of this requirement would curtail practitioners' reliance on the filing of subpoenas and result in case management efficiencies.

Seconded police officers

QLS has previously expressed concern about the CCC deploying seconded police officers to carry out its functions. We are particularly concerned now by the new definition of "prosecuting authority" in section 49(5) which explicitly includes a police officer seconded to the commission.

We **enclose** our submission to the Commission of Inquiry relating to the Crime and Corruption Commission dated 1 April 2022, which outlines why these amendments are problematic.

Journalist shield laws

QLS acknowledges that many of our previous recommendations put forward on this issue are reflected in the Bill. Accordingly, we acknowledge and support the intention of the amendments relating to 'journalist privilege' contemplated in clause 32 of the Bill.

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[3] However, we refer to our comments below about the inclusion of seconded police officers in the definition of prosecuting authority, which we say is inappropriate.

Independent review into CCC reporting powers

We refer to the Joint Statement of the Premier and Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence last week announcing an independent review into Crime and Corruption Commission (CCC) reporting powers.

While this Bill does not explicitly deal with the issues arising from the High Court's decision in *Carne v Crime and Corruption Commission* [2022] QCA 141, we have not yet been provided with the Review's proposed terms of reference and we note that the Bill does deal with amendments concerning material that should be provided to a prosecuting authority.

Consideration should be given to whether passage of this legislation is premature in light of this review.

Finally, we note there have been myriad inquiries into the CCC in recent years. While inquiries are useful and necessary to identify issues of concern and to propose reform, 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.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [redacted] or by phone on (07) [redacted].

Yours faithfully

[redacted]

Rebecca Fogerty
President

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1 April 2022

Our ref: LP:MC

The Honourable Tony Fitzgerald AC QC
Chairperson and Commissioner
Commission of Inquiry relating to the Crime and Corruption Commission
GPO Box 149
Brisbane QLD 4001
By email: [redacted]

Dear Chairperson

Thank you for inviting the Queensland Law Society (**QLS**) to make a submission to the Commission of Inquiry relating to the Crime and Corruption Commission.

Under its Terms of Reference, the Commission of Inquiry is required to inquire into and report on the adequacy and appropriateness of (among others):

- the structure of the Crime and Corruption Commission (**CCC** or **Commission**) in relation to the use of seconded police officers;
- legislation, procedures, practices and processes relating to the charging and prosecution of criminal offences for serious crime and corruption in the context of Crime and Corruption Commission investigations; and
- section 49 (Reports about complaints dealt with by the commission) of the *Crime and Corruption Act 2001* (**CC Act**).

QLS observes, at the outset, that the starting point for the current Commission of Inquiry must be a recognition that, in the more than 30 years since the original Fitzgerald Inquiry Report, there has been such a radical transformation of the functions and structure of the CCC as to render the current organisation unrecognisable from that which was originally envisaged.

Charging, prosecution and section 49 of the CC Act

We repeat our previous submissions to the Parliamentary Crime and Corruption Committee's (**PCCC**) Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters (**Logan City Council Inquiry**). We hold concerns about the use of prosecutorial discretion by the CCC when laying charges in corruption matters. Our members are also aware of instances where the Commission has effectively prosecuted matters "in-house" and/or attempted to maintain control over the prosecution of matter, when this is the role of an external prosecuting authority.

Some of these concerns have been raised on more than one occasion by the PCCC. For example, in the 2021 "Review of the Crime and Corruption Commission's activities" (**2021 Review**), the report noted:

> **Recommendation 25**
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> The committee recommends that further consideration of the Crime and Corruption Commission's prosecutorial practices and interaction with the Director of Public Prosecutions, be reported on as part of the committee's Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters.[1]

The PCCC's final report from the Logan City Council Inquiry also recommended:

> **Recommendation 3**
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> 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.
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> **Recommendation 6**
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> 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.

Both of these recommendations have now formed part of the Terms of Reference for this Inquiry.

