Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025

Submission No:	11
Submitted by:	Professor A J Brown, Associate Professor Yee-Fui Ng and Professor Gabrielle Appleby
Publication:	
Attachments:	
Submitter Comments:	

School of Government and International Relations
Griffith University
Nathan Queensland 4111 Australia
[redacted]
www.griffith.edu.au
[redacted]

25 March 2025

Mr Martin Hunt MLA
Chair, Justice, Integrity and Community Safety Committee
Legislative Assembly of Queensland

Dear Mr Hunt

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

Please find attached a late submission to the Committee's review of the above bill. I apologise for the lateness of the submission which is owed primarily to disruption caused by ex-tropical cyclone Alfred.

Overall, this submission strongly supports the bill as drafted, except on one issue regarding the proposed new limitation on the Crime and Corruption Commission's ability to state its findings in proposed new s. 48B, which we believe should be replaced with a more apposite section.

Background

My qualifications relevant to the bill can be found on my professional page: https://experts.griffith.edu.au/18540-a-j-brown. In addition to my primary role as a Professor of Public Policy and Law, I am Chair of Transparency International Australia, and a statutory member (community representative) appointed under the *Public Sector Act 2022* (Qld) to the Queensland Public Sector Governance Council.

This submission is made with colleagues Associate Professor **Yee-Fui Ng** (Monash University) and **Professor Gabrielle Appleby** (University of New South Wales). The Committee may be aware that Professors Appleby, Ng and myself were commissioned by the Independent Reporting Review (Holmes Review) to prepare a literature review on the topic of the bill, subsequently published by the Review. We were not consulted by the Review on its proposed recommendations arising from that research or other analysis.

Our detailed views on the outcomes of the Holmes Review, the issues addressed by the bill, and the bill itself are set out in the **attached *draft* article** which has been submitted for publication in a special issue of *Public Law Review* dealing with relevant topics.

The Committee is welcome to publish and refer to any section of the draft article, in addition to our specific submissions below.

Overall analysis

Our research and experience with anti-corruption agencies (ACAs) in the Australian tradition proposes a principles-based framework, set out in the attached article, that considers both the public interest objectives of and collective rights associated with public reporting, and the individual rights and interests often involved, particularly the rights to privacy and reputation, a fair trial, and procedural fairness.

We have applied this framework to analyse the approaches taken in response to Queensland's public reporting controversies: the presumption against any independent public reporting implied by the High Court's approach to the Queensland statute; the model for restricted public reporting proposed by the Holmes' Review; and the *Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025*. Queensland's controversies have especially demonstrated that:

- Anti-corruption agency reporting regimes need to be updated to deal more systematically with modern day rights concerns, in order to have the respect of stakeholders including affected parties, and other (sometimes jealous) institutions of government;
- Statutory objectives have to be made clear, particularly so that the role of and relationship between the prevention, 'exposure' and sanction functions of ACAs are more explicit and better understood, given the need for, and public expectation, that reporting (including public reporting) powers and functions are available to serve all these functions.

The bill correctly recognises that without an ability to publicly report their findings and recommendations in support of all these functions, the purposes of modern anti-corruption regimes of addressing, deterring and preventing corruption in government will be undermined. This landing point provides a powerful reminder of why legislatures, whether in Australia or worldwide, have felt it necessary to establish stronger, independent ACAs in the first place.

Overall, we argue that a principles-based approach supports the type of purpose-built, flexible but structured discretion regarding public reporting which is reflected in the bill. By comparison with the approaches taken by the High Court and Holmes Review, and with the one caveat noted above and below, the proposed outcome represents a significant step forward in terms of a principled approach to legislative design of ACAs' reporting powers.

Indeed, we consider the bill to now provide a basis for how such powers might be better framed in other jurisdictions. The result is a clearer, more workable model for ACA reporting powers, which is also more up to date with current public expectations and standards, than existed prior to *Carne* – and one providing a useful new benchmark for reporting powers nationally.

Specific submissions

1) Restoration

The thrust of the bill is said to be "restoring" the reporting powers that were assumed to exist before *Carne*. We support this objective, and also support the **retrospective *en bloc* validation of past reports and public statements**, given the overwhelming evidence that the CCC's past reporting satisfied what was very reasonably believed to be the parliamentary intent, as well as the procedural fairness requirements, applying at the time of that reporting.

That said, the bill clearly and correctly does more than simply restore the pre-*Carne* situation.

2) Clarification of reporting-related functions

We endorse the bill's important confirmation of the statutory functions served by public reporting. The bill directly tackles the uncertainties over the relationship between reporting and the broader statutory functions of the Commission associated with prevention, standard-setting and awareness-raising. Unlike the courts in *Carne,* and much more than the Holmes Review, the bill – correctly in our view – places a premium on principles of and the collective public interest in transparency and accountability as intrinsic to the agency's mission and purpose, above and beyond simply its role in law enforcement or disciplinary sanction processes.

We thus strongly support the addition of paragraphs (k) and (m) to the CCA Act's s 35(1) (Reporting Powers Bill, s 4), making explicit the wider statutory purposes of reporting, by extending how the Commission performs its existing corruption functions to include:

> (k) providing information generally about how it performs its corruption functions by reporting and making statements to the public; …
>
> (m) providing information to the public and to appropriate authorities and entities, by reporting and making public statements, about particular complaints or particular investigations if the commission considers it appropriate and necessary in the circumstances to do so to—
>
> (i) provide transparency about how it performs its corruption functions; or
>
> (ii) assure the public and other authorities and entities that allegations of corruption are appropriately dealt with; or
>
> (iii) continuously improve the integrity of, and reduce the incidence of corruption in, the public sector.

We also support the way that the bill responds to the primacy of traditional criminal and disciplinary processes assumed by the High Court's interpretation in *Carne*, by making it explicit that supporting those processes in a subservient manner is not the Commission's role. The amendments affirm the wider constitutional role of an anti-corruption agency, and provide the clarity necessitated by interpretations arising from the High Court and Holmes Review.

In addition to correcting the strange notion that the Commission's general reporting discretion did not extend to individual corruption matters in the first place (through insertion of s. 64A: Reporting Powers Bill, s 14), we especially endorse the clarification that even if the Commission decides to report or refer evidence to a prosecuting authority for consideration of criminal or disciplinary action, the Commission retains its own power to report publicly as needed – rather than its own reporting functions then being somehow exhausted (new s 64A(4)).

3) Enhanced rights protection

We support the bill's implementation of the Holmes Review recommendations to introduce mandatory criteria that must be considered as part of the discretion to present reports or statements for publication, as an important and valuable response to the community's heightened demand for respect for collective and individual human rights (new s 64A(2)).

