

Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025

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Justice, Integrity and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000
By email: JICSC@parliament.qld.gov.au

Dear Committee Secretary,

Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025

Thank you for the opportunity to provide a submission to the Committee's inquiry into the Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025 (**Bill**).

The Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law and help protect the rights of individuals. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve access to justice.

Concerns with the proposed reforms

QLS has significant concerns with the reforms proposed in this Bill. We **enclose** our submission to the *Independent review into the Crime and Corruption Commission's reporting on the performance of its corruption functions* which outlines these concerns and ask that the Committee consider these as part of this inquiry.

Accepting, however, that the legislation is likely to proceed in some form, we would be pleased if the Committee could consider the issues raised below and make recommendations to address these so that potential for harm caused by the amendments is reduced.

We note that despite the consideration that may have been given to these issues in the past, the amendments in the Bill require careful and thorough examination which is achieved through considered consultation. This has not occurred here. The Explanatory Notes advise that only the Crime and Corruption Commission (**CCC** or **Commission**) was consulted. This is regrettable given the amount of time taken by the Independent Review to consider these issues. An exposure draft ought to have been released.

Concerns with specific provisions

1. 'Corruption matter' must be refined and limited to matters where an investigation has been finalised

The Bill amends the *Crime and Corruption Act 2001* (**CC Act**) to permit the CCC to report and make public statements at any time about corruption matters.

New section 63A defines *corruption matter* to mean:

- (a) a complaint about, or information or matter (also a complaint) involving, corruption made or notified to the commission, or otherwise coming to its attention, whether or not the complaint has been assessed or any action has been taken in relation to the complaint under section 46; or
- (b) a corruption investigation, whether or not the investigation is complete.

This definition is overly broad and will produce unintended consequences. If the Commission's powers are to be expanded in this way, we strongly agree with the Honourable Catherine Holmes AC SC's caution that "(t)he discretion to report publicly should not be at large."¹ The review report notes that:

"The mere fact that the conduct of a public sector employee or appointee has not met expected standards, or even that they have been disciplined in some way short of dismissal as a result of a referral by the Commission, should not of itself suffice to warrant a report into the investigation of their conduct."²

However, these matters clearly fall within the above definition. The scope needs to be appropriately targeted. It is not reasonable for the power to extend to each and every matter that comes before the Commission including ones assessed as frivolous or vexatious. It is not sufficient to simply leave it to the Commission's discretion under new section 64(2). It is clear from the report and the objectives of the CC Act that the reporting focus should be on instances where serious or systemic corrupt conduct is made out.

Most concerning, the definition includes matters that have not yet been assessed and those where the investigation has not been finalised. This is explicitly contrary to the recommendations of the Independent Review and again raises reasonableness issues where there are frivolous and vexatious complaints.

As QLS has previously submitted, allowing "any" information that has come to the Commission to be published when this has not been verified and tested, and in circumstances where an investigation could be finalised and no adverse findings made, cannot be justified and is likely to cause real harm to the affected individuals. This concern is highlighted in the Review report where it is noted that the CCC does not use its full suite of investigative tools at the assessment stage and thus there is a danger in releasing this information for potentially incorrect conclusions to be drawn.³

As noted in the report, there is limited (if any) public interest in making reports or statements at this time. In fact:

Public confidence, indeed, is likely to be damaged if a report is prematurely made on an investigation which comes to nothing. Nor is it clear why reporting on an incomplete investigation is likely to be educative or provide a deterrent—again, it may in fact be counter-productive if the premise of the report proves

¹ The Hon. Catherine Holmes AC SC, Reviewer, Independent CCC Reporting Review, *Report of the Independent Review into the Crime and Corruption Commission's reporting on the performance of its corruption functions*, 20 May 2024 at page 180.

² Ibid at page 200.

³ Ibid at page 180.

to be unfounded—or why those results cannot be achieved at the conclusion of the investigation.⁴

Where there is no material benefit from reporting before a matter finalised, however, there is the real potential for harm to be caused, it is evident the right balance has not been struck here.

