



JUSTICE, INTEGRITY AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr MA Hunt MP—Chair
Mr MC Berkman MP
Mr RD Field MP
Ms ND Marr MP
Mr PS Russo MP
Hon. MAJ Scanlon MP

Staff present:

Ms F Denny—Committee Secretary
Ms E Lewis—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE CRIME AND CORRUPTION (RESTORING REPORTING POWERS) AMENDMENT BILL 2025

TRANSCRIPT OF PROCEEDINGS

Wednesday, 2 April 2025

Brisbane

WEDNESDAY, 2 APRIL 2025

The committee met at 11.29 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025. My name is Marty Hunt. I am the member for Nicklin and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today. With me here today are: Peter Russo, member for Toohey; Russell Field, member for Capalaba; Natalie Marr, member for Thuringowa; Michael Berkman, member for Maiwar; and Meaghan Scanlon, member for Gaven, who is substituting for Melissa McMahon, member for Macalister.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and the chair's direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. Please remember to press your microphones on before you start speaking and off when you have finished, and please turn mobile phones off or to silent mode.

BARBOUR, Mr Bruce, Chairperson, Crime and Corruption Commission

CROWTHER, Ms Jennifer, Director, Corporate Legal, Crime and Corruption Commission

CHAIR: Good morning, to you both. Would you like to make an opening statement before we start questions?

Mr Barbour: Thanks very much, Chair, and thank you, committee. The Crime and Corruption Commission provided a written submission to the committee in relation to the Crime and Corruption (Restoring Reporting Powers) Amendment Bill on 10 March 2025, which has been published by the committee. In the CCC's view, the bill will be effective in providing the CCC with powers to publicly report on and make public statements about corruption matters, as they were broadly understood to exist prior to the High Court's decision. This will be achieved principally by the bill's introduction of proposed sections 64A and 65A, which will vest the CCC with broad discretionary powers to publicly report and to make public statements.

Importantly, the bill will achieve this by expressly including reporting and making public statements as ways in which the commission performs its corruption functions under section 35 of the act. The CCC considers the model proposed by the bill appropriately takes a principles-based approach to public reporting and it is an example of modern, sensible and transparent reporting powers for an anti-corruption commission. We consider that the model is in step with public expectations about transparent and accountable government and at the same time works to responsibly protect the private rights and interests of individuals.

In protecting the rights of individuals, we note that the bill includes three major new safeguards: mandatory criteria that the CCC must have regard to before reporting under proposed sections 64A and 65A; limitations on the contents of reports in proposed section 48B; and an enhanced procedural fairness framework in proposed sections 69B and 69D. Additionally, the CCC will continue to be subject to existing safeguards, including obligations under the Human Rights Act 2019, section 57 of the Crime and Corruption Act as well as oversight from our Parliamentary Crime and Corruption Committee and the parliamentary commissioner.

The bill will also validate past reports and public statements by the CCC and its predecessors. Proposed sections 471 and 472 will provide legal certainty about the status of past reports and statements prepared under a common and reasonably held understanding of the reporting power in section 64 of the act prior to the High Court's decision. This is important to ensure that the CCC may continue to provide public access to previous reporting on corruption risks and corruption investigations. The CCC welcomes, and endorses, the bill.

I have had the benefit of reading *Hansard* of the committee's public hearings on 24 March 2025. Unfortunately, I was unable to attend on that date and I appreciate the committee's invitation to attend today. I considered it might be helpful to the committee if I used this opening statement to address some of the issues that were raised and discussed.

Some submitters raised concerns around the scope of the validation provisions in the bill. It was also submitted that procedural fairness should, again, be afforded to persons impacted by previous reports of the CCC and its predecessors. There has been reference to 32 reports and 256 media statements of the commission in discussions about retrospective validation. I want to clarify for the committee's benefit, and as a matter of public record, that those figures do not represent a complete catalogue of reports and statements which the CCC considers would be covered by the validation provisions, as proposed under new sections 471 and 472, nor is it a complete record of the reports and media statements that the CCC has been required to remove from its website.

That list of reports and statements was prepared by the CCC shortly after the High Court's decision when it was handed down in September 2023. At that time, the CCC was still interpreting and receiving advice about the impact of the decision from the High Court. We wanted to ensure that the CCC acted consistently with the decision and we took a view to take an expansive interpretation of the decision so that we would ensure that all the CCC's corruption prevention and research functions contained in reports were considered in terms of anything that needed to be removed. The CCC consequently made the decision to remove all reports, other than annual reports and reports about public hearings, from its website. For the avoidance of doubt, this has not changed the status of those reports as documents that have been tabled in the Legislative Assembly or as documents of public record.

