Queensland Parliamentary Service

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Committee Secretary
Economics and Governance Committee
Parliament House
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Dear Committee Secretary

Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 **and** ***Criminal Code and Other Legislation (Ministerial Accountability) Amendment Bill 2019***

This submission relates to:

- Limited parts of the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019* ("the Government Bill") namely Chapter 1, Part 1 which amends the *Integrity Act 2009* by inserting a new conflict of interest offence and Chapter 4, Part 2 which amends the *Parliament of Queensland Act 2001* by inserting new conflict of interest provisions ("the conflict provisions");
- The *Criminal Code and Other Legislation (Ministerial Accountability) Amendment Bill 2019* ("the Opposition Bill") in its entirety.

I do not support either the conflict provisions of the Government's bill or the Opposition's bill in its entirety.

The reasons for my inability to support either proposal is not due to any lack of commitment to, or understanding of, the importance of transparency and disclosure in the prevention, detection and punishment of misconduct.

The fundamental reason that I am unable to support either proposal is that they are both based on recommendations made by the CCC in a media release.

As regards the CCC's recommendations made in the media release:

- The recommendations are brief, and seek to introduce criminal offences without clarity of scope or defence. It appears that the CCC are recommending criminal laws with strict liability. That is, the CCC is recommending that criminal sanctions apply without any reference to elements usually found in the criminal law such as intention, dishonesty, negligence or materiality. The recommendations may criminalise genuine error or tardiness.
- There is no evidence of proper policy formulation and any of the benefits to be gained to law reform from proper policy formulation in the CCC's recommendations. Because there was no proper policy formulation, the CCC's recommendations have no regard for related issues, including the impact on the content, administration and enforcement of the registers of interest.

- There are likely perverse outcomes from the CCC's recommendations.
- The CCC's recommendations have no regard for important constitutional conventions and structures. One result of the implementation of the CCC's recommendations is an unjustifiable increase in the jurisdiction of the CCC over members of parliament. There is a risk of discretionary enforcement of such provisions by the CCC, which will undermine public confidence in the CCC by its increasing involvement in political matters that should be dealt with by the system of responsible government.

Law reform by media release

A media release is not a report.

The relevant media release which provides some details of one matter the subject of assessment by the CCC, does not lay a proper foundation for the recommendations it makes.

As part of the Governing Queensland suite of documents, the Queensland Government once produced the *Queensland Policy Handbook*.[1] It now appears that the principles for policy development outlined in the Australian Policy Handbook[2] is the accepted standard by the Queensland Government for proper policy formulation.[3]

There is no evidence of proper policy formulation prior to the CCC's media release. Proper policy formulation would involve policy analysis such as defining the objective (or mischief), considering alternative mechanisms to achieve the objective, choosing a correct policy instrument, consultation etc. The recommendations do not clearly enunciate the objective, evince a considered response to an issue, are not clear and authoritative, do not provide sufficient detail to allow implementation, do not consider resource implications or set out a policy that is legally sustainable or otherwise appropriately enforceable.

In my opinion the CCC's recommendations are purely reactive and are a direct result of the CCC's impotence in one particular matter. There was no consultation with stakeholders, including those who have practical experience in the area. As detailed further below, the recommendations have no regard for related issues, including the impact on the administration of the registers of interest and important constitutional conventions and structures.

Indeed, the CCC appears to be further developing its policy on the run. In its most recent submission and in evidence to the Committee by the Chair, the CCC now apparently wants the penal provisions to be applied to backbench members. But this <u>was not</u> what was stated in the CCC's original recommendations. The recommendations, contained in the media release stated that the provisions were to apply:

> *... when a member of Cabinet does not declare a conflict ...*
>
> *... when a member of Cabinet fails to comply with the requirements of the Register of Members' Interests, and the Register of Members' Related Persons Interests ...*

The CCC is clearly frustrated by what it perceives to be a lack of enforcement of the Ministerial Code of Conduct. This was evident in the Chairman's recent evidence to the Committee when he stated:

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[1] *Queensland Policy Handbook*, Office of the Director-General, Department of the Premier and Cabinet, First Published February 1996, second edition published in January 2000.
[2] Althaus C, Bridgman P and Davis G., The Australian Policy Handbook, 2007, Allen and Unwin.
[3] https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks.aspx

> *... historical conventions are no longer considered adequate to enforce the standards of conduct expected of elected representatives by the community as a whole when it comes to executive decisions ...*

The CCC's attempts to stretch its original recommendations is demonstrative of its frustration, but it fails to provide evidence to justify this last minute addition.