In addition to providing a stronger guarantee that individual human rights will be respected in the investigation and reporting process, we support the amendments' inclusion and recognition of important collective human rights to transparency and accountability in government – including

as to the Commission's own operations – as providing a clearer hierarchy than the crude and often opaque presumptions about 'balancing' all the relevant rights, reflected in previous approaches.

We agree with the Statement of Compatibility prepared by the Attorney-General under the *Human Rights Act 2019* (Qld), where it makes clear that the key human right promoted by the bill is the collective 'right of all persons to… seek, receive and express information and ideas', including the right (indeed, need) to receive information about corruption:

> *Indeed, freedom of expression takes on particular importance in a democracy where it promotes transparency regarding corruption in the public service and in public office. .... The public has a significant interest in ensuring corruption is properly investigated and that there is transparency and accountability in public administration. ...*
>
> *On balance, while there are limitations on human rights, promoting freedom of expression in relation to corruption by ensuring public confidence in how the CCC performs its corruption functions, and the related public confidence and trust in the public service and wider democratic institutions, is of foundational importance.*

It is for these reasons that we endorse the bill's approach over the Holmes Review proposal to also attempt to prescribe particular types of reports that could only be published depending on the class of conduct or official concerned, or on proceedings outside the Commission's control. In our view, that approach would have involved unnecessary and indeed unworkable infringements on the ability of the anti-corruption regime to protect the above, more foundational rights.

4) Enhanced procedural fairness regime

We strongly support the bill's primary strengthening of rights protections through implementation of the Holmes Review recommendations for more detailed requirements and timeframes for providing affected persons with draft reports, proposed adverse comment and supporting material, and ensuring their responses are fairly reflected in the final report (new Chapter 2, Part 6, div 4A 'Procedural provisions', ss 69A-D (Reporting Powers Bill, s 19)). Our analytical framework in the attached article further explains why this is most appropriate.

5) Proposed limitation on CCC findings, recommendations and statements

Against the above submissions, we **do not support** the limitation on the findings that can be made by the Commission, proposed in new s. 48B. We believe a more apposite way should be found for clarifying the nature and status of Commission findings and opinions.

The proposed limitation would seem to preclude the Commission from reporting its own opinions that a person's conduct meets the thresholds of corrupt conduct that define its own ability to investigate or make any recommendations under the Act. It could also preclude the Commission from justifying, in a report, the reasons why it has referred or is referring a person's conduct for consideration of criminal or disciplinary action, or from explaining the evidence that has led it to identify conduct as corrupt or potentially corrupt, and hence, why it is compelling that particular remedial, reform or prevention actions should be undertaken.

We are concerned that this restriction on the CCC's ability to fact-find, draw conclusions as the sufficiency of evidence, and make recommendations, is both unnecessary and unwise. Under the proposed limitation, it is difficult to see how the Commission could fulfil a function of referring outcomes for the consideration of criminal or disciplinary action, if it needed to do this publicly rather than or in addition to a private referral, without actually stating that opinion.

It is similarly difficult to see how the Commission could substantiate corruption and report meaningfully to parliament and the public on other action needed to prevent or remedy it, including awareness-raising, without trespassing into the banned territory of stating conclusions that corruption had occurred, or explaining the sufficiency of evidence as to that conduct.

In our view, the proposed limitation is also an unnecessary invitation to unproductive litigation, likely to frustrate the work of the Commission. It may make it uncertain whether the Commission is legally entitled to state a range of opinions it would normally and properly include in a report explaining why practices, systems or standards of conduct need to change – such the Carne and Trad reports. Such reports typically need to include assessments about what did or did not amount to corrupt conduct in particular cases, as well as evidence about the seriousness and implications of the conduct, as part of raising awareness and justifying recommendations. This is especially the case if reports are intended to be intelligible to the average public service manager or member of the public, or to provide policymakers with a compelling case for action.

The main value of the proposed limitation may be to help clarify the unique constitutional place of the CCC, as not being a body which adjudicates criminal guilt or disciplinary responsibility. However, clarity as to the Commission's role, especially vis-à-vis other institutions such as the judiciary and disciplinary tribunals, would be better served by a provision which simply states that the Commission has a fact-finding and recommendatory role, rather than a guilt-finding or determinative one. For example, a better provision may be one such as s 150 of the *National Anti-Corruption Commission Act 2022* (Cth):

> **150 Effect of findings or opinions about corrupt conduct**
>
> (1) This section applies if an investigation report includes a finding or opinion that a person has engaged, is engaging or will engage in corrupt conduct or conduct that could constitute or involve corrupt conduct.
>
> (2) The finding or opinion does not constitute a finding or opinion that the person is guilty of or has committed, is committing or will commit an offence.

Conclusion

We hope the above submissions may still assist the Committee. We are happy for the submission and attachment to be published, and are available to further assist the Committee in person.

Yours sincerely,

[redacted]

Professor A J Brown AM on behalf of myself,
Associate Professor Yee-Fui Ng
Professor Gabrielle Appleby

Attachment 1: Yee-Fui Ng, Gabrielle Appleby and A J Brown, 'Public Reporting by Anti-Corruption Agencies: Applying a Framework for Principled Legislative Design', Draft Article submitted for peer review, *Public Law Review*.

Attachment 1

[DRAFT ARTICLE SUBMITTED FOR PEER REVIEW – PUBLIC LAW REVIEW]

PUBLIC REPORTING BY ANTI-CORRUPTION AGENCIES: APPLYING A FRAMEWORK FOR PRINCIPLED LEGISLATIVE DESIGN

Yee-Fui Ng,[1] Gabrielle Appleby[2] and A J Brown[3]

ABSTRACT

Despite the now widespread recognition of anti-corruption agencies (ACAs) as integral to Australia's integrity system, debates have raged about the appropriate powers and jurisdiction of these bodies, including their powers to publicly report on their investigations. The recent High Court case of *Crime and Corruption Commission v Carne* [2023] HCA 28, subsequent Holmes independent review and the most recent Queensland government bill have adopted divergent approaches to the public reporting powers of that state's ACA. This article develops a framework for analysing the public reporting powers of anti-corruption agencies, proposing a principles-based approach that considers both the public interest objectives of and collective rights associated with public reporting, and the individual rights and interests involved, particularly the rights to privacy, a fair trial, and procedural fairness. We argue that to achieve the objectives, the collective public interests in reporting should be prioritised over individual rights to privacy and reputation, provided that procedural fairness is accorded to individuals, with the Queensland outcomes holding lessons for other Australian jurisdictions and beyond.

1 Associate Professor of Law, Monash University, Melbourne, Australia.
2 Professor of Law, University of New South Wales, Sydney, Australia.
3 Professor of Public Policy and Law, Griffith University, Brisbane, Australia; Chair, Transparency International Australia; Community Representative, Queensland Public Sector Governance Council.