Further, allowing reporting before the CCC has finalised its work directly contradicts the purpose of the proposed additional safeguards in new section 64A(2). One of the “matters relevant” in this section is whether the Commission has finalised its assessment of the matter and taken action on it. This provision accepts for the potential for harm and prejudice where this is not the case.

QLS recommends that the definition of *corruption matter* be amended so that it only applies to matters where no further action is to be taken by the Commission i.e. when the initial assessment concludes that no further action is warranted or where the investigation has been completed. Following further consideration of the definition, it might be appropriate to carve out instances where there are “exceptional circumstances”.

We make these same recommendations with respect to public statements, noting the review report’s views that:

“taking into account the greater impact on human rights, public statements about a matter while it is still being assessed or investigated should be the exception rather than the rule.”⁵

2. Retrospectivity

The Bill will have a retrospective effect in two ways. First, it will validate past reports and statements and second, it will allow these amendments to apply to matters currently on foot.

QLS objects to this approach. The retrospective application of laws, unless justified, is contrary to the common law and fundamental legislative principles as set out in the *Legislative Standards Act 1992*. This rationale for this principle is particularly relevant in this context. Allowing reports and statements to be public when they have arisen in circumstances where the affected persons did not know this would occur, and where there is a real risk of reputational and other damage is unfair and unreasonable.

An individual cannot step back in time with this knowledge and decide to take a different approach in their matter, however, they are left with the consequences of a report or statement being released. This is noted at page 6 of the Explanatory Notes but dismissed due to, among other matters, the new criteria set out in new section 64A(2). However, the factors set out in this new provision are still based on conduct and information that pre-dates these amendments. It is difficult to contemplate how procedural fairness can be afforded in respect of past reports.

Our concerns are compounded by the abovementioned issues with the definition of ‘corruption matter’, including in instances where reports were created where no further action was taken by the Commission, as well as by the types of powers the CCC has to gather information.

⁴ Ibid, pages 191-192.

⁵⁵ Ibid, page 216

Further, depending on how much time has elapsed since the matter, it will likely be more difficult for an affected person to prepare submissions in respect of adverse comments under the new section 69B. This prejudice could be significant.

We note that in making recommendations about retrospectivity, the Honourable Catherine Holmes AC SC considered a number of issues such as risk of litigation (event though it was noted that the risk of liability is greatly reduced by a number of existing protections).⁶ However, we respectfully disagree with the conclusions reached from balancing these factors. From our review of the relevant considerations, there is insufficient justification for provisions which have retrospective effect.

3. Process for dealing with adverse comments and/or identifying information

Finally, sections 69B and 69D set out a process by which the Commission needs to inform a person about an adverse comment or identifying information in a report and allow those persons to make submissions that this material not be included. However, the provisions do not include an express requirement for the Commission to advise of the outcome of the consideration. The provisions should be amended to include this requirement and there should be reasonable period of time between receipt of this advice and publication.

Summary of recommendations

1. Proposed amendments to the Bill should be consulted on prior to it being further debated in Parliament.
2. Amend the definition of *corruption matter* in section 63A (clause 12) so that it only extends to matters where no further action is to be taken by the Commission (e.g. where the initial assessment concludes that no further action is to be taken or when an investigation is completed). We make these same recommendations in respect of public statements.
3. The Bill should be amended to remove the retrospective application of these amendments.
4. Amend sections 69B and 69D to require the Commission to advise the person following consideration of submissions if the relevant material is to be published. There should be a reasonable period between receipt of notification and publication.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Yours faithfully



Peter Jolly
Vice President

⁶ Ibid at pages 256-257

27 March 2024

Our ref: KB:MC

The Hon Catherine Holmes AC SC
Reviewer
Independent CCC Publication Review

By email: [REDACTED]

Dear Reviewer

Independent review into the Crime and Corruption Commission's reporting on the performance of its corruption functions

Thank you for the opportunity to provide a submission to the Independent Review into the Crime and Corruption Commission's reporting on the performance of its corruption functions.