The CCC holds an important, but non-traditional, position in our State's system of government and should not allow its impotence in dealing with a particular matter or its frustration at how a particular matter has been dealt with to avoid proper policy formulation.

We cannot allow public policy in this State to be expounded by media release.

What the CCC's original recommendations don't say

Recommendations 3 and 4 of the media release upon which the proposals are based are as follows:

> *Recommendation 3:*
>
> *Parliament create a criminal offence for occasions when a member of Cabinet does not declare a conflict that does, or may conflict, with their ability to discharge their responsibilities.*
>
> *Creating a criminal offence will strengthen the framework and obligations on Ministers to ensure disclosure and management of actual, potential or perceived conflicts of interest occurs. Failure to do so could, in certain circumstances, be considered corrupt conduct, as defined in the Crime and Corruption Act 2001.*
>
> *Recommendation 4:*
>
> *That Parliament create a criminal offence to apply when a member of Cabinet fails to comply with the requirements of the Register of Members' Interests, and the Register of Members' Related Persons Interests by not informing the Clerk of Parliament, in the approved form, of the particulars of an interest or the change to an interest within one month after the interest arises or the change happens. A suitable penalty should apply, including possible removal from office, if it is found that the Member's lack of compliance was intentional.*
>
> *This would align the obligations of elected officials in state government with the obligations of elected officials in local government. This recommendation is consistent with the recommendations for local government made by the CCC arising out of Operation Belcarra.*

As outlined above, the recommendations both clearly state they are intended to apply to members of Cabinet.

What the recommendations do not provide is the proposed elements of each offence.

The CCC's submission advocates that the concept (element) in the Government bill's conflict provisions that a minister must have the intent to 'dishonestly obtain a benefit for the minister or another person' or 'dishonestly cause a detriment to another person', as drafted, overlap entirely with more serious offences already in existence.

In my opinion, without specific guidance from the CCC in its original recommendations, it was entirely reasonable for the Government to introduce such concept in the offence. Such elements would be normal in the drafting of criminal offences. When I was consulted by the government on the drafting of the legislation I advocated such an element as whilst I did not support the CCC's recommendations, I could not envisage that they intended strict liability. I cannot see why the Government should be criticised for not drafting the provisions in the way envisaged by the CCC, when no particularity was set out in the recommendations.

In evidence before the Committee, the Chair stated:

> *For the reasons set out in our submission, the CCC does not support the bill's proposal to limit prosecutions for noncompliance with disclosure obligations to only matters for which a dishonest intention is able to be proved. The offence should also prescribe the failure to disclose relevant interests when the person knew or ought to have known of the relevant interest. A strict liability offence is required because otherwise the laws are ineffective in preventing corruption and would negatively contribute to perceptions in democratic decision-making processes. As we said in our submission, the CCC considers that the offence provisions for serious offences by ministers are preferably located in the Criminal Code, where other integrity offences are also housed.*

It is only in the Chair's evidence before the committee that the Chair appears to recognise that "knowledge" should be an element of the new offence. This element was not identified in the CCC's recommendations or submission.

In my opinion another important element has not been addressed, and that is the issue of materiality.

Strict liability – criminalising genuine error or immaterial matters

Currently, a member who knowingly fails to register interests as required commits a contempt of parliament.

Section 18 of Schedule 2 of Standing Orders provides:

> ***Effect of failure to comply with requirements***
> ***18.*** *A member who—*
> *(a) knowingly fails to give a statement of interests to the Registrar as required;*
> *(b) knowingly fails to notify the Registrar of a change of details contained in a statement of interests; or*
> *(c) breaches s.69B(4) of the Parliament of Queensland Act 2001*
> *is guilty of a contempt of the Parliament and may be dealt with accordingly.*

Section 69B(4) of the *Parliament of Queensland Act 2001* provides that:

> *A member must not give to the registrar a statement of interests or information relating to a statement of interests the member knows is false or misleading in a material particular.*

Members (or former Members) have been fined for knowingly failing to disclose matters on the registers of interest[4] and in one instance the expulsion of a member for the cumulative effect of the contempts of failure to declare interests and deliberately misleading the House was recommended.[5] In the latter case, the member resigned before expulsion could be actioned, but the expulsion was endorsed by the House in its subsequent order.[6] The former member was, however, fined. The fines imposed have been significant.

