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**Crime and Corruption
Commission**

QUEENSLAND

Our Reference: AD-19-0931
Contact Officer: Mr Justin Gorry

10 February 2020

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

Via email: egc@parliament.qld.gov.au

**RE: CRIMINAL CODE AND OTHER LEGISLATION (MINISTERIAL
ACCOUNTABILITY) AMENDMENT BILL 2019**

I refer to the committee's invitation for submissions in relation to the Criminal Code and Other Legislation (Ministerial Accountability) Amendment Bill 2019.

Please find *attached* the Crime and Corruption Commission's submission.

Thank you for the opportunity to comment on the Bill. Should you wish to clarify any matters please contact Mr Justin Gorry, A/Director, Corporate Legal on [REDACTED] or email [REDACTED]

Yours sincerely

Mr Alan MacSporran QC
Chairperson



Crime and Corruption Commission
QUEENSLAND

Submission to the Economics and Governance Committee

For the Criminal Code and Other Legislation (Ministerial
Accountability) Amendment Bill 2019

10 February 2020



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IN CONFIDENCE ■ FOR INTERNAL USE ONLY**Introduction**

The Criminal Code and Other Legislation (Ministerial Accountability) Amendment Bill 2019 (the Bill) was introduced on 23 October 2019 and then referred for consideration by the Economic and Governance Committee (the Committee) to report by 23 April 2020.¹

The Crime and Corruption Commission (CCC) welcomes this opportunity to assist the Committee in its consideration of the Bill and is pleased to make the following informed commentary.

The CCC has also considered the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill, which was tabled by the Honourable Ms Yvette D’Ath MP, Attorney-General and Minister for Justice, on 28 November 2019 and lodged two submissions in relation to this Bill.² Where relevant to its submissions on the current Bill, the CCC makes reference to the proposals in this comparable Bill.

Cross River Rail Project

On 6 September 2019, the CCC issued a media statement regarding the completion of the CCC’s assessment of allegations of corrupt conduct relating to the Honourable Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships, Ms Jacklyn Trad MP and her involvement in decision-making relating to the Cross River Rail Project and the Inner City South State Secondary College.³

The CCC made five recommendations as follows:

1. That during the current term of Parliament, the Government amend Cabinet processes to ensure a standing agenda item is included for each Cabinet meeting and decision to mandate the proactive declaration of any actual, potential or perceived conflicts of interest, and the recording of any management or treatment of these conflicts.
2. That during the current term of Parliament, the Government ensure Cabinet processes provide guidance to ministers to prepare a management plan for any conflict of interest before being involved in Cabinet or other related decisions.
3. That 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.
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.
5. That during this term of Parliament, the Department of Premier and Cabinet, in consultation with the Integrity Commissioner, review all handbooks and guidance material in relation to conflicts of interest to ensure there is consistency and all material reflects best practice.

The Bill seeks to address recommendations three and four. Recommendations one, two and five have not been addressed as they concern internal Cabinet processes.

¹ Hansard 23 October 2019, pp. 3549-3551.

² Submission 51 <https://www.parliament.qld.gov.au/documents/committees/EGC/2019/Electoralexpenditurecaps/submissions/051.pdf> and <https://www.parliament.qld.gov.au/documents/committees/EGC/2019/Electoralexpenditurecaps/submissions/051a.pdf>

³ <https://www.ccc.qld.gov.au/news/ccc-determines-not-investigate-deputy-premier-calls-improvements-cabinet-processes-and>

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The Bill seeks to implement amendments to:

1. the Criminal Code regarding declarable conflicts of interest and the introduction of a criminal offence for failing to declare a conflict.
2. the *Parliament of Queensland Act 2001* regarding the introduction of a criminal offence for failing to notify the registrar in writing of a change in particulars contained in the last statement of interests within one month of becoming aware of the change.

Amendment of the Criminal Code

Clause 4

Clause 4 involves the insertion of a new part 3, Chapter 13A in the Criminal Code with four provisions:

- section 97A details the definitions for the chapter
- section 97B details what is a declarable conflict of interest
- section 97C details who is a related party of the minister
- section 97D details the process ministers must follow to inform Cabinet of a declarable conflict of interest. Section 97D also creates a criminal offence for failing to declare a conflict.

