

## Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025

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<b>Submitter Comments:</b>	



# QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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11 March 2025

Mr Martin Hunt MP  
Chair  
Justice, Integrity & Community Safety Committee  
Queensland Parliament  
Email: [JICSC@parliament.qld.gov.au](mailto:JICSC@parliament.qld.gov.au)

Dear Mr Hunt,

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

This is a submission in relation to the above Bill which was referred to your Committee for a Report due 11 April 2025 and a submission deadline of 11 March 2025.

The Objectives of the Bill are outlined in the Explanatory Notes.

This submission will concentrate on the second listed Objective of the Bill namely:

- "To safeguard against the release of information to the public about corruption matters in circumstances where the risks or harms outweigh any benefits to be derived from releasing the information".<sup>1</sup>

The Explanatory Notes in dealing with "Consultation" record that the CCC was the only entity consulted on the draft Bill.

This total lack of consultation other than with the CCC is to be deplored as there was nothing urgent or peculiar about the Bill that can serve as an excuse for the lack of consultation on such an important area of law reform.

The Independent Crime and Corruption Commission Reporting Review prepared by The Honourable Catherine Holmes AC SC (hereinafter referred to as the Holmes Review) delivered to the previous

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<sup>1</sup> See Explanatory Notes page 1.

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Government on 20 May 2024 provides a valuable blueprint for changes to the Reporting provisions of the *CCC Act*.

While the Explanatory Notes inexplicably do not even refer to this important work some of the Bills' provisions appear to be modelled on the Holmes Review.

This is the second major piece of legislation introduced by the Crisafulli Government which was elected in October 2024. The first major piece legislation which was encapsulated in the slogan "Adult Crime Adult Time" was similarly not the subject of consultation prior to the Bill being introduced into the Parliament.

This lack of consultation in relation to legislation should immediately cease.

The lack of consultation except with the Crime and Corruption Commission (hereinafter referred to as the Commission) puts a far greater onus and responsibility on the Committee to thoroughly examine this Bill and submissions forwarded to the Committee in respect of the Bill because of the legislative imperfections that invariably arise from a poorly prepared Bill which does not have the formative benefit of input from multiple entities.

This submission will deal with the following headings, namely:

- Public Statements by the Commission;
- Reports by the Commission; and
- Strengthening Review Mechanisms

### **Public Statements**

The new Section 48B imposing limitations on a Commission's findings, recommendations and statements is welcomed.

Section 48D(3) declares that the Commission is not prevented from making a factual statement about a matter or thing that is already in the public domain or to indicate that the Commission has reported on a corruption investigation.<sup>2</sup>

It is important to observe that 'corrupt conduct' is defined in Section 15 of the *Crime and Corruption Commission Act* as conduct:

- That adversely affects the performance of functions of a unit of public administration;
- Conduct that is not honest or impartial; and
- Conduct that impairs public confidence in public administration even when it does not involve a lack of propriety.<sup>3</sup>

This definition is very wide and would not be understood by the average member of the public as being so wide. The public views the term 'corruption' through the prism of popular TV shows as referring to public officials being paid money to perform an illegal act.

The fact that corruption is so widely defined makes it even more important for the Bill to ensure that that the Bill's Objective which is the subject of this submission be given full force and effect.

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<sup>2</sup> See Explanatory Notes page 8-9.

<sup>3</sup> See page 33-34 Holmes Report.

The new Section 65A deals with public statements and provides that a public statement must not include any recommendation in relation to a corruption matter other than a recommendation included in a Commission report on the corruption matter that has been tabled in the Legislative Assembly or published under Section 69...<sup>4</sup>

Section 65A(4) outlines the matters the Commission must consider in making a decision about making a public statement about a corruption matter.<sup>5</sup>

Under the new Section 65A(4)(a) to (f) the matters the Commission must consider are:

- The need for accountability and transparency in Government and the public sector;
- Whether the statement will be for the public benefit;
- Whether the Commission has finalised its assessment of the corruption matter;
- The seriousness of the corruption matter;
- Whether any statement may prejudice any proceeding;
- Whether the statement is the most appropriate and suitable means of releasing information about the corruption matter to the public.<sup>6</sup>

In relation to public statements the Holmes Review makes the following observations:

- The Commission should have a general discretion to make public statements but only for limited purposes e.g. to inform the public that a referral is not warranted if the matter is already in the public domain and the subject of the investigation agrees. For particular situations at the earlier stages of investigation where there is a higher risk to reputation and fair trial the Commission should only make public statements if there are exceptional circumstances but no person should be named unless reasonably necessary.<sup>7</sup>
- The Commission must have a power to make public statements. Anything less would be contrary to the principles of transparency and accountability.<sup>8</sup>

The Holmes Review Recommendation 1 is:

- The discretion to prepare a report and to make a statement in relation to a corruption assessment should only be made in the public interest and the Commission should be required to take into account the following, namely, the need for transparency and accountability in Government, the effect on reputation and the seriousness of the matter under investigation or assessment.<sup>9</sup>

The Holmes Review also emphasises the importance of the Public Interest test. The report observes “making a report or public statement should only be exercised by taking into account a number of factors including the need for transparency and accountability in Government and the public sector”.<sup>10</sup>

Section 65A(4)(g) provides that where a person’s identity is readily apparent or can reasonably be ascertained from the (public) statement the Commission must also consider further criteria namely:

<sup>4</sup> See Explanatory Notes page 11.

<sup>5</sup> See Explanatory Notes page 12.

<sup>6</sup> See Explanatory Notes page 12.

<sup>7</sup> Page 6 Holmes Review.

<sup>8</sup> Page 180-182 Holmes Review.

<sup>9</sup> Underlining added. See page 190-191 Holmes.

<sup>10</sup> Page 6 Holmes Review.

- Whether the standing and status of the person warrants greater public scrutiny;
- Whether the statement may unreasonably damage the person's health, safety or wellbeing;
- The seriousness of the person's conduct;
- Whether the person consents to being identified;
- Whether the statement may unreasonably interfere with the person's privacy or reputation.<sup>11</sup>

It is submitted that in relation to the Commission making a public statement both in relation to the corruption assessment stage and at the conclusion of the Commission's investigations, the Bill should be amended to make it clear that the provision contained within Section 65A(4)(g) namely "whether the statement may unreasonably damage the person's health, safety or wellbeing or privacy or reputation" should be given significant weight by the Commission in deciding whether to issue a public statement.

In this regard there is an important observation in the Holmes Report, namely:

- There is a risk that the consideration given to human rights comes to be seen as 'perfunctory lip service' especially if the compatibility assessment almost always leads to the conclusion that the Commission's 'duties and responsibilities' outweigh the rights of individuals to privacy and reputational protection...the Commission's Operational Manual does not mention the impact on a person's privacy or reputation.<sup>12</sup>

The Holmes Report also observes that "a common and emphatic feature of many submissions was that the Commission should not report on matters not amounting to corruption".<sup>13</sup>

While it would appear that Recommendation 1 has been largely taken up in the Bill the observation about "perfunctory lip service" being given to reputational consequences should be taken on board by the Committee and supports this Council's submission that privacy and reputational protection should be given significant priority by the Commission both in deciding whether to issue a statement and in the actual content and wording of the statement. The Bill should be amended accordingly.

In the current list of criteria the reputational issue is one of a number of factors the Commission has to take into consideration in producing a statement or a report. It is submitted the Bill should be amended so as to give this factor greater prominence and priority in the list of issues the Commission has to consider in issuing a Report or a Public Statement.

The Holmes Report notes that "the High Court's observations in Balog remain true of the Queensland Commission. That is particularly so now it has a greater responsibility to avoid damage to reputation...by virtue of its obligations under the *Human Rights Act* (being) legislation which had, when *Balog* was decided, and still has, no New South Wales equivalent".<sup>14</sup>

In Recommendation 12 the Holmes Report notes that the Commission should be given the express power to make a public statement under the following circumstances:

- To say it is inappropriate to comment;
- To inform the public evidence is not sufficient to warrant an investigation;

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<sup>11</sup> See Explanatory Notes page 12.

<sup>12</sup> Page 150-151 Holmes Review.

<sup>13</sup> Page 169 Holmes Review.

<sup>14</sup> Page 202 Holmes Review.