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[4] IEPPC, Matter of Privilege Referred by the Speaker on 13 November 2006 Relating to the Alleged Failure by a Former Member to Register a Payment Received in the Register of Members' Interests, Report No. 105, Goprtnt, Brtsbane, 2010; IEPPC, Matter of Privilege Referred by the Registrar on 18 November 2010 Relating to the Alleged Failure by a Member to Register an Interestln the Register of Members' Interests, Report No. 114, Goprtnt, Brtsbane, 2011.

[5] Report No. 139 and Report No. 134, 54th Parliament - Matter of privilege referred by the Registrar on 19 March 2013 relating to an alleged failure to register an interest in the Register of Members' Interests and Report No. 139 and Report No. 134, 54th Parliament - Matter of privilege referred by the Speaker on 4 June 2013 relating to an alleged deliberate misleading of the House by a Member

[6] https://www.parliament.qld.gov.au/documents/hansard/2013/2013_11_21_WEEKLY.pdf

As outlined above, currently members can only be found in contempt for knowingly failing to disclose an interest. Thus members have not been found guilty of contempt where it has been established by evidence:

- That the member had no knowledge at the relevant time that the matter was an interest that could be required to be registered;[7]
- That the member had provided an incomplete statement of interests, but that it was an inadvertent omission;[8]
- That at the time the transaction occurred the Member was not aware of the specific arrangements and there was no evidence to suggest that the Member received an interest in a private capacity.[9]

There is no evidence of non-enforcement by the Ethics Committee or Legislative Assembly of the requirements of the registers of interest in the appropriate case. Indeed there have been substantial fines imposed.

Do we really want to have laws that make members of parliament criminals for innocent omissions or mistakes on their register of interest?

Do we want to make members of parliament criminals for tardy or sloppy paperwork, especially when fault may lay with third parties or where the disclosures are completely minor or immaterial?

This issue is best explained by hypothetical examples.

Member A and the trust

Member A, a backbencher, completes their register of interest.

7(5)(b) of Schedule 2 of Standing Orders requires Members to declare:

> *(b) in respect of any family or business trust or nominee company in which the member or a related person is a trustee, office holder or holds a beneficial interest—*
> *(i) the name or a description of the trust, or the name of the nominee company, as the case requires;*
> *(ii) the nature of the activities of the trust or company;*
> *(iii) the nature of the interest of the member; and*
> *(iv) the investments or beneficial interests of the trust or company (of which the member is aware);*

A grandparent of Member A established over 50 years ago a discretionary trust, the general beneficiaries of the trust include Member A.

Member A is only generally aware of their grandparent's assets and business, and is unaware of the existence of the trust and the role the trust plays in the grandparent's business does not declare the trust, activities, interest or investments on their register.

[7] MEPPC, Matter of Privilege Referred by the Registrar on 21 July 2008 Relating to the Alleged Failure by the Premier to Register a Benefit Received in the Register of Members' Interests. Report No. 93, Goprint. Brisbane. 2008 al6.
[8] IEPPC, Matter of Privilege Referred by the Registrar on 25 February 2010 Relating to an Alleged Failure by a Member to Register an Interest in the Register of Members' Interests, Report No. 104, Goprint, Brisbane, 2010 at5.
[9] Ethics Committee, Matter of Privilege referred by the Registrar on 15 October 2012 relating to an alleged failure to register an interest in the Register of Members' Interests, Report No. 127, November 2012.

Member A's grandparent decide to distribute some funds from the trust to beneficiaries, including Member A.

Member A then declares the distribution, the trust, their interest (beneficial) and what they know about the investments or interests of the trust.

A complaint is made that the Member did not previously declare the trust.

Should Member A be guilty of a criminal offence where they did not know of an interest?

The CCC's recommendations did not deal with the issue of "knowledge".