The proposed new sections aim to achieve the purpose of the CCC's recommendation 3 to create a criminal offence in relation to undeclared conflicts of interest to strengthen the framework and obligations on ministers to avoid conflicts of interest.

Section 97C provides a broad definition of a 'related party' and includes 'another person ... in a close personal relationship with the minister' (s. 97C(g)). This provision has the advantage of acting as a 'catch-all' for relationships that are not included in the list under the section. The, the scope of this term would be a matter for jurisprudential development.

Section 97D provides that a minister must inform a meeting of Cabinet or cabinet committee of a declarable conflict of interest if the minister 'is aware, or ought to reasonably be aware' that he or she has a declarable conflict of interest. This broader approach is more consistent with the CCC's recommendations than the current proposed new section 40A of the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill. The strict liability introduced by this provision is adequately mitigated by the requirement to prove knowledge or objectively reasonable knowledge. An alternative approach would be to provide a defence where a minister could not reasonably be expected to have been aware of the conflict. There is also the additional 'safeguard' of prosecutorial discretion as in all criminal cases where the Director of Public Prosecutions (DPP) makes an assessment as to whether to proceed with a prosecution with reference to the DPP's guidelines.

Additionally, all new members of Parliament are required to undertake an induction program after each election which is managed by the Clerk of Parliament. This program has been carried out since at least 2004 and involves discussion of the role of the Integrity Commissioner and the register of interests. The Clerk of Parliament has an important role in the education of members of Parliament on the requirements of the registers of interest. Members also have access to the Code of Ethical

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Standards and associated guidelines through the Queensland Parliamentary website.⁴ These documents clearly state the obligation of all members of Parliament to comply with disclosure obligations. The training and the available educational tools, as well as the ability to receive advice from the Integrity Commissioner, greatly reduce the possibility that members could be unaware of their obligations and inadvertently overlook a conflict of interest.

As stated in the CCC's submission on the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill, the intention of recommendation 3 is to create a criminal sanction for the offence of merely failing to declare a conflict. The proposed categorisation of this strict liability offence as a misdemeanour (rather than a crime) appropriately recognises the potential lesser culpability in the absence of the requirement to prove dishonest intent.

The offence proposed in the Bill would be categorised as a simple offence⁵, and as such have a one year time limit from the time the complaint arose.⁶ The CCC prefers the classification of the offence as a misdemeanour to prevent the prosecution of offences becoming statute-barred where the investigation process takes longer than one year.

The CCC's recommendations focus on strengthening the framework and obligations on ministers to declare actual, potential or perceived conflicts of interest, which then allows for the efficient and effective management of these conflicts. The CCC acknowledges that the identification of conflicts and their management can change over time. However, legislative processes allow for the evolution of criminal law as all law is continually updated to meet the needs of society.

Section 97D is unnecessarily restricted to known discussion in Cabinet meetings (i.e. agenda items). The obligation may not apply to conflicts that only become apparent during the course of a meeting. The CCC prefers the broader approach of the proposed section 40A in the comparable Bill in this regard.

The Bill proposes that new sections 97B, 97C and 97D be introduced into the Criminal Code. The CCC considers the location of the offence provisions in the Criminal Code to be preferable to the *Integrity Act*, as proposed in the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill, as this is more reflective of the seriousness of the conduct with which they deal. Further, the inclusion of the offence in the Criminal Code (in particular Chapter 13) would enable all offences involving corruption and abuse of office, including misconduct in relation to public office (s. 92A of the Code) and fraud (s. 408C of the Code), to be grouped in the one place.

The proposed penalty for section 97D is a maximum of 100 penalty points or one year's imprisonment. This is generally less than the maximum penalties under the *Local Government Act 2009* and the *City of Brisbane Act 2010*.⁷ It is also lower than the maximum penalty of 200 penalty units or two years' imprisonment proposed under the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019.

⁴ <https://www.parliament.qld.gov.au/work-of-assembly/procedures>.

⁵ Section 3(5) Criminal Code.