- The Commission should also be given an express power to make public statements in connection with a corruption investigation, for one of the following purposes, but only in exceptional circumstances.<sup>15</sup>

By way of clarification of this recommendation the Holmes Report further noted:

- “As is the case under the Federal and the Northern Territory models, the power to make public statements should be subject to some qualifications. First a public statement should not name or identify a person if it is not reasonably necessary to do so. Second, the Commission should only exercise the power to make the public statement after giving procedural fairness to any affected person”.<sup>16</sup>

### **The format of public statements to be issued by the CCC**

The new Section 48B provides that, despite any other law, the Commission must not:

- Make any finding or statement that a person has or has not engaged in, or is or is not engaging in or about to engage in, corruption.
- Make any finding, recommendation or statement that a person should be prosecuted for a criminal offence or be the subject of disciplinary action, or that prosecution proceedings or disciplinary action should be considered in relation to a person.
- Make any finding or statement that there is evidence, or insufficient evidence, supporting the start of a proceeding against a person.<sup>17</sup>

It is submitted that in any public statement or report published by the Commission to which Section 48B applies that the above extract from the Explanatory Notes dealing with Section 48B should be prominently displayed. In a public statement it should be prominently displayed at the end of the statement and in a Report it should be prominently stated in the ‘introduction’ pages. This is because in the way the Commission’s media statements are reported the impression is often created that the Commission is making a “finding” against a person. The insertion of the Explanatory Notes extract of Section 48B will go some way to addressing this problem and preventing media reports from suggesting the Commission has made a negative finding including a finding of guilt against a person.

### **Commission reports**

A new Section 64A is proposed to be inserted into the Act namely that the Commission may report on a corruption matter and the Section outlines the matters the Commission must consider in making a decision about reporting on a corruption matter.

The criteria in relation to reports are essentially the same as the criteria in relation to Public Statements as outlined above.<sup>18</sup>

The following extracts from the Holmes Review are relevant in considering whether any changes should be made to the new Section 64A, namely:

- That reporting in relation to an individual against whom there has been no finding is not ordinarily justified.<sup>19</sup>

<sup>15</sup> Page 235-236 Holmes Review.

<sup>16</sup> Page 235 Holmes Review.

<sup>17</sup> See Explanatory Notes page 8 and 9.

<sup>18</sup> See Explanatory Notes page 10.

<sup>19</sup> Page 1 Holmes Review.

- Elected officials should be an exception but if they have not been found guilty of any corruption reporting should be confined to the purely factual.<sup>20</sup>
- In exercising its prevention function the Commission should be able to make reports which include corruption investigation details, again avoiding the identification of individuals.<sup>21</sup>

It is appropriate in relation to Reports to repeat the observation made earlier in this submission that the Holmes Report observed “there is a risk that the consideration given to human rights comes to be seen as ‘perfunctory lip service’ especially if the compatibility assessment almost always leads to the conclusion that the Commission’s ‘duties and responsibilities’ outweigh the rights of individuals to privacy and reputational protection...the Commission’s Operation Manual does not mention the impact on a person’s privacy or reputation”.<sup>22</sup>

The Holmes Review draws attention to the case of Kazal v Australia.<sup>23</sup> The Holmes review observed:

- In 2010 and 2011 the (NSW) Commission conducted an investigation into an alleged undisclosed conflict of interest of a senior executive of the Sydney Harbour Foreshore Authority. The Commission decided to conduct the hearings in public and went on to publish a report in December 2011. In that report, the Commission made findings that the senior executive and Mr Kazal had both acted corruptly. The Commission found that Mr Kazal had sought to improperly influence a senior executive by holding out to him the prospect of a joint business venture with the Kazal family and by paying for his flights to the United Arab Emirates...despite the findings, the DPP determined there was insufficient evidence to warrant a prosecution and Kazal sought Judicial Review of the (NSW) Commission findings but the NSW Supreme Court found the Commission had acted within its wide jurisdiction. The consequence was that Mr Kazal was left with adverse findings he could not appeal or negate in another way such as through an exoneration protocol.
- In 2017 the Office of the Inspector of the Independent Commission Against Corruption criticised the report findings, finding them “weak and flawed”. The Office of the Inspector was also critical of “the lack of any written record of the reasons for holding public hearings and the lack of any exoneration protocol”.<sup>24</sup>

Importantly the Holmes Review made the following observation about Kazal and its applicability to Queensland:

- “Kazal demonstrates the need to weigh what is actually necessary in order to investigate corruption against the damage caused to the privacy of a person being investigated. It draws attention to the invidious position a person can find themselves in if they are the subject of an adverse comment in a public report but they cannot clear their name by successfully defending a prosecution or through some other process such as an exoneration protocol. Even with human rights obligations the Crime and Corruption Commission has placed people in a similar position in Queensland”.<sup>25</sup>

This strong statement in the Holmes Review leads to consideration of the separate issues of Reputational repair protocols and other Oversight mechanisms.