QLS considers the CC Act and CCC practices require reform to ensure decisions about commencing prosecutions are not made by the CCC without involvement from an external body, such as the Director of Public Prosecutions (**DPP**). These processes need to be fair, transparent and independent.

The 2021 Review report provides a useful summary of the current statutory provisions in the CC Act:

> **6.9.1 Statutory provisions**
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> Section 35 of the CC Act provides for how the CCC may perform its corruption functions. It enables the CCC, when conducting or monitoring investigations, to gather evidence for the prosecution of persons for offences.
>
> Section 49 of the CC Act provides that, if the CCC investigates or assumes responsibility for the investigation of a complaint about corruption and decides that prosecution proceedings or disciplinary action should be considered, the CCC can report on the investigation to a prosecuting authority (such as the QPS), for the purposes of any prosecution proceedings the authority considers warranted. Section 49(5) of the CC Act however, explicitly states that a prosecuting authority for that section does not include the Director of Public Prosecutions (DPP).
>
> The CCC has the discretion, at section 50 of the CC Act, to prosecute corrupt conduct of an officer of a UPA, where there is evidence to support the start of disciplinary proceedings, at

[1] Report No. 106, 57th Parliament Parliamentary Crime and Corruption Committee June 2021

> QCAT. However, the CC Act does not provide the CCC with any prosecutorial discretion in relation to potential criminal offences. The decision as to whether to prosecute an individual for a criminal offence sits with the QPS or DPP for more serious offences.

We turn first to section 35. Part 3 of the CC Act deals with corruption and Division 1 (which contains section 35) outlines the Commission's corruption functions. These provisions do not explicitly refer to the CCC bringing charges and/or prosecuting matters following an investigation, but do refer to investigations and allow the Commission to "deal with (matters) in an appropriate way". Interestingly, section 34(d) requires the Commission to apply the principle of 'public interest', including any likely increase in public confidence in having the corruption dealt with by the commission directly. In our view, not referring a matter out to an external prosecuting authority can serve to undermine public confidence as there is no independent review of the evidence which can cause or contribute to failed prosecutions.

The Explanatory Notes to the Crime and Misconduct Bill 2001 do not elaborate further on the intent of these provisions.

Section 49 is included in Division 5 of Part 3 of the CC Act and outlines the actions the CCC is to take following investigation. Section 49 applies when the Commission decides that prosecution proceedings or disciplinary action should be considered. Depending on the matter, subsection (2) allows the CCC to report to various bodies. However, after amendments made to this provision in 2018, a prosecuting authority does not include the DPP.

We see this amendment as contributing to the current issues being examined by the Inquiry. We note the following from the 2021 Review report about this amendment:

> The Crime and Corruption and Other Legislation Amendment Act 2018 removed the power of the CCC to refer corruption investigation briefs to the ODPP for the purposes of considering prosecution proceedings.
>
> The explanatory notes for the Crime and Corruption and Other Legislation Amendment Bill 2018 stated the amendment would 'not affect the ability for evidence gathered by the Commission during the course of its corruption investigation to be provided to the QPS and consequentially the ODPP as a part of the usual prosecutorial process'.

In our view, the removal of this direct referral power has led to unintended consequences, even though we acknowledge the issue it was designed to address. Given the nature of these matters, including the CCC's broad powers and the public interest involved, QLS considers that review by an external body is necessary.