The Queensland Law Society ("the QLS") is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

The QLS has considered the public submission of the Crime and Corruption Commission ("the CCC") to the Community Safety & Legal Affairs Committee considering the *Crime and Corruption Amendment Bill 2023* ("the CCC's submission"). The QLS does not support proposed amendments to the current provisions in the *Crime and Corruption Act 2001* (Qld) ("the Act"). In the event legislative reform is recommended, the QLS submits that the provisions should be directory insofar as when and how the Commission should prepare and publicly disseminate a report, and how procedural fairness is to be ensured to any affected person(s).

The CCC's submission contends that amending legislation with a retrospective effect is imperative to facilitate its statutory purpose to, "*continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector*".¹ In particular, the CCC contends that its capacity to fulfil its statutory corruption objects will be 'significantly diminished' if its

¹ *Crime and Corruption Act 2001*, s4(1)(b)

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reporting powers remain limited to those identified by the High Court in *Crime and Corruption Commission v Carne*². The CCC states:-

"In the absence of public reporting powers, the CCC is limited in its ability to report on:-

- *The detail of an investigation which identified systemic corruption risks for which recommendations may be made; and*
- *Where an investigation has concluded that there was not corrupt conduct and there is a public interest in explaining the basis of the CCC's conclusion about this."*³

The CCC also refers to 'the public interest' in disseminating reports to the Legislative Assembly, for publication at large, *"...for the education of the public sector and the public generally, or by dispelling an allegation of corrupt conduct where it is not established on the evidence."*⁴

Reference is made to provisions in the Act that are said to promote the protection of privacy and guard against reputational risk, whilst still giving proper weight to the CCC's need to be accountable and transparent to Parliament and the public in respect of the exercise of its (extraordinary) powers. These provisions include the right to seek judicial review of the CCC's activities concerning corruption (s332), the requirement that the CCC provide procedural fairness to persons the subject of adverse comment in a proposed report by giving them an opportunity to make submissions prior to publication (s71A), the presumption against public hearings in corruption investigations (s177(1)) and the Commission's overriding statutory obligation to act independently, impartially and fairly having regard to the purposes of the Act and the importance of protecting the public interest (s57 of the Act).

Finally, the CCC directs attention to the enabling legislation of each of its Commonwealth and interstate counterparts, including the National Anti-Corruption Commission ("NACC"), the New South Wales Independent Commission against Corruption ("ICAC") and the Independent Broad-Based Anti-Corruption Commission in Victoria ("IBAC"), which confer power to report publicly on corruption investigations.

Against this, the Commission (correctly) recognises that:-

*"...striking the right balance between properly informing the public and particular stakeholders so that they maintain confidence in the CCC's work, and providing fairness to those investigated, is a difficult exercise."*⁵

² [2023] HCA28.

³ Crime and Corruption Commission Public Submission to Community, Safety and Legal Affairs Committee dated 29 February 2024, p.2.

⁴ Ibid.

⁵ Ibid, p.3.

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There is no doubt that Queensland needs a strong and effective anti-corruption body such as the CCC. The CCC must have appropriate powers adapted to achieve its statutory functions. However, there must at the same time be an enduring recognition of the extraordinary nature of the powers, and the ever-present risk of an abuse of power and/or oppression occasioned by their exercise.

For the reasons that follow, the QLS is unpersuaded that the matters referred to by the CCC, either individually or in combination, warrant the legislative reform sought.

First, a power to generally report on corruption investigations is not justified so as to dispel an allegation/complaint of corrupt conduct in circumstances where a CCC investigation has found none to exist. As the CCC identifies, there is a statutory presumption against the holding of public hearings in corruption investigations: s177(1). Accordingly, it would seem that the occasions on which there will be a public interest in the dissemination of a report to elucidate a finding of no corruption are likely to be rare.

More relevant is the circumstance in which a corruption investigation results in a conclusion of no criminal conduct nor malfeasance in public office but a finding of a 'systemic corruption risks'⁶ grounded in some lesser wrong (e.g., conduct that may amount to contravention of the Code of Conduct of the Queensland Public Service, the Public Service's Ethical Principles or an employment/industrial law obligation).