CONTENTS

I. INTRODUCTION

Independent anti-corruption agencies (ACAs) are now widely accepted as integral to Australian public integrity systems. However, even as this has come to pass, controversy has grown over the proper extent of their powers – including their ability to report their findings, opinions and recommendations to the general public, as well as make other public statements regarding their investigations. Consistently with international practice and standards,[4] the power to report publicly on investigations, including the power to oversee and report on the implementation of recommendations, has recently been identified by all ten Australian ACAs as one of the fundamental principles for legislative and institutional design, necessary for 'an anti-corruption or integrity commission to undertake its functions independently and effectively.'[5] Yet, recent years have seen persons affected by anti-corruption investigations and other stakeholders push back vigorously against previously accepted public reporting powers, amid debate over potential over-reach and a claimed need for some 'wing-clipping' of anti-corruption agencies' roles and powers.[6]

This article addresses the question of how ACA public reporting powers should be framed as an issue of legislative design in an Australian context. It is intended to offer a guide to legislative and administrative practice, as well as help better resolve debates over the place and roles of independent ACAs more generally. Part II of the article sets out the context for this analysis, including the background to the High Court challenge to the Queensland's Crime and Corruption Commission ('CCC') public reporting powers in *Crime and Corruption Commission v Carne* ('*Carne*').[7] This part will also look at the government's response to the High Court's decision, including the independent review of the CCC's reporting powers by the Hon Catherine Holmes AC ('Holmes Review'),[8] and the ultimate legislative solution that has been adopted by the government. This legal and political saga has many implications for the scope of public reporting by ACAs nationally and demonstrates the importance of considering

---

4 See United Nations Office of Drug and Crime, *Jakarta Statement on Principles for Anti-Corruption Agencies* (2012) and *Colombo Commentary on the Jakarta Statement of Principles for Anti-corruption Agencies* (2020).

5 See *Media Release*, 31 July 2024, available at <https://www.nacc.gov.au/news-and-media/anti-corruption-chiefs-announce-fundamental-principles#:~:text=The%2012%20fundamental%20principles%20state,agencies%20to%20report%20suspected%20corruption>.

6 See Yee-Fui Ng and Stephen Gray, 'Robust Watchdogs, Toothless Tigers or Kangaroo Courts? The Evolution of Anti-Corruption Commissions in Australia' (2024) 47(2) *UNSW Law Journal* 415.

7 [2023] HCA 28.

8 Queensland Government, *The Independent Crime and Corruption Commission Reporting Review* (2024) <https://www.cccreportingreview.qld.gov.au/reports> ('*Holmes Review*')

elements such as public reporting powers as part of the holistic design of ACAs, including their purposes and jurisdiction.

Part III of the article sets out a basis for analysing the different approaches, through a principles-based framework that considers both the public interest objectives of and collective rights associated with public reporting, and the individual rights and interests often involved, particularly the rights to privacy and reputation, a fair trial, and procedural fairness. This framework is drawn from a research report by the authors,[9] commissioned but entailing different conclusions to those reached by the Holmes Review. In Part IV, we then use this principles-based framework to analyse the three different approaches taken in response to the Queensland controversies: the presumption against any independent public reporting implied by the High Court's approach to the Queensland statute; the model for highly restricted public reporting proposed by the Holmes' Review; and the new, wider statutory framework for public reporting under the *Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025* (Qld).

In conclusion, we argue that a principles-based approach supports the type of purpose-built, flexible but structured discretion regarding public reporting which is reflected in the 2025 amendment Bill, providing a basis for how such powers might be better framed in other jurisdictions. We endorse the recognition ultimately given to citizens' collective rights and need to know verified information regarding both hard and soft forms of corruption, over and above individuals' rights to privacy and reputation, provided procedural fairness is properly respected. This landing point provides a powerful reminder of exactly why legislatures, whether in Australia or worldwide, have felt it necessary to establish stronger, independent ACAs in the first place.

---

9 See further Gabrielle Appleby, Yee-Fui Ng and A J Brown, Public Reporting of Corruption Matters: Research Report for the Independent Crime & Corruption Commission Reporting Review (2024) <https://www.cccreportingreview.qld.gov.au/reports>.

II. CONTEXT: REPORTING POWERS AND QUEENSLAND'S CARNE/TRAD SAGA

A. Anti-corruption Reporting Powers in Queensland and Beyond

ACAs are now widely accepted as integral to Australian public integrity systems. With passage of the *National Anti-Corruption Commission Act 2022* (Cth), all ten Australian jurisdictions have such an agency. Importantly, Australia has led the way among developed countries in establishing 'broad-based' public sector ACAs, with at least eight of these agencies having two distinct and interrelated features: an investigative jurisdiction extending to both criminal and non-criminal corruption, and, to varying degrees, the institutional model of a standing Royal Commission.[10] However, controversy has also grown over the extent of their powers – especially whether or when these bodies should have the power to conduct public hearings, and the appropriate threshold of investigation.[11] As emphasised internationally, the ability of ACAs to report their findings, opinions and recommendations to the general public, as well as make other statements in the public interest regarding their investigations, is also fundamental; but until now, has received little attention in legal and policy scholarship, and indeed public debate.

The variations in reporting powers of Australian ACAs have been usefully described elsewhere.[12] Obligations and/or powers to prepare investigation reports are fairly universal.[13] So are obligations and/or powers to publish any of those reports, which traditionally have been dependent on receipt and tabling in parliament, but which in some jurisdictions are also subject to a wider discretion by the agency.[14] There is greatest variation in express powers to make public statements regarding investigations, before, after or irrespective of the preparation of reports.[15]

The reporting powers of Queensland's Crime and Corruption Commission are a highly significant case study – typifying much that has been generally accepted, but also what has

---

10 See A J Brown, 'Federal Anti-corruption Policy Takes a New Turn… But Which Way? Issues and options for a Commonwealth Integrity Agency' (2005) 16(2) *Public Law Review* 93; A J Brown, 'Australia's National Anti-corruption Agency Arrives: Will it stand the test of time?' *The Conversation* (30 November 2022) <https://theconversation.com/australias-national-anti-corruption-agency-arrives-will-it-stand-the-test-of-time-195560>. The key exceptions to this are Victoria and, especially, South Australia, with more limited jurisdictions.

11 Eg Yee-Fui Ng, 'Will the National Anti-corruption Commission Actually Stamp Out Corruption in Government?', *The Conversation* (online, 5 October 2022) <https://theconversation.com/will-the-national-anti-corruption-commission-actually-stamp-out-corruption-in-government-191759>; Ng and Gray (n 3) 415-44.