Should Member A be guilty of a criminal offence where the trust and its investments creates no conflict of interest (ie they are not material to any issue)? The CCC's recommendations did not deal with the issue of "materiality".

Member B and the company

Member B, is a first term Member who is appointed a Minister. Member B completes their register of interest.

Schedule 2, 7(5)(b) requires the declarations relating to companies:

> *(a) in respect of any company in which the member or a related person is a shareholder or officer*
> *or has a controlling interest in shares—*
> *(i) the name of the company (if the company is a listed company, the Company Code is sufficient);*
> *(ii) the nature of any office held;*
> *(iii) where the shareholding or interest is held in a private company, the investments or beneficial interests of the company; and*
> *(iv) where the shareholding or interest is held in a private company—*
> > *(A) the nature of the activities of the company;*
> > *(B) the assets or beneficial interests of the company;*
> > *(C) the name of any subsidiary companies; and*
> > *(D) the assets or beneficial interests of those subsidiary companies;*

Prior to becoming a Member, Member B had run a business through a company XYZ Trading Pty Ltd. Before running for election Member B had sold parts of their business and wound down other parts. As part of this process they wound up XYZ Trading Pty Ltd.

Member B has always used an accountant who first arranged the corporate structure and the winding up of the company.

It appears that the accountant was not particularly diligent in submitting the paperwork to wind up the company and it still actually exists, even though it is a dormant shell. A newspaper reporter's corporate search reveals the company and Member B's directorship of it.

Member B does not declare the company or their directorship on their declaration.

Should Member B be guilty of a criminal offence?

Member B knew about XYZ Trading Pty Ltd, but they were mistaken as to its status, having relied on a professional third party.

Should Member B be guilty of a criminal offence where there the company's existence creates no conflict of interest (ie it not material to any issue)?

Member C and the caravan

Member C, a backbencher, completes their register of interest.

An "asset" is defined in Schedule 2 of Standing Orders to mean:

> *... an item of property or an investment or interest owned by a person, trust or company, regarded as having value but does not include:*
> *(a) household and personal effects;*
> *(b) motor vehicles unless those motor vehicles have been purchased primarily for an investment purpose;*
> *(c) industry, public offer and employer superannuation entitlements;*
> *(d) stock, plant or equipment related to an occupation or business activity otherwise disclosed under this Schedule; and*
> *(e) a loan to a family member.*

Under Schedule 2, Members are required to declare the *nature of any other asset of the member or a related person the value of which exceeds more than the published indexed threshold* (s7(5)(l)).

The current published indexed threshold for assets is $9,500.[10]

The Member owns a caravan valued at $15,000 that the member and their family use predominantly for recreation purposes. The caravan is registered. Member A does not declare the caravan believing it to be a motor vehicle (because it is registered) and exempt from declaration.

There is no definition of motor vehicle in the Standing Orders. A caravan, although required to be registered, is not a motor vehicle under Queensland law except when it is attached to a vehicle.

The Member and their family on holiday are featured in a newspaper story. A complaint is made that the caravan mentioned in the story has not been disclosed by the Member.

Should Member C be guilty of a criminal offence?

Member C knew about the caravan but made an error as to interpretation of the requirements of the register.

Under the CCC's proposal it is irrelevant that the caravan creates no conflict of interest (ie it is not material to any issue) and it would also be irrelevant that the Member did not knowingly or dishonestly fail to register the caravan. The Member made a mistake in the interpretation of the law. Not knowing or not understanding a law cannot be used as a defence, even if defences in the Criminal Code were a defence to the CCC's proposals.

Member D and the car lease

Member D, a Minister, completes their register of interest.

[10] https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2018/5618T152.pdf

The Member leases a car through Remserv, an approved government salary sacrificing provider that facilitates the lease with a major leasing company.

The Member does not declare the car on their register of interest, noting that motor vehicles unless those motor vehicles have been purchased primarily for an investment purpose, are exempt from the definition of asset.

However, the member fails to recognise that the lease for the car is a liability that should be declared under 7(5)(f) of Schedule 2:

> *(f) in respect of any liability exceeding the published indexed threshold of the member or a related person or a trust of which a member or a related person is a beneficiary or a private company of which a member or a related person is a shareholder or partnership of which a member or related person is a partner—*
> *(i) the nature of the liability; and*
> *(ii) the name of the creditor concerned;*

Should Member D be guilty of a criminal offence?