This sentiment has been expressed by the former Chairperson of the CCC, Mr Alan MacSporran, who told a Western Australian inquiry that he considers separating the power to investigate and the power to prosecute "is important in maintaining public confidence in the Qld CCC and the prosecuting authorities".[2]

The following excerpt of the transcript from a public meeting before the PCCC on 7 February 2020, however, outlines how matters should have been dealt with following an investigation:

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[2] Joint Standing Committee on the Corruption and Crime Commission, Parliament of Western Australia, "The ability of the Corruption and Crime Commission to charge and prosecute", Report No. 33, page 57 accessed via: prosecute https://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3914897acf75c8953a7a8d5b4825806e0032aa27/$file/4897.pdf

Mr CRANDON: Reflecting on your comments earlier about the discretion being in the Director of Public Prosecutions, the CCC has discretion in relation to prosecution?
Mr MacSporran: Not really. We do not prosecute. It is just a quirk of fate that we have police officers from the QPS seconded to us. When they are seconded to us, they retain their normal police powers, which include powers of arrest and charge and so forth. What we do, just for convenience, is once we decide, through our chain of command, including up to me, that there is sufficient evidence to charge someone, we then give that material to an independent police officer at the commission and say, 'Would you mind looking at this and exercising your discretion as to whether you think it is one you would be happy to charge or not?' That is how the charge is laid if we lay it. When I say 'we', it is really the police officer. It is then handed over to the DPP.
Mr CRANDON: Would you always hand it over to the DPP?
Mr MacSporran: Yes, we never prosecute, yes.
Mr CRANDON: You have never prosecuted?
Mr MacSporran: We have no power to.
CHAIR: Do you not hold a prosecutorial authority? I think you have said in this committee before, Mr MacSporran, that you hold a prosecutorial authority.
Mr MacSporran: I used to. I used to have the commission to prosecute years and years ago, but that is just for other purposes.
CHAIR: I am sorry. I understood you to have a prosecutorial authority because it came up in relation to the Premier matter in relation to the review of the guidelines of the Office of the Director of Public Prosecutions. You do not hold it yourself, so you always refer to the DPP in that respect?
Mr MacSporran: Yes, we never, ever prosecute ourselves, no.
CHAIR: Oh, terrific. I misunderstood that previously then. Thank you.
Mr MacSporran: If it is a simple offence, the police prosecutor goes to the QPS and Police Prosecutions do it. If it is an indictable offence, it goes to the DPP. The DPP then, under its own guidelines, has the ability to not present an indictment or, if one has been presented by them or a previous DPP, to discontinue it with nolle prosequi.
CHAIR: So it is discretionary under the hands of the DPP?
Mr MacSporran: Yes.
CHAIR: You are subject to the vagaries of the DPP and their office in that sense?
Mr MacSporran: Yes, absolutely.
CHAIR: Yes.
Mr MacSporran: In the old days we used to always go to the DPP before we gave it to a police officer to see if they were comfortable with it. We still do it occasionally for more controversial cases. That is just to save the DPP the embarrassment of having to say, 'Well, we don't agree and we don't think this has got legs,' and so forth. Most often the police officer lays the charge and then the brief goes to the DPP. The DPP then has the ultimate say as to whether or not it is a case they feel comfortable prosecuting. If they are not, they don't. That is the first safeguard.
The second one would be a mandated statutory requirement that a charge cannot be laid at all until the DPP consents. There are some offences in the code that have that. A private prosecution cannot start without consent. There are some others. That is a safeguard. Whilst we thought that was too big a step to take—and we said that in our submissions—I can understand from a political point of view how you might want another layer of comfort if this became a criminal offence, or these became criminal offences. That is one way you can achieve it, by having the need for the director's actual consent before a charge could ever be laid.
Mr CRANDON: Following on from that, are you acting therefore as an arbitrator as to whether or not, if that is the right word, to pass it on? If you do not pass it on to the DPP, it goes nowhere?
Mr MacSporran: It goes nowhere.
Mr CRANDON: You are making the call as to whether or not to prosecute?

> **Mr MacSporran:** Yes.
> **Mr CRANDON:** At your level, anyway.
> **Mr MacSporran:** We are making the call as to whether we should commence the proceedings, whether we think there is sufficient evidence. We have a body of senior lawyers, including myself, in the organisation that have a clear interest in that. We make the determination or judgment to give it to a police officer who then exercises their police discretion as to whether or not to charge. If they charge, it then goes to either the police prosecution corps or the DPP who then have the final say.
> **Mr CRANDON:** If you choose not to pass it on, is there any avenue for someone else to take it up?
> **Mr MacSporran:** There is nothing stopping anyone from making a complaint to the QPS, or even to go directly to the DPP, but they would say, 'Where is the evidence?'