12 Holmes Review (n 5), "Chapter 4: Legislation in other Australian jurisdictions: a comparison", 55-87.

13 Ibid Table 1, 69.

14 Ibid Table 2, 72-73.

15 Ibid 76.

remained vague, about the broad-based Australian model. Queensland's Commission was first created in 1989 – the second such in Australia, shortly after NSW in 1988 – explicitly as a standing royal commission to make permanent the corruption investigation and prevention functions exercised by the Fitzgerald Commission of Inquiry.[16] Through its evolution as first the Criminal Justice Commission, then the Crime and Misconduct Commission, the now Crime and Corruption Commission has always enjoyed an investigative jurisdiction extending beyond criminal offences, to corrupt behaviour that constitutes a disciplinary breach providing reasonable grounds for terminating a person's services.[17] Secondly, the Commission has always been subject to a public expectation that it would report publicly as it deemed necessary in the public interest, on the progress and outcomes of its investigations, consistently with the standing royal commission model – and do so for purposes including public awareness, reform and corruption prevention, rather than simply for triggering individual legal sanctions.

This context informed what was, on its face, a broad reporting discretion, in s 64 of the *Crime and Corruption Act 2001* (Qld) ('CC Act'):

> **64 Commission's reports—general**
>
> (1) The commission may report in performing its functions.

The CC Act was generally silent on when or how reports would be made public, apart from (i) general requirements for procedural fairness, (ii) a discretion for the Commission to report *at least in the first instance* to particular prosecuting or disciplinary authorities where it 'decides that prosecution proceedings or disciplinary action should be considered',[18] (iii) a restriction that reports about practices of a State court could be 'given only' to the head of the relevant court,[19] and (iv) specific procedures requiring the parliamentary tabling and publication of any report 'on a public hearing', or that the Commission's parliamentary oversight committee 'directs be given to the Speaker' (but not applying to a report under ss 49 or 65, nor information that the Commission deems confidential under s.66).[20] The CC Act made no express provisions for other public statements about investigations.[21]

The widespread assumption, and practice, over 30 years was that sections 49, 65 or 69 only limited the Commission's general reporting discretion in those circumstances and ways. If no public hearing was held as part of an investigation, the publication process via

---

16 Ng and Gray (n 3).
17 See CC Act, s 15.
18 Ibid s 49.
19 Ibid s 65.
20 Ibid s 69.
21 For reasons of space, we do not deal further with discussion and outcomes with respect to the making of public statements regarding investigations, as opposed to the primary issue of public reports, while noting these are also important elements of the Holmes Review and final outcome.

parliamentary tabling was instead triggered by seeking a committee direction for the tabling of the report as provided for by s. 69(1)(b) of the Act. When challenged, the issue became whether the general discretion to report was, in fact, limited – and in particular, whether a report that did not make findings of corrupt conduct for the purpose of recommending criminal or disciplinary action, but rather set out findings and recommendations to fulfil other Commission functions, could trigger the tabling and publication procedure in the Act.

B. The Carne and Trad Reports

The formal challenge to the CCC's reporting powers came from Mr Peter Carne, who was appointed Public Trustee of Queensland in 2009 and again in 2016, and resigned on 31 July 2020. The CCC commenced an investigation into possible corrupt conduct by Mr Carne in June 2018, and in May 2019 referred information to the Attorney-General for consideration as to whether to take disciplinary action. Mr Carne was suspended the following month, from which time, public controversy swirled around the case. The CCC continued its investigation and sought to interview Mr Carne, but he declined on health grounds. The CCC completed its investigation in April 2020, advising Mr Carne's solicitors that no criminal proceedings were being recommended, but also advising the Attorney-General on its overall findings against Mr Carne. Based on this not-yet-public information, the Attorney-General asked Mr Carne to show cause as to why he should not be dismissed, prompting his resignation.

In September 2020, the CCC indicated to the Parliamentary Crime and Corruption Committee (PCCC) that it intended to provide a final report, and seek a Committee direction to trigger the tabling and publication process under s 69(1)(b) of the CC Act, given the matter had 'so much public interest and… [was] such an important matter in terms of workplace culture, corruption risks and so forth'.[22] Mr Carne's solicitors were also notified, and provided with a draft report for comment. None was forthcoming, with Mr Carne instead challenging the legal basis of the proposed report. In October 2020, the CCC sent the report to the Parliamentary Committee (PCCC) and requested the s 69(1)(b) direction. As detailed in the report, eventually tabled in February 2025, allegations substantiated by the CCC and already referred to the Attorney-General or other authorities included misuse of resources for personal purposes, conflict of interest in recruitment, and other apparent misbehaviour and academic

[22] For a timeline, see Neil Laurie, 'Removing the Watchdog's Bark: Crime and Corruption Commission v Carne' (24 October 2023) <https://www.auspublaw.org/blog/2023/10/removing-the-watchdogs-bark-crime-and-corruption-commission-v-carne>.

misconduct.[23] The report recommended reforms to increase the accountability of the Public Trustee to prevent such issues arising again.

Mr Carne commenced proceedings in the Queensland Supreme Court seeking a declaration that the report was not one that could be tabled under s 69(1) of the CC Act, and an injunction to prevent tabling and publication. He failed at first instance, but in August 2022, the Queensland Court of Appeal (by majority) accepted his argument that the public report was beyond the reporting power in s 64, and any tabling or publication procedure, because the report did not explicitly find corrupt conduct for the purpose of recommending criminal proceedings or disciplinary action, those functions having already been exhausted in this case.[24] On appeal, the High Court agreed with the Queensland Court of Appeal that the report lacked statutory authority. They also went further in holding that while s 64(1) of the Act allowed the CCC to report *generally* in relation to the performance of its corruption functions, the presence of s 49 meant the CCC actually had no ability to report publicly on any *individual* corruption investigations, either through parliamentary tabling under s 69(1)(b) or any other provision.[25]

The implications of the High Court's approach are analysed in Part IV below. However, the challenges in *Carne* also delayed publication of other investigation reports – including an even higher profile report proposed to be published in May 2021, about the conduct of the Hon Jaclyn (Jackie) Trad, former Deputy Premier of Queensland. Ms Trad was a member of the Queensland Legislative Assembly from 2012 until losing her seat at the October 2020 state election. She stood down as Deputy Premier and Treasurer in May 2020, when the CCC commenced an investigation into her alleged interference in the selection of a principal of a new school in her electorate.[26] Although the CCC found no evidence that she had personally interfered in that selection process, its report was critical of the corruption risks created by the government's leadership culture. Shortly after, in July 2020, the CCC received a further complaint that as Treasurer, the previous year, Ms Trad had interfered in a selection process for the Under Treasurer (Director-General of Treasury) which, under changes introduced by the government, was now meant to be independent. In May 2021, after Ms Trad had already

---

23 Crime & Corruption Commission, 'An Investigation into Allegations relating to the Former Public Trustee of Queensland', Investigation Report, October 2020 – Legislative Assembly of Queensland, Parliamentary Papers, 19 February 2025 <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5825T0106/5825t106.pdf>.

24 *Carne v Crime and Corruption Commission* [2022] QCA 141 (5 August 2022).