Member D knew about the lease but simply made an error as to interpretation of the requirements of the register.

Under the CCC's proposal it is irrelevant that the lease creates no conflict of interest (ie it is not material to any issue) and it would also be irrelevant that the Member did not knowingly or dishonestly fail to register the lease. The Member made a mistake in the interpretation of the law. Not knowing or not understanding a law cannot be used as a defence, even if defences in the Criminal Code were a defence to the CCC's proposals.

Requirements of registers built for an ethical regime, not a criminal regime

The criminal law consists of a clear set of written rules (criminal offences) that have clear elements that must be satisfied to create the offence. Penal laws are generally read down (narrowly interpreted), because a breach of those offences will result in criminal conviction.

Ethics regimes comprise principles and guidelines that inform people about how to behave in a particular environment. Codes of conduct and disclosure requirements are usually written in wide language and are interpreted widely in accordance with the principles that underpin the regime.

The current disclosure requirements of the registers of interest are designed for an ethics regime, not a criminal regime.

For example, 7(5)(n) of Schedule 2 provides a very wide "catch all" provision that has subjective elements, requiring members to disclose –

> *(n) any other interest (whether or not of a pecuniary nature) of the member or a related person—*
> *(i) of which the member is aware; and*
> *(ii) that raises, appears to raise, or could foreseeably raise, a conflict between the member's private interest and their duty as a member.*

This type of requirement which was designed for an ethical regime, is totally inappropriate as a requirement for a criminal regime.

If criminal offences for failure to declare are to be introduced, then as a prelude the register of interest requirements will need to rewritten and narrowed to ensure there is no subjectivity and that there cannot be confusion or mistake about disclosure requirements.

Perverse outcomes from criminal regime

There are at least five perverse outcomes from putting the registers of interest within a criminal regime –

(1) In my 2009 submission to the Integrity White Paper I outlined how much more extensive the Queensland Parliament's disclosure regime was compared to other Parliaments. As outlined above, the disclosure regime will need to be reviewed and narrowed to be suitable for a criminal regime. This will mean that the Queensland Parliament's disclosure regime, which benchmarks highly in terms of disclosure may become less transparent.
(2) Currently Members update their register when they realise they have made a mistake or omission. Members who omit to declare a matter through genuine mistake or error are less likely to rectify their disclosure if they know it may highlight a criminal charge.
(3) The Registrar would have an obligation to report members who have failed to declare their interests as required to the CCC as they would have committed a criminal offence in the knowledge of the Registrar.
(4) Consequent to (2) and (3), if the Registrar (currently the Clerk) is to become an enforcer by default, and members are not willing to disclose errors, then considerable wider harm will befall the Parliament's ethics regime. The contact that members have with the Clerk regarding the registers of interests and other matters of disclosure and procedure enhances, rather than diminishes the ethics of the entire Parliament.
(5) The Ethics Committee will be effectively sidelined by the criminal regime as regards the registers of interest. As explained below, the CCC will become the arbitrator of disclosure and whether Members should be charged with criminal offences.

Impact on the administration of the registers of interest

Because there was no proper policy formulation, the CCC's recommendations have no regard for related issues, including the impact on the administration of the registers of interest.

If the simple failure to register interests is to be made a criminal offence, then not only will the requirements of the registers of interest need to be reviewed but the administration of the register will need to increase exponentially.

Most communications with members about the requirements of the register of interest involve simple matters and are currently predominantly oral. It is only where there are complicated matters that the Registrar insists on written requests for advice. If the registers are to be within a criminal regimes, the Registrar will need to insist upon written requests for advice and issue written advice in all matters. If the administration of the register is to remain within my office, then I will require additional support staff to support this added burden.

Defences to any offence should include reliance on advice provided by the Registrar.

Extension to backbenchers

The CCC's latest recommendation that the offence provision be extended to backbenchers should be rejected. Any argument that because similar offences apply to local government councillors, there is no reason why the offences should not apply to backbenchers does not take into account the clear distinction between state and local government functions.