In this regard, the Society notes that s 5(3)(a) of the Act provides that the CCC's statutory purposes are to be achieved by investigating, in particular, "*more serious cases of corrupt conduct*". A corruption investigation resulting in adverse findings not amounting to criminal conduct nor public sector misconduct would therefore seem to constitute a secondary corruption function of the CCC.

The CCC has extraordinary, compulsive powers not ordinarily available to other investigative agencies. Evidence assembled by the CCC in the course of a corruption investigation is often a product of the exercise of such powers. It is a legal truism that the reliability of evidence obtained by involuntary means should always be approached with circumspection.

Against this backdrop, it is relevant that the CCC has no obligation of evidentiary disclosure. An individual the subject of a CCC corruption investigation has no right to a copy of all relevant or potentially relevant evidence in the case. Nor do they have an entitlement to test the evidence in any meaningful way. In particular, there is no right to cross-examine a witness giving evidence adverse to them. Similarly, there is no right to pray in aid of adjudication by an independent tribunal of fact, pursuant to a prescribed standard of proof.

The net effect is that adverse factual findings against an individual contained within a CCC corruption report may be based upon evidence neither disclosed to, nor tested by, the subject.

⁶ Ibid, p.2.

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And, interstate experience shows that findings in corruption reports are readily trumpeted by the mass media in a manner equivalent to the findings of a Court.

Such a process is apt to occasion a potent degree of prejudice. It is also apt to abuse, in particular for political purpose.

At pp.3-4 of the CCC's submission, four criteria are stated as touchstones of its' pre-existing decision-making process regarding, "*when and how to report on the outcome of a CCC investigation*". None of the criteria expressly refer to the subject's right to privacy and protection from reputational damage. The Society considers that the risk of an unjustified contravention of privacy and reputational damage is not adequately met by an individual's capacity to make a submission to the CCC (s71A) and/or apply for a statutory order of review of the CCC's activities (s332).

Regarding the state of the law in other jurisdictions, the Society urges the Review to closely consider the substantial criticisms previously levelled at the NACC, the ICAC and the IBAC regarding their dissemination of public reports on corruption investigations. The QLS understands that these criticisms are extensive, and were a factor in the formulation the statutory presumption that corruption investigations of the NACC be heard in private (i.e. so as to offset the risk of the undue infringement of the privacy and reputational damage).

In the event the Review concludes that there is an objective necessity for statutory reform designed to enlarge the CCC's current reporting power, the QLS suggests consideration be given to insertion of a legislative dictate that any corruption report with adverse findings falling short of criminal offending and/or misconduct de-identify the subject individual(s). This was not the case in *Crime & Corruption Commission v Carne*, where the High Court said:-

*"[The published report]...differed from the earlier draft in that, relevantly, it included a forward by the Chairperson of the Commission which spoke at some length about the standards of conduct on the part of public officials who held positions of trust. Given that the respondent was identified in the report as the public official whose conduct was the subject of the allegations and investigation, the forward would be understood to be directed to him and to be highly critical of him, although the body of the report contained no findings of corrupt conduct against him. The conclusion of the forward contained a statement urging ministers, senior public sector employees and members of the public to read the report."*⁷

Finally, the QLS opposes in principle the retrospective application of legislation, criminal or civil, particularly when the amendment is capable of having an adverse effect on individual rights and obligations. As French CJ, Crennan and Kiefel JJ noted, rule of law principles underpin the common law presumption against retrospective operation of the statute:-

⁷ *Crime and Corruption Commission v Carne* [2023] HCA 28 at 13.

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*"In a representative democracy governed by the rule of law, it can be assumed that clear language will be used by Parliament in enacting of statute which falsifies, retroactively, existing legal rules upon which people have ordered their affairs, exercise their rights and incurred liabilities and obligations. That assumption can be viewed as an aspect of the principle of legality...."*⁸

Yours faithfully



Rebecca Fogerty
President

⁸ Australian Education Union v General Manager of Fair Work Australia (2012) 246 CLR 117, [30]