25 *Carne* [2023] HCA 28.

26 See Josh Bavas, 'Corruption investigation into Queensland Deputy Premier Jackie Trad has Potential to Unravel Labor Government's Five-year Reign', ABC News, 10 May 2020: <https://www.abc.net.au/news/2020-05-10/jackie-trad-investigation-potential-unravel-qld-labor-government/12231828>.

left office, the CCC concluded, and proposed to report publicly, that the selection process had indeed been interfered with, in a manner that undermined the entire principle of independent merit selection. The main findings were against the Director-General of the Department of Premier and Cabinet, the chair of the selection panel, who conceded that he gave in to 'aggressive pressure' from Ms Trad to promote the abilities of her preferred candidate, changing the panel's unanimous assessment of that individual from "not appointable" to suitable albeit not preferred, without drawing this change to the attention of the other panel members. The Premier then appointed that individual.[27]

The Trad report was similar to the Carne report, in that its purpose was not to convey findings or recommendations for criminal prosecution or disciplinary action. Ms Trad had already left office, and criminal prosecution was deemed unlikely to succeed. While the CCC did expressly conclude that the Director-General's conduct amounted to corrupt conduct which likely justified termination, the CCC had already separately referred this information to the Premier,[28] who, within weeks, announced public service changes in which the Director-General was replaced and posted to London.[29] Rather, the purposes of the report were to publicly identify the 'corruption risk' entailed by the failure of the selection process 'to preclude inappropriate interference',[30] recommend amendments for greater clarity, transparency and integrity in the process, and raise awareness to protect the integrity of all government merit selection processes. The Chair of the CCC wrote in the Foreword to the report:

> [T]his is a significant report that *must* be read by all ministers and public servants, particularly the most senior. If they fail to learn from it, then public cynicism about them will only increase, and we will all be the worse off for that.[31]

The Trad report was suppressed in 2021 pending the outcome of Mr Carne's challenges. In October 2023, following the High Court's decision in *Carne*, the CCC conceded that it could not publish the Trad report and settled her own Supreme Court challenge, paying her costs.[32] While the Trad report was never analysed by the High Court, the fact that it concerned official

---

27 Crime and Corruption Commission, 'A Report concerning an Investigation into Allegations relating to the Appointment of the Under Treasurer', Investigation Report, May 2021, p.8 - Legislative Assembly of Queensland, Parliamentary Papers, 19 February 2025: <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5825T0107/5825t107.pdf>.

28 Ibid 60.

29 See Melissa Coade, 'Shake-up for Qld DPC with New Appointments', *The Mandarin*, Apr 20, 2021 <https://www.themandarin.com.au/154289-shake-up-for-qld-dpc-with-new-appointments>.

30 Ibid, 65.

31 CCC (n 20) 8.

32 Cloe Read and Matt Dennien, 'Former Deputy Premier Wins Bid to Gag CCC Report', *Brisbane Times*, October 3, 2023 <https://www.brisbanetimes.com.au/national/queensland/former-deputy-premier-wins-bid-to-gag-ccc-report-20231003-p5e9c7.html>. As noted earlier, the report was eventually tabled in Queensland Parliament in February 2025.

misconduct at the highest levels of government elevated the controversy over the CCC's reporting powers into something of a crisis, especially if, as it seemed, the Commission was simply unable to report.

As a result of these controversies, it was clear to most observers that legislative amendment was needed to empower the CCC to report publicly on the outcomes and implications of specific corruption investigations, even if no further criminal or disciplinary action was possible or being recommended. The CCC advised that if the *Carne* result stood, no less than 32 of its previous corruption investigation reports and 256 other public statements about investigations, spanning back over the previous 26 years, were without legal basis.[33] In response, the Queensland Government established the Independent Crime and Corruption Commission Reporting Review (the Holmes Review) to advise on when and how reports of the CCC should be made public.[34] While the Labor government introduced a bill seeking to implement the Holmes Review recommendations,[35] it lost office before the Bill could progress. Ultimately, the new Liberal National Party government introduced its own amendments, restoring the reporting powers to the position they had been widely assumed to be in prior to *Carne*, but with important new modifications.[36] At the same time, it tabled and published the long-suppressed Carne and Trad reports. All three approaches – the one implied by the High Court's interpretation in *Carne*, the Holmes Review, and the final legislated model – are reviewed in Part IV.

---

33 Queensland Government, *The Independent Crime and Corruption Commission Reporting Review* (2024) 8.
34 Holmes Review (n 5).
35 *Crime and Corruption (Reporting) Amendment Bill 2024* (Qld).
36 *Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025* (Qld).

III. PUBLIC REPORTING: A PRINCIPLES-BASED ANALYTICAL FRAMEWORK

When and how should an ACA like Queensland's be able to publish reports regarding its individual investigations? How does any jurisdiction determine it has a workable model for its ACA's reporting powers? To evaluate each of the three approaches evidenced by the Queensland saga, it is important to examine the principles underlying both the value and dangers of the public reporting function.

The issue of public reporting by ACAs has received comparatively little detailed attention from scholars or those involved in policy deliberation over ACA design.[37] More broadly, this lack of recourse to relevant first principles of institutional and legislative design has been a general feature of debate over their powers.[38] Instead, it has been largely taken for granted that an ACA should have sufficient discretionary reporting powers to fulfil their deterrent functions and inform the public about outcomes of corruption investigations – and that their legislation provided sufficient protection for all relevant rights and interests. Scholars and practitioners have noted the need to exercise the power of public reporting within constraints that respect an individual's rights to privacy and reputation and procedural fairness, as well as not interfering with the right to be presumed innocent or prejudicing judicial process. However, this is often expressed at a high level of generality, with little detailed analysis as to appropriate restrictions on reporting.

To better inform evaluation and design, we first set out the principles and collective rights associated with public reporting, before explaining how these should be reconciled with individual rights. Combining these in a calibrated framework that resolves the hierarchy within these principles is vital for effective clarity about the merits of reform proposals.

A. The Value of Public Reporting: Principles and Collective Rights

Previously, four interrelated ideas have typically been associated with the importance of public reporting for ACAs: transparency, accountability, agency independence and effectiveness, and public participation. Importantly, while these can be seen as 'principles' or

---

37 For a full review of this literature in Appleby et al (n 6)

38 Notable exceptions include Grant Hoole and Gabrielle Appleby, 'Integrity of Purpose: A Legal Process Approach to Designing a Federal Anti-corruption Commission' (2017) 38(2) *Adelaide Law Review* 397; Tim Prenzler and Janet Ransley, 'Australia's New National Anti-corruption Commission: Background and Critique' (2023) *Public Integrity* 1; Marie J dela Rama, Michael E Lester and Warren Staples, 'The Challenges of Political Corruption in Australia, the Proposed Commonwealth Integrity Commission Bill (2020) and the Application of the APUNCAC' (2022) 11(1) *Laws* 1.