Local government, amongst all levels of government, is the level which is most exposed to high risks of fraud and corruption. This is because:

- there is a high level of procurement of goods and services, often from local suppliers;
- there is a high degree of devolved decision making vested in local governments;
- there is generally lower levels of risk controls; and
- the nature of council business provide more lucrative opportunities for fraud and corruption. (For example, the ability of councils to approve multimillion-dollar development applications or land rezoning or waive contributions to infrastructure charges.)

A State backbencher is simply not in the same position of risk as a local councillor.

I accept that Ministers who are decision makers or key influencers should be held to a higher standard. I accept that there is an argument that Ministers who fail to make known, material disclosures in their decision making should be subject to criminal charges. But careful consideration and policy development is required and strict liability to be avoided.

The damage to public perceptions

In my 2009 submission to the Integrity White Paper I made the following points which I believe are still valid:

> *In considering ethics and integrity, it must be appreciated that the perception of ethics and integrity in a system of government is as important as the reality. Indeed, perceptions are reality.*
>
> *The reality is that the great majority of public officers, including the great majority of members, are hard working and have the public interest as their priority. The great majority are honest, ethical servants of the public. Unfortunately, the actions of a few harm the image of all public officers.*
>
> *Continual, daily expose in the media of allegations or insinuations of unethical behaviour, inappropriate relationships and conflicts of interest can very easily undermine public confidence in government and the institutions of government.*
>
> *The media can act as an important watchdog. It can also be reckless. It must be understood that the private interests of the media, to publish stories that the public are 'interested in', sometimes does not coincide with the public interest. This means that the media sometimes publishes stories that have the appearance of corruption and misconduct, but in reality lack substance. A lot of smoke, without any actual fire. As the benchmark for unethical behaviour cannot be the criminal law, neither can the benchmark for good reporting be the laws of defamation.*
>
> *Governments have a very bad propensity of dealing with matters in a 'political manner', disregarding proper procedure, which also creates the appearance of corruption and misconduct, where none in fact exists.*
>
> *It is very hard to build and maintain confidence in the ethics and integrity of government. It is much, much easier to destroy public confidence in the ethics and integrity of government. The public are naturally cynical towards the institutions of government and it only takes a 'whiff' of corruption or misconduct to destroy confidence.*
>
> *Oppositions are naturally keen to exploit allegations of corruption, as it aids their cause.*

What I could add to my 2009 submission is that the CCC plays an important role in our State's system of government. It needs to build and maintain confidence in the ethics and integrity of government by properly investigating and fully reporting on matters within its jurisdiction.

However, the CCC needs to refrain from lengthy involvement in matters that are clearly not within its jurisdiction because:

- firstly it simply delays outcomes on those matter which is itself damaging to public perception; and
- secondly, when advising there is no matter within its jurisdiction it creates the perception that there is no unethical behaviour and enables government to avoid dealing with matters appropriately.

Erosion of constitutional conventions and structures

In my 2009 submission to the Integrity White Paper I highlighted the fragility of responsible government.

I noted that whilst there are advantages in a fluid and evolving system of government, there are also great dangers. Many important aspects are not constitutionally entrenched, and over time can be forgotten or ignored.

One of those conventions/unwritten rules of responsible government is ministerial responsibility. I noted that it appeared that this most basic concept of responsible government is now perceived to be much different than it would have been, only a few short decades ago. Indeed, I questioned whether individual ministerial responsibility is perceived, by governments, to exist at all. And, if so, to what extent or in what circumstances.

I noted that whilst one of the outcomes of constitutional review leading up to the *Constitution of Queensland Act 2001,* was that the government was amenable to including, for the first time, not only a description of cabinet, but a statutory expression of ministerial responsibility. What was disappointing, however, was that responsibility was only described in the collective.

I recommended that a new provision should be inserted into the *Constitution of Queensland Act 2001* that recognised the individual responsibility of Ministers for their personal decisions and actions to the Parliament. Unfortunately, this recommendation was not taken up with the other white paper outputs.

As a close and impartial observer of the operation of responsible government in this State for almost three decades, I have come to the conclusion that one of the reasons for the erosion of individual ministerial responsibility in Queensland is the operation and use of the CCC and its predecessors.

Governments have become adept at referring matters to the CCC that are, in all likelihood, not within the CCC's mandate because they are unlikely to amount to a criminal offence although they may breach the Ministerial Code of Conduct or other standards.