The CCC understands that the legislative intent of the validation provisions in the bill is to provide certainty about the lawful basis of reports and statements previously made by the commission in accordance with the previous widely and reasonably held view about the broad powers under section 64. The legislative intent was confirmed in the Department of Justice's briefing document and in their appearance before the committee. The CCC does not interpret the proposed provisions to validate the content of any specific report or statement made by the CCC or its predecessors. Rather, the purpose is to put beyond doubt an argument that the CCC did not have a statutory power to prepare a report, including by way of public statement.

Procedural fairness was afforded in relation to each of those previous reports in accordance with common law requirements and also the statutory provisions that existed at the time the reports were made. It is not necessary, nor required as a matter of law, to afford procedural fairness again in relation to those historic reports. No new decision is being made to publish those reports. Rather, those documents which have remained available on the public record at all times will again be made conveniently accessible to the people of Queensland by way of our website.

Next, I note the concerns raised about enabling the CCC to report about a corruption investigation at any time, including prior to an investigation being finalised. The CCC has a long-standing policy to neither confirm nor deny that a matter is under investigation, unless there are exceptional circumstances. An example of exceptional circumstances might be where the existence of a complaint being made to the CCC is already in the public domain and accompanied by significant media attention and a heightened public interest in relation to the complaint. In those cases, if the CCC assesses the matter and determines that either the complaint is outside the CCC's jurisdiction or that no further action will be taken in dealing with the complaint, it may well be appropriate to make a public statement or report about the assessment of the complaint both because it would be unfair to the person against whom the allegations are made not to do so and because heightened interest in the complaint may call for a stronger public interest in the assessment outcome.

By way of further example, in cases of alleged serious and systemic corruption, public statements may be used to bring forward more information and witnesses, as was seen in the Fitzgerald inquiry. There may be other circumstances which cannot currently be conceived of where it may be necessary to make a public statement prior to the conclusion of an investigation, and we must be given sufficient scope to be able to determine the timing of such reporting. On balance, we consider it is appropriate, and in the public interest, for us to have the discretion to decide to report on a matter at any time.

It was raised by one submitter that the new mandatory reporting criteria should be hierarchical and afford particular weight to some considerations over others. The new mandatory criteria, which requires the weighing up of the public interest in accountability and transparency in public administration against the private rights and interests of individuals, are matters that the CCC and its predecessors already have regard to in making reporting decisions. The need to grapple with

competing interests is not a new concept for the CCC. What is important, though, is that the weighing up of those considerations is not prescribed as a rigid exercise and that the provisions provide sufficient flexibility for the CCC to afford appropriate weight to competing interests, depending on a case-by-case basis, having regard to the relevant circumstances of the matter.

Questions were also raised about the extent to which the bill adequately subjects elected officials to public scrutiny and accountability compared to the former government's bill, as informed by the Holmes review. The Holmes review and the former government's bill based on that review proposed a model of reporting only in very specific circumstances, with different prescriptions for categories of reports based on the class of person the investigation related to. The previous bill did not substantively hold elected officials to a higher standard of public scrutiny and accountability because that higher standard was only with reference to the significantly constrained reporting powers which were proposed in relation to non-elected officials. The current bill gives the CCC a wide discretionary power to report which is not constrained by the category or class of person, though it is guided by the mandatory criteria to weigh whether the standing and status of the person warrants greater public scrutiny.

The previous bill also prevented the CCC from including any critical commentary, opinions or recommendations based on the conduct of elected officials, if it did report in relation to their conduct. While the current bill imposes limitations in proposed section 48B, those limitations on the contents of reports are less restrictive than the former government's bill. In the CCC's view, the new bill in fact holds elected officials to a standard that is at least equal to, if not higher than, the previous bill. Additionally, and appropriately, in our view, the current bill replicates those high standards for non-elected officials. We consider the reporting regime for elected officials as outlined by the bill sufficiently subjects those office holders to a high level of public scrutiny and accountability. I am almost done. I appreciate that I am taking a little bit of time but I thought it would be helpful.

One submitter considered that a final stage to the procedural fairness process should be included in the provisions which requires the CCC to notify the person about the final publication decision in relation to the report concerning them. The CCC conducted a brief jurisdictional comparison exercise to understand if procedural fairness provisions in the governing legislation of other anti-corruption commissions in Australia included such a requirement. We have confirmed that such a requirement does not exist in any other state or territory anti-corruption body, nor the national anti-corruption commission. The CCC agrees with the Department of Justice's briefing document that the procedural fairness provisions are consistent with the natural justice obligations at common law.