'objectives' of public reporting powers, they can also be seen as reflecting the collective rights of citizens. Conceiving them this way stands to assist the exercise of 'balancing' or prioritising them against the individual rights that must also be considered as potential limitations on public reporting. In exploring each of these four principles/collective rights, we also note arguments that public reporting can serve as an informal sanction, even when formal criminal, disciplinary or civil sanctions do not occur.[39] For clarity, we do not posit this as a valid design principle, for exactly the reasons that attract controversy in cases such the Carne and Trad reports.

1 *Transparency*

Two related dimensions of transparency justify why ACAs report on their individual investigations: the transparency of government agencies' conduct and processes that anti-corruption investigations facilitate, and transparency of the anti-corruption agency's own processes.

Transparency of government processes is closely associated with the right to freedom of expression, insofar as it encompasses a collective right of citizens to receive information about government. As a democratic ideal, transparency is based on the notion that an informed citizenry is better able to participate in government and exercise judgement in relation to government decision-making, thus obliging government to publicly disclose information.[40] This includes enhancing representative democracy by enabling electors to make better informed choices at elections. Exposing executive activity to public scrutiny, whether via vertical (congressional or parliamentary committees, formal audit institutions) and horizontal (civil society organisations, the media, the public) networks of accountability, has long been fundamental to reducing the risk of corruption.[41] In relation to ACAs themselves, transparency of investigative activity and outcomes has been identified as vital to public confidence in the entire system, in order to 'promote and enhance trust that the investigative process is not being compromised by vested interests'.[42]

---

39 Mark Bovens and Ancrhit Wille, 'Indexing watchdog accountability powers: a framework for assessing the accountability capacity of independent oversight institutions' (2021) 15 *Regulation & Governance* 856; See also Petia Kostadinova, 'Improving the Transparency and Accountability of EU Institutions: The Impact of the Office of the European Ombudsman' (2015) 53 *J of Common Market Studies* 1077, 1082.

40 Daniel J Metcalfe, 'The History of Government Transparency' in Padideh Ala'I and Robert G Vaughn (eds), *Research Handbook on Transparency* (Edward Elgar, 2014) 247, 249.

41 Albert Meijer, 'Transparency' in Mark Bovens, Robert Goodin and Thomas Schillemans (eds), *The Oxford Handbook of Public Accountability* (Oxford University Press) 507.

42 dela Rama et al (n 32) 10-11.

Transparency is reinforced by international obligations. The 2005 United Nations Convention Against Corruption (UNCAC)[43] provides a comprehensive set of standards, measures and rules for countries to apply to fight both public and private sector corruption. In relation to public reporting, the UNCAC provides that State Parties must take measures to enhance *transparency* in public administration, including publishing information on the risks of corruption, and allowing the public to obtain information on the organisation, functioning and decision-making processes of public administration.[44]

2 Accountability

Government accountability has been identified as a fundamental value not only in multiple legislative regimes for public governance, but in the Australian *Constitution*.[45] For example, 'officers of the Commonwealth' are subject to judicial review under section 75(v) of the Constitution, and executive spending is controlled by Parliament under s 81 and 83 and the requirements of responsible government.[46] Kenny J has observed that accountability, along with the independence of executive oversight institutions, are 'central to the framework of administrative law in this country'.[47]

Public reporting of corruption investigations again supports accountability in two ways. First, a major purpose of investigations is to enable remedial action in response to corrupt conduct, including criminal or disciplinary accountability of individuals where possible. Examples such as the Royal Commission into the Robodebt Scheme emphasise that, especially where powerful interests are involved, action may not follow unless facts are first independently made public.[48] Second, public reporting enhances the accountability of ACAs, as it allows the government, parliament and public to evaluate their performance based on investigative outcomes, whether they are fulfilling their objectives effectively and whether the expenditure on oversight is justified. Accountability exists, then, for the collective good of the Australian public, as well as for individuals.

---

43 *United Nations Convention Against Corruption*, opened for signature 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005) ('*UNCAC*').

44 Ibid Article 10.

45 See further Janina Boughey and Greg Weeks, 'Government Accountability as a Constitutional Value' in Rosalind Dixon, *Australian Constitutional Values* (Hart 2020) ch 6.

46 *Williams v Commonwealth* (2012) 248 CLR 156.

47 Susan Kenny, 'Opening Address' in Susan Kneebone (ed), *Administrative Law and the Rule of Law: Still Part of the Same Package?* (Papers presented at the 1998 National Administrative Law Forum, Canberra, AIAL Inc, 1999) 10.

48 See e.g. Sarah Canales, 'NACC to investigate six referrals made by robodebt royal commission', *The Guardian*, 18 February 2025 < https://www.theguardian.com/australia-news/2025/feb/18/nacc-to-investigate-six-referrals-made-by-robodebt-royal-commission-ntwnfb>.

Internationally, the value of public reporting for the accountability of independent integrity agencies has been reinforced by the International Institute for Democracy and Electoral Assistance (IDEA).[49] For anti-corruption agencies, it is especially important:

> Regular reporting by ACAs will enhance their *accountability* by providing clear accounts of their progress. It can also strengthen their institutional legitimacy if the reports are made public. Formal reports serve as another accountability mechanism designed to ensure that the Government and the public can assess the performance of an ACA pursuant to its mandate and allocated budget. (emphasis added)[50]

3 *Independence and Effectiveness*

Public reporting is also intrinsic to ensuring the independent and effective operation of oversight bodies.[51] Indeed, the power of *publishing* reports and findings of corruption investigations is a fundamental characteristic of agencies that exercise 'soft' accountability power, such as anti-corruption commissions on the royal commission model. As Prasser argued:

> A signal of the *independence* of an inquiry is the extent it conducts its business in public… What distinguishes an inquiry [from review by a government agency] is the public and transparent character of its deliberations in the process of fact-finding and reporting.[52] (emphasis added)

Public reporting is also accepted as basic to the effectiveness of commissions in fulfilling functions additional to individual legal or disciplinary accountability. Most if not all ACAs also have awareness-raising, educative, standard-raising, and policy-recommendatory or preventive functions, which rely on transparency of findings and analysis.[53] Prasser's typology of how public inquiries perform these activities[54] highlights 'public release of [inquiry] reports and formal presentation to government' as fundamental for obtaining 'formal endorsement from government of specific recommendations'.[55]

Peter Hall, former NSW Chief ICAC Commissioner, emphasises that public reporting of corruption investigations encourages higher standards of behaviour by public officials, increasing their own effectiveness.[56] Internationally, an independent discretion to publicly

---

49 Elliot Bulmer, *Independent Regulatory and Oversight (Fourth-Branch) Institutions* (International IDEA Constitution-Building Primer 19, 2019) 22.