The CCC's "assessment" of such matters usually takes many weeks. If it is escalated to an "Investigation" it will generally take longer. Generally Ministers only stand aside if a matter reaches the declared threshold of "investigation". Whilst the matter is under CCC "assessment" the political heat in the matter usually dissipates. The government usually refuses to discuss the matter or answer questions because it is under CCC assessment. When the CCC responds that there is no corrupt conduct in terms of its jurisdiction (as it usually does), the government proclaims the minister has been "cleared", when in fact what has been resolved is the matter is not within the CCC's jurisdiction. Meanwhile the CCC has taken to not providing reports and, without a report, the complete facts determinable by the evidence provided to the CCC often remains confidential or unknown.

The point is that the CCC and its predecessors have been used by governments for many years as an alternative to traditional ministerial responsibility. The media have shown itself to be largely inept in properly reporting and outing this routine.

The CCC by conducting lengthy assessments of matters clearly unlikely to reach the requisite jurisdictional threshold, labelling matters as under "assessment" even when it is gathering evidence (a hallmark of investigation) and dismissing matters without any detailed report has assisted in this routine and has also unwittingly assisted in the erosion of individual ministerial responsibility and thus responsible government itself.

The CCC's recommendations in its recent media release, if implemented, will exasperate this routine. The jurisdiction of the CCC over members of parliament will increase significantly. As I have highlighted above, there is a real risk of members breaching disclosure requirements for immaterial matters or without criminal intent. It is inevitable that the ludicrousness of prosecuting members for minor and immaterial matters or even delay will have to occur. There will be in turn be increased discretionary enforcement of penal provisions by the CCC. This increase in discretionary enforcement will undermine public confidence in the CCC itself, as will its overall increasing involvement in political matters that should be dealt with by the system of responsible government.

Conclusions and recommendation

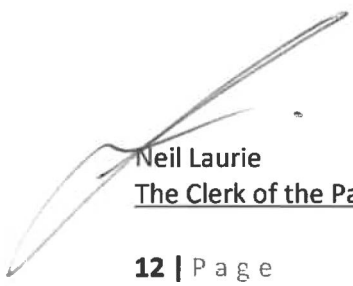
The *Criminal Code and Other Legislation (Ministerial Accountability) Amendment Bill 2019* ("the Opposition Bill") should be withdrawn. As argued above, this bill was based solely on the CCC's recommendations in a media release and is not founded on proper policy formulation. The provisions are strict offences, except in the sense that they are predicated on the Minister's knowledge. There is also a legal issue with the new offence contained in Clause 6 of the bill which will mean practical difficulties in prosecuting the offence. Section 53 (Evidence of proceedings in the Assembly allowed for prosecution) allows proceedings in parliament to be used in the prosecution of offences in Part 2, Chapter 8 of the Criminal Code. The registers are proceedings in parliament and generally cannot be used in prosecution of other offences. Acts are not generally held to affect the powers, rights or immunities of Legislative Assembly except by express provision (s.13B *Acts Interpretation Act 1954*).

Those parts of the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019* ("the Government Bill") namely Chapter 1, Part 1 which amends the *Integrity Act 2009* by inserting a new conflict of interest offence and Chapter 4, Part 2 which amends the *Parliament of Queensland Act 2001* by inserting new conflict of interest provisions ("the conflict provisions") should be omitted from the bill. Again, these provisions of the bill were based solely on the CCC's recommendations in a media release and are not founded on proper policy formulation. As a positive the government provisions have the element of dishonesty and do not create a strict liability offence. But I still cannot support the provisions without proper policy formulation.

In my submission to the Committee and the Legislative Assembly itself, the entire issue raised by the CCC's recommendation should be remitted for proper policy development. If it is deemed desirable to establish an offence for Minister's who fail to declare their interests in Cabinet or on the registers of interest, then the offence should involve the elements of knowledge and materiality to the issue the subject of decision. There is no evidence to justify extension of the provisions to backbench members.

The benchmark for unethical behaviour cannot be the criminal law. One difficult and unusual issue should not lead to the introduction of bad law.

Yours sincerely



Neil Laurie
The Clerk of the Parliament