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<sup>20</sup> Page 2 Holmes Review.

<sup>21</sup> Page 3 Holmes Review.

<sup>22</sup> Page 15-151 Holmes Review.

<sup>23</sup> See UN Human Rights Committee views 11/4/2024 and footnote 90 at page 159 of Holmes Review.

<sup>24</sup> Page 143 Holmes Review.

<sup>25</sup> Underlining added. Page 144 Holmes Review.

## **Strengthening review mechanisms**

The Holmes Review noted:

“The recent case of *Kazal v Australia* shows the predicament a person can find themselves in if an anticorruption Commission issues a report that includes findings they have engaged in corrupt conduct if there is insufficient evidence to warrant a prosecution so the person ‘never gets their day in court’ and can never clear their name. The potential for that predicament lead the Queensland Human Rights Commission to submit that consideration should be given to “including mechanisms to challenge [decisions to report] and/or adverse findings in public reports.”<sup>26</sup>

Another submitter to the Holmes Review argued that “there should be an adequate right of review of any public findings that the Commission is empowered to make. The Application for review or appeal might be to the Supreme Court or a Tribunal constituted by a serving or retired Supreme Court Judge. The Review should not be confined to the traditional grounds of Judicial Review. It should extend to review on the ground that the findings made by the Commission “could not reasonably be supported by the evidence”. The submission pointed to a similar appeal avenue to the District Court from findings made by a Coroner at an Inquest”.<sup>27</sup>

The Holmes Review noted that a similar proposal in New South Wales was considered in an independent review by the Honourable Murray Gleeson and Mr Bruce McClintock SC in 2015 but that review considered that “introducing a ground that the Independent Commission against corruption finding “was not reasonably supported by the evidence” would effectively introduce merits review.”<sup>28</sup>

The Holmes Review noted that:

“There is another factor militating against merits review of findings made by the Commission. Unlike the Coroner, and unlike the ICAC in NSW the Crime and Corruption Commission does not have express power to make findings”.<sup>29</sup>

The Holmes Review concluded that “Judicial Review may be an imperfect safeguard, but the solution is not to introduce stronger review mechanisms, such as merits review. The solution is to confine the scope of the Commission’s statutory powers and to strengthen its obligations to provide procedural fairness”.<sup>30</sup>

With respect to the conclusions reached in the Holmes Review it is submitted that the *Queensland Judicial Review Act* should be expanded to include merits review of a Commission finding on the basis that “the traditional grounds of Judicial Review do not offer a sufficient protection of a person’s reputation”.<sup>31</sup>

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<sup>26</sup> Page 246 Holmes Review.

<sup>27</sup> Page 246 Holmes Review.

<sup>28</sup> Page 246 Holmes Review.

<sup>29</sup> Page 247 Holmes Review.

<sup>30</sup> Page 248 Holmes Review.

<sup>31</sup> This is a reference to a submission made to the Holmes Review and reported at page 247/paragraph 3.

The QCCL notes the Holmes Review comment that:

“Judicial Review may be an imperfect safeguard but the solution is not to introduce stronger review mechanisms such as merits review. The solution is to confine the scope of the Commission’s statutory powers and to strengthen its obligations to provide procedural fairness”.<sup>32</sup>

The Holmes Review notes that “in relation to Judicial Review (there is) the difficulty of seeking relief both in terms of proving a case and assembling the monetary resources needed to mount it”.<sup>33</sup>

Challenges to the Commission by way of Judicial Review are extremely rare in Queensland. This is because of the huge legal expenses that are incurred not only by an Applicant in the Supreme Court but also by the fact that an Applicant will have to bear their own very significant legal costs as well as the significant costs of the Commission if the Applicant loses.

The Holmes Review conclusion that Judicial Review should not be expanded to a merits review is respectfully disagreed with in this submission. It is submitted that the Holmes Review comment that “the solution to confine the scope of the Commission’s statutory powers and to strengthen its obligations to provide procedural fairness” will not, in practice, prove to be the case because of the Commission’s ongoing ability and frequent practice as referred to above to give only a ‘perfunctory’ nod to reputational issues while continuing the almost invariable stance that reports should be published.