It appears from these statements the former CCC Chairperson considered referring a matter to the DPP before a charge is laid to be an effective safeguard. As we discuss below, the CCC's substitute for this, and the second potential safeguard mentioned, is a seconded police officer reviewing the matter and lay a charge.

While Mr MacSporran advised the CCC does not prosecute matters, his evidence suggests there is not a complete separation between investigations and prosecutions (decisions to charge and prosecute).

These statements, taken together with the manner in which a number of matters have been handled in recent times, suggest there is some ambiguity between what the Commission was established to do, what the legislation permits it to do and what in fact happens in practice. We consider there is a need to very clearly delineate the CCC's scope of authority in relation to decisions to charge.

Reform options

Consideration should be given to legislative and/or policy reform designed to implement a process of independent, external review of evidence assembled in the course of CCC investigations, culminating in an independent decision to prosecute.

Some of our members suggest this role could be given to the Commissioner of Police who then, depending on the nature of the matter, can refer to an appropriate section of QPS to review and lay charges. For example, if the matter concerned fraud, a referral could be made to the QPS's fraud unit. The Commissioner could also make a referral to an external person, such as a member of the private bar if this was considered appropriate in the circumstances Section 49 of the CC Act should be specifically amended to provide for this referral.

Another option is to refer the matter to a senior prosecutor in the employ of the DPP or a senior member of the legal profession.

Our members have differing views on who the most appropriate body is to undertake this role. There should further consideration and consultation on any proposed reforms with relevant stakeholders. Further, all reform options will require the direction of appropriate resources to enable these independent assessments.

Whatever external referral framework is decided, the relevant test should be that contained within the *ODPP Guidelines*; namely, whether the evidence is sufficient to disclose a reasonable prospect of conviction before a reasonable and properly instructed jury.

Corruption bodies around the country, generally, are able to refer matters arising from investigations to external prosecuting agencies. The Victorian Independent Broad-based Anti-corruption Commission (**Victorian IBAC**) does have a statutory power to prosecute, but has a protocol with the Victorian Office of Public Prosecutions (**Victorian OPP**) that provides for the Victorian OPP to handle all indictable matters and also prosecute some summary matters flowing from Victorian IBAC investigations.[3] In a submission to a Western Australian inquiry on this issue, Mr Stephen O'Bryan QC, Commissioner, Independent Broad-based Anticorruption Commission advised that:

> When IBAC seeks to charge a person with an indictable … offence, a hand-up brief is prepared and delivered to the OPP. Advice is then provided as to the appropriateness of the charges and sufficiency of evidence. In the event the OPP advises that IBAC should proceed, IBAC will draft and file the charges and arrange for the matter to be listed at the appropriate venue.[4]

We also note the NSW Independent Commission Against Corruption (**NSW ICAC**) has the power to lay charges in some circumstances, but can only do so with the written approval of the Director of Public Prosecutions. The NSW Director of Public Prosecutions conducts all prosecutions commenced by the NSW ICAC, whether summary or indictable.[5]

The South Australian Independent Commission Against Corruption is not able to prosecute offences. The body has a protocol with its DPP which provides that once an offence is identified, the DPP will decide whether a prosecution should be launched.[6]

The Tasmanian Integrity Commission has no power to prosecute and instead refers matters for prosecution to the Commissioner of Police, the DPP or other agencies as appropriate.[7]

Seconded police officers

QLS holds significant concerns about the involvement of a seconded police officer in the investigation and charging of persons in respect of corrupt conduct. We call for reform to this practice so that seconded police officers are only called upon in corruption matters as a last resort and subject to strict guidelines as to their roles and responsibilities. For example, a police officer seconded to the CCC should not be tasked with making a decision about whether criminal charges should be laid.