50 United Nations Office of Drug and Crime, *Colombo Commentary on the Jakarta Statement of Principles for Anti-corruption Agencies* (2020) 72.

51 As identified in, eg, Gabrielle Appleby, 'Horizontal Accountability: the rights-protective promise and fragility of executive integrity institutions' (2017) 23(2) *Australian Journal of Human Rights* 168.

52 Scott Prasser, *Royal Commissions and Public Inquiries in Australia* (LexisNexis, 2nd ed, 2021) 282.

53 dela Rama et al (n 32) 10-11.

54 Ibid 143.

55 Ibid.

56 Peter Hall, *Investigating Corruption and Misconduct in Public Office* (LawBook Co, 2019) 777.

report is seen as central to the role of independent oversight institutions in reaffirming and enforcing important norms across society.[57]

4 *Public Participation*

Coming full circle, public reporting is intrinsic to public participation in resisting and combatting corruption. Article 13 of the UNCAC, for instance, requires nation states to promote active societal participation in the fight against corruption, and increase public awareness of the existence, causes and gravity of the threat posed by corruption, including 'respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption'.[58]

B. Individual Rights Concerns relating to Public Reporting

The general approach is that the above principles or collective rights need to be counterbalanced against the rights of *individuals* involved. For example, Article 13 of the UNCAC, identifies that the freedom to publish information concerning corruption should be balanced 'only as are provided for by law and are necessary' with the 'respect of the rights or reputations of others' and protection of national security, public order, public health or morals.[59] The key rights engaged are the right to privacy and reputation, a fair trial and fair process, as will be dealt with in turn.

1 *Right to Privacy and Reputation*

Although Australian domestic law does not currently furnish individuals with the right to adjudicate privacy claims,[60] the right of privacy was recently ventilated in the United Nations Human Rights Committee's findings of a breach by the NSW ICAC of Article 17 of the International Covenant on Civil and Political Rights (ICCPR) (right to privacy) .[61] In *Kazal v Australia*, the Human Rights Committee found that the decision 'to hold a public hearing and make public findings in which the ICAC concluded that [Charif Kazal] had sought to

---

57 See Tarunabh Khaitan, 'Guarantor Institutions' (2021) 1 *Asian Journal of Comparative Law* S40; and Tarunabh Khaitan, 'Guarantor (or the so-called 'Fourth Branch') Institutions' in Jeff King and Richard Bellamy (eds) *Cambridge Handbook of Constitutional Theory* (CUP 2023).

58 United Nations Office of Drugs and Crime, *Technical Guide to the United Nations Convention Against Corruption* (2009) 63.

59 Ibid.

60 Stephen Gray and Yee-Fui Ng, 'Taming the Electronic Genie: Can Law Regulate the Use of Public and Private Surveillance?' (2023) 48(3) *Monash University Law Review* 113.

61 United Nations Human Rights Committee, *Kazal v Australia*, Views Adopted by the under Article 5(4) of the Optional Protocol, concerning Communication No 3088/2017, 7 July 2023 CCPR/C/138/D/3088/2017.

improperly influence the impartial exercise of the official functions of a public officer, but where said findings could not be challenged by the [Kazal] before any domestic authority and for which the ICAC provided no reasoning as to its decision to make the proceedings and findings public, amounted to an arbitrary interference in [Kazal]'s right to privacy'.[62] Particularly important was the evidence that 'the publication of the findings damaged his reputation and his ability to conduct his family business.' [63]

In general, much criticism has stemmed from the concern that ACA public reports which adversely name a person may unfairly tarnish their reputation. Peter McClellan, when a barrister and before he chaired the Royal Commission into Child Sexual Abuse, warned about the excessive powers of anti-corruption commissions as causing 'considerable harm to persons unfairly trapped by the blaze of sensational publicity which can be created… [including] entirely innocent people'.[64] This concern is especially triggered by ACAs who hold public inquiries, however, with public *reporting* of corruption investigations raising different if related issues.[65]

Donoghue discussed damage to reputation as being an interest that attracts procedural fairness (which we consider separately below):

> Commissions may damage the reputations of suspects by publishing evidence, or by making findings, that implicate them in criminal activities. Similarly, they may damage the reputation of witnesses who are not suspects by, for example, finding they are associated with criminals or that they are otherwise unethical or guilty of misconduct. As damage to reputation may be caused by the conduct of the commission as a whole, rather than just by the actions of a commission when using coercive powers against a suspect or witness, commissions may be required to comply with the rules of procedural fairness in relation to any suspect or witness whose reputation may be damaged by the investigation as a whole.[66]

However, Donoghue noted that in *ICAC v Chaffey*[67] the rules of procedural fairness did not require a decision in favour of a private hearing when reputations may be damaged, nor guarantee that no harm will be done to an individual's reputation in the course of an investigation—they merely ensure that a person whose reputation is at risk is given an opportunity to be heard.[68]

The most acute risk arises where ACAs have power to make administrative findings that a person engaged in corrupt conduct, independently or in advance of (often in order to support

---

62 Ibid 12-3.
63 Ibid.
64 Ibid 21.
65 Ibid 28-9.
66 Stephen Donoghue, *Royal Commissions and Permanent Commissions of Inquiry* (Butterworths, 2001) 153.
67 (1993) 30 NSWLR 21.
68 Donoghue (n 56) 194-5.

the initiation) of criminal or disciplinary findings. The most recent major review of the NSW ICAC's jurisdiction and powers, by former High Court Chief Justice Murray Gleeson and Bruce McClintock SC,[69] noted the capacity of a finding of corrupt conduct to cause reputational damage, but considered it appropriate for ICAC to possess these powers:

> There is a limit to the extent to which legislation can provide the solution to criticisms of the kind that have been made of the procedures of the ICAC. The … obvious potential for reputational damage arising not only from considered findings at the end of an inquiry, but also from publicity associated with the course of the inquiry, creates a risk of serious unfairness. At the same time, publicity itself is a source of protection against administrative excess. [In] terms of the legislation, the Panel does not consider that amendment or qualification is required.[70]

Measures that may ameliorate reputational damage include a power or responsibility to make further public statements where a person is later exonerated in court. For instance, the ACT Integrity Commission is required under the *Integrity Commission Act 2018* (ACT) to issue reputational repair protocols, where the Commission makes a finding of corrupt conduct against a person that is later not prosecuted or if the person is exonerated in court.[71]

The preponderance of literature indicates that while important, the right to privacy is not absolute: it needs to be weighed up against the public benefit, and damage can be ameliorated in different ways. The primary remedy – increased procedural fairness requirements – is discussed further below.