It is submitted that, contrary to the Holmes Review, that merits review should be inserted into the *Judicial Review Act* to make the Commission more accountable and to protect reputational rights in respect of Public Statements and Reports that the Commission produces.

### **Reputation repair protocol**

The Holmes Report notes:

“The Office of the Inspector in New South Wales has raised the idea of an exoneration protocol in a number of reports starting from 2016. The Parliamentary Committee rejected the idea in 2016 and again in 2021. That appears to be because an exoneration protocol has been conceived of as a form of merits review...according to the Parliamentary Committee, Justice Gleeson and McClintock had concluded in 2015, merits review of that kind would confuse the role played by the Commission with the role played by a Court. Moreover a person is not exonerated just because they are subsequently acquitted or their prosecution is discontinued”.<sup>34</sup>

Not to have an exoneration protocol simply because “it would confuse the role played by the Commission with the role played by the Court” is, with respect, an inadequate justification for rejecting merits review.

Further, the assertion that “a person is not exonerated just because they are subsequently acquitted or if the prosecution is discontinued” is a conclusion that should be rejected. The presumption of innocence in criminal law jurisprudence has the consequence that if a person is acquitted or their prosecution is discontinued they remain presumed innocent.

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<sup>32</sup> Page 248 Holmes Review.

<sup>33</sup> Page 9 Holmes Review.

<sup>34</sup> Page 248 Holmes Review.

It is submitted, therefore, that the Bill should be amended to provide for an exoneration protocol.

### **Oversight by Parliamentary Commissioner**

The Holmes Report notes that the South Australian *Independent Commission Against Corruption Act* “requires the South Australian Inspector who helps to oversee the Independent Commission Against Corruption to consider whether the Commission has exercised its powers in an appropriate manner, including whether the Commissioner has invaded privacy unreasonably or caused undue prejudice to a person’s reputation”.<sup>35</sup>

It is submitted that particularly having regard to the significant limitations of Judicial Review in Queensland, the power of the South Australian Inspector should be given to the Queensland Parliamentary Commissioner.

### **Summary of submissions**

It is submitted that in relation to the Commission making a public statement both in relation to the corruption assessment stage and at the conclusion of the Commission’s investigations, the Bill should be amended to make it clear that the provision contained within Section 65A(4)(g) namely “whether the statement may unreasonably damage the person’s health, safety or wellbeing or privacy or reputation” should be given significant weight by the Commission in deciding whether to issue a public statement. (Page 4 herein)

In the current list of criteria the reputational issue is one of a number of factors the Commission has to take into consideration in producing a statement or a report. It is submitted the Bill should be amended so as to give this factor greater prominence and priority in the list of issues the Commission has to consider in issuing a Report or a Public Statement. (Page 4 herein)

It is submitted that in any public statement or report published by the Commission to which Section 48B applies that the above extract from the Explanatory Notes dealing with Section 48B should be prominently displayed. In a public statement it should be prominently displayed at the end of the statement and in a Report it should be prominently stated in the ‘Introduction’ pages. This is because of the way that Commission media statements, particularly, are media reported the impression is often created that the Commission is making a “finding” again a person. The insertion of the Explanatory Notes extract of Section 48B will go some way to remedying this problem. (Page 5 herein)

With respect to the conclusions reached in the Holmes Review it is submitted that the *Queensland Judicial Review Act* should be expanded to include merits review of a Commission finding on the basis that “the traditional grounds of Judicial Review do not offer a sufficient protection of a person’s reputation”. (Page 7 herein)

The Holmes Review conclusion that Judicial Review should not be expanded to a merits review is respectfully disagreed with in this submission. It is submitted that the Holmes Review “...solution to confine the scope of the Commission’s statutory powers and to strengthen its obligations to provide procedural fairness” will not, in practice, prove to be the case because of the Commission’s ongoing ability to give only a ‘perfunctory’ nod to reputational issues while continuing the almost invariable stance that reports should be published. (Page 8 herein)

It is submitted, therefore, that the Bill should be amended to provide for an exoneration protocol. (Page 8 herein)

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<sup>35</sup> Page 251 Holmes Review.

It is submitted that particularly having regard to the significant limitations of Judicial Review in Queensland, the power of the South Australian Inspector should be given to the Queensland Parliamentary Commissioner. (Page 9 herein)

Yours faithfully

**QUEENSLAND COUNCIL FOR CIVIL LIBERTIES**



**TERRY O'GORMAN**  
**VICE-PRESIDENT**