The CCC appreciates that there may be circumstances in which it is appropriate to advise a person following consideration of submissions during a procedural fairness process of the decision that is made ultimately about publication. We agree with the department's view that it is not necessary for this to be expressly provided in the bill. We will, however, consider this, along with any other matters, as a discretionary consideration in the development of our own internal policies about reporting following the passage of the bill. I hope those comments are helpful to the committee and, of course, myself and Jennifer Crowther are able to answer any questions you have.

CHAIR: Thank you for that comprehensive opening statement. It answered a few of my first questions, in fact, in terms of the evidence we have heard. The recommendation of the Queensland Law Society, for example, that the CCC only be permitted to report at the end of an investigation seemed quite rigid and I challenged them on that in relation to the Fitzgerald inquiry and systemic corruption investigations. Can you further outline how important it is for you to have that discretion to report prior to an investigation being completed and how that fits in with your remit—your corruption role?

Mr Barbour: Firstly, I do not envisage that it is something that would be used frequently—and I think it is important to state that upfront—but to have the discretion to be able to do that in particular circumstances that might arise and which would require that to be done in terms of fairness or in terms of the efficacy or appropriateness of an investigation is something that is important and that is why the discretion is important. As I indicated in my opening statement, one can already think of a number of circumstances where it would be relevant and in an individual's interest if we have a matter before us that has received significant media attention suggesting that somebody has done something wrong and it is, in fact, clear to us, after an initial assessment, that they have not, to be able to make a public statement to that effect.

Similarly, the Fitzgerald inquiry used advance public statements to ensure that it was gathering as much relevant evidence and information and potentially important witnesses as it could. I can envisage large-scale investigations where such a strategy may well be appropriate as well. It is impossible to identify every particular circumstance where we might do it, but certainly I think it is extremely important to be able to have the capacity to do that.

CHAIR: Deputy Chair, do you have a question?

Mr RUSSO: Can I hand over to the member for Gaven?

CHAIR: Of course.

Ms SCANLON: Is it fair to say that the scope of new reports under this bill will be different to previously created and published reports? Obviously, we acknowledge the High Court decision, but I am talking about reports prior to that decision that were created and then published versus what this bill will now allow.

Mr Barbour: No, I do not see any difference at all. The intent of this bill and what I think it does achieve is it puts the CCC back into a position which everybody understood it to be in prior to the High Court decision. In that sense we would be in a position to be able to report, as we did previously, and so I do not see it as being any different. What is different, however, is that there are significantly improved safeguards for people in terms of reporting, in terms of what we must consider prior to reporting and so, if anything, I think it is actually an enhanced process rather than one which creates a difference, if I can put it that way.

Ms SCANLON: I acknowledge the point you have made. To follow up on a point you made in your opening statement, there are some restrictions obviously in section 8B that do prevent some things that you can say, particularly whether there is sufficient evidence. How will you reconcile providing public confidence if you are not able to make some comments based on that restriction?

Mr Barbour: I understand that that particular provision is one that is a little bit challenging for everybody to get their head around, but we have looked at it closely and we are satisfied that it will not prevent us in large part from doing what we need to do. The department's submissions to the committee we agree with in that it will permit us to be able to provide factual information about the investigation, about what we have identified in the investigation and also refer to the fact that we have prepared a section 49 report and who that report has been provided to.

If I can give you an example, if we identify conduct which potentially could be criminal and we prepare a 49 report and a brief of evidence to go to the Director of Public Prosecutions, we can state that fact in the report. I think the report will then effectively, for any reader, convey a very clear and precise level of information about the matter.

Ms MARR: Your statement has answered a lot of my questions so thank you for being so thorough today. You spoke about restoring everything onto the website and you went into detail about that. Can you explain what the expected outcomes are of doing that and also what the benefits of that would be to the community?

Mr Barbour: Transparency and accountability of government is critical to our system of government. It is undeniable that it is in the public interest that that exist. It is also undeniable that it is essentially a collective right of the community to be able to be adequately informed, properly informed, about significant issues involving corruption in the public sector. For us to be able to have material that we have prepared which highlights concerns around these issues from investigations over many years back on our website allows easy access to the material for the community, for public sector employees and for academics. Having said that, reports that have been tabled through the parliament previously are all publicly on record and they are technically accessible, but they are not easy for a lot of people to get or find. It is really important that easy access is available to the community on the website and I think it serves an incredibly important function.

