

Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025

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10 March 2025

Committee Secretary
Justice, Integrity and Community Safety Committee
Parliament House
George Street Brisbane QLD 4000

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

Dear Secretary

**RE: Crime and Corruption (Restoring Reporting Powers) Amendment Bill
2025**

Thank you for the opportunity to provide a submission in relation to the Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025 ("the Bill").

The Crime and Corruption Commission ("CCC") has had the opportunity to consider the operation and workability of the proposed provisions during the drafting of the Bill and in the Committee review process.

The CCC notes the stated objective of the Bill to restore the CCC's power to publicly report and make public statements about corruption matters. The CCC endorses the Bill acknowledgement of the strong public interest in ensuring that the CCC can report and make statements about corruption and corruption risks.

The CCC has consistently advocated for legislative amendment to revest the CCC with reporting powers following the High Court's identification of a deficiency in the *Crime and Corruption Act 2001* ("CC Act") in September 2023.¹

The CCC considers that the Bill effectively delivers on that objective. It recognises the important public interest in revesting the CCC with the power to publicly report in the performance of its corruption function, and effectively returns the CCC to the position as it was widely understood to exist prior to the High Court's decision.

The CCC welcomes and supports the Bill.

¹ *Carne v Crime and Corruption Commission* [2023] HCA 28.

The CCC must be accountable to the Queensland community, it must promote public understanding of its role, and it must instil confidence in the effectiveness of the organisation. Public reporting is a key mechanism by which the CCC delivers on those purposes. Public reporting is also a powerful education tool and deterrence to corruption, and it promotes public confidence in the integrity of the Queensland public sector.

The CCC acknowledges that this responsibility to the public and the public interest in reporting must be balanced against the interests of individuals, particularly those who may be adversely affected by publications. The Bill sets out a framework to appropriately balance those competing interests. The Bill requires the CCC to consider the matters set out in proposed ss 64A and 65A in making decisions to report on, and make public statements about, corruption matters. The new provisions codify matters the CCC already had regard to, and, additionally, imposes new mandatory considerations in making decisions about reporting. While the CCC observes that the enhanced test may present some challenges in practical implementation, it reasonably allows the CCC to make fair decisions about reporting by balancing competing considerations on a case-by-case basis.

The Bill also endorses the preparation and publication of past reports and statements. The CCC and its predecessor bodies have published reports on corruption matters for over 30 years. Those reports highlight corruption risks, demonstrate important integrity lessons and, in many cases, were an impetus for improved processes and procedures in public agencies. The Bill appropriately validates both the preparation and publication of previous public reports and public statements of the Commission. This is an important, sensible and necessary step in restoring the legacy work of the Criminal Justice Commission, the Crime and Misconduct Commission, and the CCC, and ensures those publications will remain available to the Queensland community into the future.

Particular matters for review

The CCC has identified a number of matters of detail and drafting, which the CCC considers may impact the ease of interpretation and workability of aspects of the Bill. The following matters are drawn to the attention of the Committee for the purposes of review:

- **Proposed ss 64A and 65A Commission reports and public statements**

Sections 64, 64A and 65A together express the CCC powers to report on, and make public statements about, corruption matters. There is a definition of ‘corruption matter’ in proposed s 63A “*a complaint about, or information or matter (also a complaint) involving, corruption made or notified to the Commission...*”. The CCC observes that the definition mirrors the language in the CC Act, including in s 35 (How commission performs its corruption functions). Without this context, the inclusion of the words “involving corruption” in the definition could be interpreted to mean that a complaint, information or matter must meet the threshold of ‘corrupt conduct’ under s 15 of the CC Act in order for a report or statement to be made about it. The CCC does not interpret the Bill to be so narrow, noting that it otherwise allows for the CCC to make a public statement about its assessment of complaints which it concludes do not meet the definition of ‘corrupt conduct’ under the CC Act and to make report and make statements generally in furtherance of its corruption prevention responsibilities.²

Circumstances may, and have previously, arisen where the fact of a corruption complaint being referred to the CCC is in the public domain. Where the CCC assesses a complaint and determines it falls outside of jurisdiction because it does not meet the definition of ‘corrupt

² Noting the wide description of the commission’s corruption functions in existing s 33 of the CC Act and the terms of proposed s 174(2A) and s 35(1)(k) to (m).

conduct', it may still be in the public interest for the CCC to make a public statement about its assessment of the complaint. While it may be reasonably open to conclude the complaint does not 'involve corruption' because it has been found the complaint is not within the CCC's jurisdiction, the CCC notes that, even if such a complaint was not a 'corruption matter' within the power in s 65A, the proposed amendments to s 174(1) provide power for the CCC to make a public statement about a complaint in those circumstances.

