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Our Reference: AD-21-0936/02
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OFFICIAL

10 November 2021

Mr Linus Power MP
Chair, Economics and Governance Committee
Parliament House
By email: egc@parliament.qld.gov.au

Dear Chair,

CCC Submission – Brisbane Olympic and Paralympic Games Arrangements Bill 2021

Thank you for your correspondence of 9 November 2021, seeking the CCC's views on the proposed legislation. I am not available to appear before the Committee in its public hearing on 15 November 2021. Instead, please see below a brief submission on behalf of the CCC in relation to aspects of the Bill.

Management of conflicts of interest

Division 5, subdivisions 2 and 3 contain provisions relating to the disclosure and management of conflicts of interests. In particular (cl37 and 44), the Bill proposes to 'carve out' duties owed by elected officials as a result of their elected office from the requirements regarding conflicts.

The CCC has concerns with this aspect of the Bill as it presents corruption risks.

The CCC does not consider that such a carve out for this issue is necessary or desirable. If a conflict arises between an elected office bearer's duties and their role as a director on the Corporation it should be declared and managed.

A conflict of duty could arise due to a number of factors including geographical considerations regarding where infrastructure is developed or decisions which traverse portfolio responsibilities. A perceived or actual conflict may not, of itself, necessitate the director declining to participate in discussion and voting on the issue, but this does not mean the conflict should not be declared and considered.

The remainder of the board should consider the nature of the conflict, the particular expertise or experience that the conflicted director can bring to the board in relation to the particular issue, and determine how best to manage the conflict. That is what is contemplated in relation to other directors and other interests in cl38-40, and is how such conflicts are addressed through ordinary corporate board processes. There is no reason identified, and none is readily apparent, which would justify the proposed departure from that practice.

Disclosure and management of conflicts of interest is central to good governance. Those considerations loom large for a body which is likely to be involved in the

management of substantial public funds. Given the mixed public and private nature of the Corporation's functions, the CCC's view is that this should weigh in favour of more stringent, rather than less stringent, governance mechanisms.

The Bill also (cl43) exempts directors who are elected officials (or Olympic officials) from a duty to disclose to the Corporation confidential information they have obtained through their other official capacity.

The CCC does not oppose the inclusion of this clause *per se*, but notes a potential issue in its application. It seems that the provision is intended to make clear that those office holders who have confidential information which may be relevant to the Corporation's decision-making do not breach their obligation to the Corporation by maintaining confidentiality of that information.

It does not seem that this provision is intended to exempt those persons who have such confidential information from broader obligations to manage conflicts. In the CCC's view, that is appropriate.

Again, having regard to ordinary corporate governance principles, a person may simultaneously hold office in multiple companies. Confidential information may be obtained in the person's capacity as a director of one company which may be relevant to the decision-making of another company. Absent permission to disclose that confidential information from one company to another, that director must maintain confidentiality of that information.

In such circumstances the director may have a conflict of duties. This would be a conflict between the director's duty to maintain confidentiality and act in the best interests of the first company, and their duty to act in the best interests of the other company. Generally the director would have a conflict which would require them to recuse themselves from decision-making processes to which the information is relevant.

If such a conflict was likely to recur, or to endure at a fundamental level, this should factor into the director's decision as to whether to accept the position in the first place, or form part of an ongoing assessment as to the appropriateness of retaining that directorship. But a director would not have a positive obligation to disclose that confidential information to the latter company. Clause 43 appears to appropriately reflect that position.

Exemption of members of Commonwealth Parliament

Clause 8 provides that the Corporation is a unit of public administration under the *Crime and Corruption Act 2001* ('CC Act'). The CCC supports this provision and considers it an appropriate accountability measure. However, cl8(2) exempts members of the Commonwealth Parliament from the CC Act.

The CCC has serious concerns about this proposed exemption. These concerns are at two levels.

First, there is no reason stated, and none which is apparent, which would justify exempting members of the Commonwealth Parliament from the operation of the CC Act in relation to the functioning of the Corporation.

Second, the drafting of the proposed exemption is, in any event, overly broad and as a result may give rise to unintended consequences.

The explanatory notes provide that one of the considerations in designating the Corporation as a unit of public administration ('UPA') is to make it "subject to the public sector accountability regime rather

than the *Corporations Act 2001* (Cwth), which is considered appropriate given the public money and public interest involved in successfully delivering Brisbane 2032". Such public accountability considerations are, with respect, self-evidently appropriate. That is particularly so having regard to the wide range of functions set out in cl9.

There is no principled reason why Commonwealth Parliamentarians should be exempted from this accountability regime. It would be perverse if all other directors of the Corporation were within the CCC's jurisdiction, but directors who were members of the Commonwealth Parliament were not. That is particularly so given the absence of an equivalent Commonwealth integrity body with jurisdiction over members of the Commonwealth Parliament.

Clause 8(2) is drafted in terms of a blanket exemption from the operation of the CC Act.

The two elements required to be established under cl8(2) are that a person is 1) a director of the Corporation; 2) who is a member of the Commonwealth Parliament (a 'Member/director'). Once those facts are established, the person is exempted entirely from the CC Act. As presently drafted, that would provide exemption not just for matters connected with the Corporation or the Olympics more broadly, but in relation to any matters at all arising under the CC Act.

Section 15 of the CC Act defines corrupt conduct. It covers the conduct of any person (whether or not they hold an appointment in a UPA) which has certain defined effects on public administration. At present that would include members of the Commonwealth Parliament. For example, if a member of the Commonwealth Parliament who had a private business interest gave a 'kickback' to a procurement officer in a State Government department to give a contract to that private business, that conduct would fall squarely within the CCC's jurisdiction.

As it is presently drafted, cl8(2) would exempt that member from the CCC's jurisdiction if that member were also a director of the Corporation. That cannot have been intended.

Further, cl8(2) proposes to exempt such Member/directors from the operation of the CC Act in its entirety. That is, the investigative powers available to the CCC would have no application to such Member/directors. This poses broader problems. An investigation into conduct of other non-exempt directors, or the Corporation more broadly, may be hampered if a Member/director could not be compelled to provide relevant evidence.

And again, those same considerations would also apply to other investigations in which a Member/director may be a witness, but which is unconnected to the business of the Corporation for the reasons set out above. In this regard, and for completeness, it is noted that the CC Act covers matters that extend beyond the CCC's Corruption jurisdiction.

For these reasons, the CCC submits that the exemption for directors who are members of the Commonwealth Parliament should be removed.

Yours sincerely,



Alan MacSporran QC
Chairperson