⁶ Section 52 *Justices Act 1886*

⁷ Section 175E of the *Local Government Act 2009* (fail to declare a conflict of interest) imposes a 100 penalty units or one year's imprisonment and Section 175C (material personal interest) imposes 200 penalty units or two years' imprisonment. Section 177E of the *City of Brisbane Act 2010* (fail to declare a conflict of interest) imposes a maximum penalty of 100 penalty units or one year's imprisonment. Section 177C (material personal interest) imposes a maximum penalty of 200 penalty units or two years' imprisonment or otherwise 85 penalty units.

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The CCC prefers the higher penalties envisaged under the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019.

Amendment of the *Parliament of Queensland Act 2001*

Clause 6

This clause proposes an amendment to section 69B of the *Parliament of Queensland Act 2001* and the introduction of an offence with a penalty of 100 penalty units for failing to change or update a minister's statement of interests.

Section 69B

The proposed penalty is commensurate with that imposed by the *Local Government Act 2009* and the *City of Brisbane Act 2010*⁸ but less than that proposed under the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019.⁹ The CCC prefers the increased penalty provision in the latter Bill.

The CCC supports the broadening of the proposed section 69B so that the penalty for failing to change or update statements of interests applies to all members of Parliament. This would be in keeping with recommendation 4, would be in the public interest, and would increase confidence in the system of government.

Intentional lack of compliance

The CCC's recommendation 4 above notes that a suitable penalty where there is an intentional lack of compliance could include possible removal from office. On reflection, the CCC considers that the provisions of the *Parliament of Queensland Act 2001* in relation to disqualification should adequately cover the situations where removal is appropriate. Currently, candidates can be disqualified under section 64(2) of the *Parliament of Queensland Act* if they are (among other disqualifying circumstances) sentenced to a term of imprisonment or detention, periodic or otherwise. This includes a person released on parole under section 64(4)(a), but not on a suspended sentence under section 64(4)(b). Section 72(1) deems a member's seat to become vacant in certain circumstances. It is expected that convictions where a corrupt motive is proven would attract a sentence of imprisonment and therefore fall within section 64.

Clause 7

Clause 7 inserts a new Chapter 10, part 9 into the *Parliament of Queensland Act*.

This chapter provides a timeframe for a minister's notification of changes in the particulars of statements of interests in relation to the commencement of the Bill. Ministers will breach section 69B if they become aware of a change in particulars within one month of the commencement of the Bill and had not made the changes immediately before the Bill commences. The minister is then taken to have become aware of the change in particulars on commencement.

In comparison, the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019 provides that ministers have one month after the commencement to disclose conflicts or interests.

⁸ Section 171B of the *Local Government Act 2009* and section 173B of *City of Brisbane Act 2010* impose a 100 penalty units if there is intentional failure to correct the register of interests or otherwise 85 penalty units.

⁹ 200 penalty units or two years' imprisonment.

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General Conclusion

As stated above, the CCC supports parts of the Bill. However, amendments need to be made to the Bill to ensure all of the recommendations made by the CCC are implemented.

The CCC considers that overall this Bill is more consistent with the CCC's recommendations than the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019, although the high maximum penalty provisions in the latter Bill are preferred. The following attributes of the Bill are a closer reflection of the intentions of the CCC recommendations::

- the location of the offences in the Criminal Code in relation to undeclared conflicts of interest more accurately reflects the seriousness of the conduct and enables all offences involving corruption and abuse of office to be grouped together
- the broader approach to a related party by including the 'catch-all' provision of another person who is in a close personal relationship with the minister
- the broader approach to when a minister must inform a meeting of Cabinet or Cabinet committee of a declarable conflict of interest under section 97D
- the absence of any requirement for proof of dishonest intent regarding the failure to disclose a conflict of interest
- the absence of any requirement for the specific consent of the Director of Public Prosecutions prior to commencing a proceeding for the offences..

However, this Bill could be improved by:

- removing the restriction in section 97D to known discussion in Cabinet meetings (i.e. agenda items) and the extending the obligation to conflicts that become apparent during the course of a meeting
- increasing the penalties under sections 69B and 97D to the levels proposed in the Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019.



Crime and Corruption Commission

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