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[3] Section 190 of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic)
[4] Submission No. 8 from Mr Stephen O'Bryan QC, Commissioner, Independent Broad-based Anticorruption Commission, 6 September 2016, p6, to the Joint Standing Committee on the Corruption and Crime Commission: The ability of the Corruption and Crime Commission to charge and prosecute accessed via https://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3914897acf75c8953a7a8d5b4825806e0032aa27/$file/4897.pdf
[5] See section 9 of the Director of Public Prosecutions Act 1986 (NSW) and ibid, pages 29-30.
[6] Submission No. 9 from Hon Bruce Lander QC, Commissioner, Independent Commission Against Corruption, 31 August 2016, p1 and ibid, page 37-39.
[7] Ibid, page 40.

While the Fitzgerald Inquiry Report stated that, "(w)hatever the structure and powers of an ICAC, it has to use police" and listed several, albeit high-level, factors about how this should work[8], the reality is that seconded police officers' roles at the CCC are not clear as these officers retain their powers and duties as police officers (section 255(5) of the CC Act), but take direction from the CCC chief executive (section 255(3)).

The former CCC Chairperson's evidence extracted above also gives rise to confusion as to a seconded officer's role, including referring to them as "independent". He suggests, on the one hand, the CCC makes a decision to charge and is simply seeking a seconded police officer's opinion because they happen to be there, but on the other hand, suggests the decision to charge does incorporate this officer's assessment of the matter and is a substitute for referring the matter to the DPP. In our view, these practices creates unnecessary confusion as to the protocols of the State's integrity body, and can lead to conflicts and a lack of transparency and independence about how a matter is progressed following investigation.

We refer to the Logan City Council Inquiry and report where it was suggested by submitters and Counsel Assisting that where a seconded police officer is tasked with considering whether charges are to be laid, it is the organisation (the CCC) that is essentially making a decision and that a "pack or "group think" mentality develops to which the seconded officer becomes subject.

The CC Act provides limited guidance on the role of a seconded officer; section 255 simply permits the secondment of officers to the CCC. While the legislation requires that, for police officers, approval of the secondment must be given by the Minister and the Minister administering the *Police Service Administration Act 1990* (section 255(2)(b)), the section does not contemplate whether any conditions can be considered for a secondment.

The CCC's submission to the Logan City Council Inquiry set out what its operation manual provides as to how a seconded police officer is to charge:[9]

> **Seconded Police Officer**
>
> The seconded police officer selected to decide if charges should be issued will have the appropriate rank and experience required to fulfil the function. In deciding whether to lay charges, the seconded police officer should apply the same two tiered test that the DPP applies in determining whether to commence a criminal prosecution, namely:
>
> 1. is there sufficient evidence?, and
>
> 2. does the public interest require a prosecution?

Despite this requirement to apply the same test as the DPP, the seconded officer is not operating within the DPP structure and, if seconded from the QPS, may not have ever worked within the DPP and therefore had access to their training, resources and internal processes. They are, however, positioned within the structure of the CCC during their secondment (which on average is 2.56 years) and take direction from, at least, the Chairperson and Deputy Chairperson.

The CCC needs to operate with the utmost integrity and independence to be effective. Having a police officer seconded to a body which investigates police officers is dubious enough, but

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[8] Section 9.5.3. see page 315, 10.2.3(b) see page 325, 10.3 page 335: https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/The-Fitzgerald-Inquiry-Report-1989.pdf

[9] https://documents.parliament.qld.gov.au/com/PCCC-8AD2/ICCCLCC-5502/submissions/00000025.pdf from para 216

when the officer carries out a function which should be done externally, this is concerning and casts a shadow over any charges and prosecutions, leading to a loss of public confidence.