Mr BERKMAN: Thank you for your time today. In your opening statement you have addressed the validation provisions and the fact that you do not believe any further steps are required around affording procedural fairness. I am interested in any broader concerns that other submitters have raised around the retrospectivity of the bill. You would have heard or read, for example, the evidence from the former Logan City councillors around the consequences of that retrospective publication. Can you add anything more for the committee's consideration around those concerns, around the retrospective nature of this bill and your response to those?

Mr Barbour: Firstly, I did note what was said by the former Logan councillors and also by the Law Society in relation to these issues. I have to say, quite frankly, I do not agree with what has been said. Retrospective validation in appropriate circumstances is something that happens all the time and frequently in relation to legislation. It has happened previously in relation to CCC legislation on a number of occasions. I do not think it creates any further impost or breach of people's rights to do so because, as I said in my opening, all of those matters are already on the public record. All that this will do will ensure that there is clarity around matters. It will provide certainty in relation to issues and it will also ensure that those matters are accessible by people on the website. I do not necessarily share that view.

Mr FIELD: Thank you both for being here today. With the mandatory inclusions in the reports that are there as per the current section 64A and 65A, what was the case previously? Has anything changed with those or has it stayed the same with that mandatory inclusion?

Mr Barbour: No, it is a new regime. It is important, I think, to emphasise the fact that they are mandatory and that they are things that we must turn our mind to. That is not to say that we would not have considered many of those matters previously prior to issuing reports, but I think to have them mandated in the legislation provides an appropriate safeguard, and I think it is a very legitimate thing to have there. Previously, of course, we would have been guided by common law principles of procedural fairness. We also had provisions under the Crime and Corruption Act that related specifically to procedural fairness. We would have followed those. We are also obligated to comply with the provisions of the Human Rights Act and we would have complied with those previously as well. They will all continue to exist and then on top of those will be the enhanced system which includes these mandatory elements.

Mr FIELD: In relation to the retrospective validation of the past reports, how important is it to have the ability to have that retrospectivity with the past reports and statements?

Mr Barbour: I think it is extremely important. I cannot underscore how interesting the dilemma that we were presented with as a result of the High Court's decision was. We had existed in one form or another for over three decades and there was uniform understanding and consistent thinking across members of parliament, people in the CCC, attorneys-general, lawyers, that the act operated in a particular way and then all of a sudden the High Court decision determined, as it certainly appropriately can, that that was, in fact, not correct. It is incredibly important, I think, for us to be able to firstly recognise the context of that. Secondly, to validate these reports allows, as I have said previously, for public accessibility, because without validating them we cannot put them on our website. It removes any doubt at all that officers who prepared these reports over 30 years and provided them to the parliamentary committee and various other procedures and steps that needed to be followed have done so appropriately. It really is, just simply by validating them, recognising that what we all understood to be the case is now able to be certain, and then we can move forward with the provisions of the bill.

Ms SCANLON: Given comments today made about the Fitzgerald inquiry, I just wanted to ask the CCC whether you believe that individuals appointed to the Queensland Redistribution Commission should be truly independent beyond reproach and have no political affiliation?

CHAIR: That question is outside the scope of the bill, member. I rule that out of order. With the last couple of minutes remaining, you did recommend an amendment to the bill. Could you take us through what that amendment is, which I think related to a definition of a corruption matter.

Mr Barbour: I think that has been resolved. We are satisfied, on the basis of the department's clarification, of that issue and we regard their response as a statement of legislative intent so we are quite comfortable about that. One of the other concerns we raised was about whether it could be seen that there was a mandatory requirement in relation to the identification of persons. We are satisfied with the department's statement in relation to that so we do not have a concern about that. Also, with regard to the operation of 69B(1)(a), we are satisfied with the explanation of the department in relation to that. They were all things that we identified in our submission to the committee that we had some concern about. We would prefer a different wording for section 85AA and it is a fairly complicated legal argument, but I am very happy if you would like Ms Crowther to go through that for you. It is not unworkable as it is presently drafted, but we do believe that it could be improved.

CHAIR: As we are running out of time, that is covered fairly well in your submission, is it not, so we can consider that. Is there anything else that you would like to add to that that is not necessarily covered in the submission?

Mr Barbour: No. I think that is fine, thank you, Chair, and because it is a technical drafting issue there is an opportunity in further deliberations or discussions with the department and following the committee's review to potentially have a look at that.

CHAIR: That concludes the public hearing. Thank you to everyone who has participated today. Thank you to our Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. No questions were taken on notice. I declare this public hearing closed.

The committee adjourned at 12.00 pm.