- **Proposed s 69D Other identifying information**

The CCC notes the discretionary process in s 69D which the CCC may follow in relation to persons who are identifiable, but about whom adverse comments are not made, in reports or statements. While the Bill anticipates that there may be circumstances in which the CCC is required to urgently make a public statement which identifies, but does not make an adverse comment, about a person, the CCC observes that the process in s 69D contemplates that the CCC would allow a person 30 days to respond. That discretionary process would not be employed where there were circumstances requiring an urgent statement to be made. The CCC is nonetheless required to comply with the *Human Rights Act 2019* and its overriding obligation to act fairly and independently under s 57 of the CC Act in relation to the identification of persons in public statements. In the CCC's view, the discretionary provision in s 69D appropriately balances the rights and interests of individuals without foreclosing the CCC's ability to urgently make public statements in the public interest when it deems it is appropriate to do so.

Related to this, the CCC notes the Bill provision in ss 64A and 65A that where a person's identity is readily apparent or can reasonably be ascertained from a report or statement, one of the matters the CCC must have regard to is whether the person consents to being identified.³ Given the Bill acknowledgment that there may be circumstances in which the CCC is required to make an urgent public statement which identifies, but not make adverse comment, about a person, the CCC considers that the requirement in ss 64A and 65A is not a positive obligation on the CCC to inquire with every person who may be identifiable in a report or statement as to whether they consent to the report or statement's publication in every circumstance. If the provision were to be otherwise construed, it would confuse and undermine the detailed framework for procedural fairness of identifiable persons in s 69D. Rather, we interpret the mandatory consideration in ss 64A and 65A to mean that the CCC must consider the identifiable person's consent or non-consent, if the identifiable person has themselves expressed this to the CCC. To the extent there is any doubt about this interpretation, the Committee may conclude that this could be clarified in the Bill drafting.

- **Validation, and application to complaints and investigations**

The CCC welcomes the provisions in ss 471 and 472 which validate past reports and public statements of the Commission and its predecessors. These are important provisions which will ensure that the CCC may provide public access to previous reporting on corruption risks and corruption investigations.

The CCC supports the Bill provision in s 473 which confirms that the Bill powers will apply to corruption complaints and investigations notified to the CCC, and conduct that occurred, prior to the commencement of the Bill. These transitional provisions appropriately allow the CCC to continue its work and engage in future public reporting in relation to corruption complaints made or notified and investigations commenced or completed since the High Court's decision.

³ The Bill proposed ss 64A(2)(f)(iv) and 65A(4)(f)(iv).

- **Proposed s 69B Adverse comment**

The CCC has previously expressed its support for enhancement and clarification of the procedural fairness requirements in s 71A of the CC Act. The Bill provision generally achieves this. However, the reference in proposed s 69B(1)(a) to commission reports that are “required to be tabled in the Legislative Assembly” may require review. The CCC understands the Bill intention is to confer a discretion to report, rather than impose a requirement to report in every case. Also, whereas s 71A applies to “a report to be tabled in the Legislative Assembly, or published to the public” the current wording of s 69B could suggest that it applies only where a report is to be tabled or published under s 69. In the interests of clarity, s 69B(1)(a) may benefit from rewording: “a commission report ~~required to be~~ tabled in the Legislative Assembly under section 69, or published”.

- **Proposed s 85AA Giving notices by email**

Section 85AA of the CC Act, which commenced in September 2024, provides a new mechanism for giving notices by email. The CCC submits that in the interests of achieving consistency with the notice provisions in the COVID-19 emergency legislation which preceded this and the notice provisions in other legislation which the CCC employs, including for example the *Criminal Proceeds Confiscation Act 2002*, s 85AA should be simplified by the omission of subsections 85AA(3) and (4). Alternatively, the drafting of s 85AA could be clarified by adding the words “under section 85AA(3)(a)” after the words “In deciding...” in s 85AA(4).

[REDACTED]

Yours sincerely

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Bruce Barbour
Chairperson