Other jurisdictions

This issue should be examined in the context of how other bodies deal with charging and prosecuting corruption matters, as discussed above. Most bodies across Australia allow for seconded police officers to carry out roles in equivalent integrity commissions, however, their roles depend on each body's powers and functions.

Options for reform

As highlighted earlier, QLS considers that a police officer seconded to the CCC should not be tasked with making a decision about whether criminal charges should be laid. Consideration should also be given to amending section 49 to specifically exclude a seconded police officer as constituting a 'referral out' under that provision.

Counsel Assisting the Logan City Council Inquiry proposed a limit on the duration and repetition of secondments by police officers to the CCC. However, the CCC submitted that the periods of secondments are already comparatively short. Short secondment times were contemplated in the Fitzgerald Inquiry report and this is something that should be reviewed. While QLS considers limited secondment periods and repetition could assist with issues of independence, we do not believe this measure is sufficient. The PCCC, in response to these submissions, re-stated its call for cultural change in the CCC.

We accept there is a need for appropriately trained officers at the CCC to conduct investigations and that these people are typically sourced from the QPS. However, could police officers be trained, and even have experience working in QPS, before being permanently recruited to the CCC, rather than seconded, to ensure there is a clear and definite separation?

If there is a resourcing issue at the Commission, then this should be identified as soon as possible and brought to the attention of the Government/the PCCC so that the issue can be rectified by the provision of further resources and a recruitment process. There should be a commitment by the Government to ensure, so far as possible, that a vacancy is promptly filled.

Secondments from QPS should generally be a last resort. Some alternatives could include an arrangement whereby seconded staff are recruited from interstate bodies to, as far as possible, ensure a more arm's length relationship and reduce a potential conflict of interest.

Other reforms

Term of reference 3.b.iv refers to the adequacy and appropriateness of legislation, procedures, practices and processes relating to the charging and prosecution of criminal offences for serious crime and corruption in the context of CCC investigations, including having regard to the consequences arising from the laying of criminal charges as a result of a CCC investigation.

We recommend consideration be given to the creation of a costs regime to act as a check and balance on the CCC's prosecutorial function. Such a regime could allow for the making of an award of costs against the CCC/the State in the event of dismissal of charges by a Magistrate at committal, discontinuance of charges and/or acquittal after trial, in a prosecution initiated following a CCC investigation. QLS's position is that a costs regime is

one of few available and effective checks and balances on the extra-ordinary powers of the CCC as a standing commission of inquiry.

QLS also calls for procedural and statutory reform designed to reinvigorate the CCC's police integrity oversight function. This may include the creation of an independent Commission analogous to the Law Enforcement Conduct Commission (**LECC**) in New South Wales.

The progressive diminution in the CCC's police integrity monitoring function is evidenced by the content of the CCC's annual reports, which show a progressive reduction in focus on its function of monitoring and overseeing the QPS.

More than 30 years since the original Fitzgerald Report, our members report that the CCC's oversight of the QPS has been so progressively diminished as to be functionally ineffective. In particular, our members who regularly practice in crime report a routine practice within the CCC of referring complaints against police to the QPS for internal investigation. This practice is contrary to the original Fitzgerald model and the overall purpose for which the CCC was originally established.

In 2017, the New South Wales LECC was established as a permanent independent investigative commission to provide oversight of the NSW Police Force and the NSW Crime Commission. The LECC replaced the Police Integrity Commission and the Police Compliance Branch of the NSW Ombudsman. It is a single oversight body with two clearly defined functions: detecting and investigating misconduct and corruption, and overseeing complaints handling. The LECC was set up to strengthen law enforcement integrity, by preventing, detecting and investigating misconduct and maladministration within law enforcement in NSW. The LECC also aims to understand and assist in the prevention of officer misconduct. The QLS commends this model to the Inquiry.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [redacted] or by phone on [redacted].

Yours faithfully

[redacted]

Kara Thomson
President