2 *Right to Fair Trial*

Given the key role of ACAs in ensuring criminal or disciplinary action, it is axiomatic that public reporting should not adversely affect an individual's right to a fair trial – should that be recommended, underway or likely. This was emphasised by an independent review by the Hon Ian Callinan and Professor Nicholas Aroney in 2013, warning against the then Queensland Crime and Misconduct Commission's (CMC) identification of individuals as being the subjects of investigation, and especially the risk of contamination by the media:

> It is necessary, therefore, to confine the statements that bodies such as the Police Service and the CMC (and others) may make, not only [due to] the detrimental effect upon the reputation of those made subject to a complaint, but also because such statements, whether in the media or otherwise, may affect, even subliminally, potential jurors and may therefore may have a real capacity to prejudice the fair conduct of criminal trials,

---

69 See generally Murray Gleeson and Bruce McClintock, *Independent Panel - Review of the Jurisdiction of the Independent Commission Against Corruption* (2015).

70 Ibid 17, 68.

71 Integrity Commission Reputational Repair Protocols 2020 (ACT) notifiable instrument NI2020–594 made under *Integrity Commission Act 2018* (ACT) s 204.

> particularly when there is no strong public interest served by making or publicising the statements.. [72]

However, despite their critical commentary, even Callinan and Aroney assumed that disclosure of the substance and identities involved in corruption complaints was legitimate and/or necessary for a concluded investigation report, despite recommending significant restrictions on release of that information while an investigation was in progress. Their recommended restrictions on publication did not apply if the named persons made or consented to the disclosure themselves, if the Commission reached 'any finding against ... a person or persons', if formal criminal or disciplinary proceedings commenced, or if the Commission was publishing details in order to 'clear' a person or persons.

3 *Fair Process*

As already seen, procedural fairness is a fundamental right of people who may be adversely affected by the use of public powers, although the specific rights can be modified or excluded by statute.[73] The ability for ACAs to publicly report their findings is often accompanied by the requirement for procedural fairness, where the commission must disclose adverse material and proposed adverse conclusions or findings to a person that they will name in their public reports, and reflect their submissions in the report that is finalised.[74] In *AB v Independent Broad-based Anti-corruption Commission* (IBAC), the High Court recently found that this extended to disclosure of the evidentiary material upon which proposed adverse comments or opinions were based, although this could be satisfied by provision of the substance or gravamen of the underlying material rather than the material itself.[75] As Groves identified, the important question is how to 'strike the balance between the competing interests of an investigative agency such as IBAC and the people who are affected by its investigations'.[76]

Hall argued that 'an appropriately considered approach is required rather than a one-size-fits-all formula':

> the issue of "balance" will depend upon considerations such as the nature of the commission of inquiry and its jurisdiction, the nature of the investigation in question

---

72 Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 90.

73 *Kioa v West* [1985] 159 CLR 550.

74 Ibid 779; Donoghue (n 56) 181-4.

75 [2024] HCA 10. See Matthew Groves, 'What's in a Name? Fairness and a Reasonable Opportunity: AB v Independent Broad-Based Anti-Corruption Commission' (2023) 45(4) *Sydney Law Review* 525; William Partlett, 'Improving Anti-Corruption Oversight: *AB v IBAC* and Beyond' (11 June 2024) <https://www.auspublaw.org/blog/2024/6/improving-anti-corruption-oversight-ab-v-ibac-and-beyond>.

76 Groves (n 69).

> and the issues arising. The balance between ensuring that the integrity of an investigation is preserved and the need to ensure fairness and prevent avoidable damage to reputation of affected persons is one to be carefully achieved having regard to the facts and circumstances of each case, there being no rigid rule.[77]

C. Articulating an Analytical Framework for Public Reporting

How, then, should the principles and collective rights that support public reporting be reconciled with the protection of these individual rights? We take three key lessons from the literature and debates to date.

First, clarity as to the broad constitutional purposes of having specialist ACAs is vital to understanding how reporting powers can and should be framed. As seen above and below, the specific statutory functions and objectives of ACAs are often mixed and difficult to discern, despite their fundamental importance to the role and timing of any reporting. However, this does not make it safe to assume that functions and powers should be construed narrowly, as might be the case for traditional criminal law enforcement or disciplinary agencies – because for the most part, Australian ACAs are not these. While they have important investigation and referral functions, they do not themselves have the power to enforce norms. Like an ad hoc royal commission or inquiry, their role in sanctioning is not necessarily even their most important. Rather, they should be understood as predominantly exercising a form of 'soft' accountability,[78] with jurisdictions commonly extending beyond criminal law enforcement to include identification of non-criminal corruption, causes of corruption, imperatives for addressing corruption risk (criminal or non-criminal), cultural issues and opportunities for specific or systemic reform to control corruption.

Sitting towards this 'soft' end of the spectrum, the power of reporting on specific facts and issues is not just a collateral feature but a key dimension of the form of oversight they exercise. It is partly due to the unique nature of these roles that independent accountability and integrity institutions are increasingly known as 'fourth branch' institutions in the modern public law landscape[79] – answerable to the people through the legislature and subject to judicial

---

77 Hall (n 49) 780.

78 See Lisa Burton and George Williams, 'The integrity function and ASIO's extraordinary questioning and detention powers' (2012) 38 *Monash University Law Review* 1, 28, 24, 26; Andreas Schedler, 'Conceptualizing Accountability' in Andreas Schedler, Larry Diamond, and Marc F Plattner (eds) *The Self-restraining State: Power and Responsibility in New Democracies* (Lynne Rienner Publishers, 1999) 13, 14-17.

79 See e.g. Bruce Ackerman, 'The New Separation of Powers' (2000) 113 *Harvard Law Review* 642; John McMillan, 'Re-thinking Separation of Powers' (2010) 38 *Federal Law Review* 423; A J Brown, 'The Fourth, Integrity Branch of Government: Resolving a Contested Idea', Australian Political Studies Association Presidential Address (2018) <https://auspsa.org.au/storage/2020/09/Brown-A-J-2018-Fourth-Integrity-Branch-of-Government-APSA-Presidential-Paper.pdf>, Mark Tushnet, *The New Fourth Branch:*

review, but otherwise exercising their statutory, administrative powers independently of the executive, and not necessarily in service of judicial, law enforcement or disciplinary process.

Second, there is a similar, also recently growing need to be explicit about how fundamental human rights are being respected by governmental institutions in Australia. This growing public expectation, reflected in public debate over the powers of ACAs but also other agencies, has seen significant shift in legislative frameworks for greater respect and protection for individual human rights since the time of the original *Criminal Justice Act 1989* (Qld), or similar legislation such as the *Independent Commission Against Corruption Act 1988* (NSW). Human rights statutes enacted in the ACT, Victoria and Queensland are indicative of this shift.[80] Where it may once have been assumed, democratic deliberation about appropriate rights protection, with greater transparency and inter-institutional conversation about the appropriate accommodation of rights within legislation, is now imperative.

Third, rather than the crude and rather opaque concept of 'balance' between the different rights and interests relevant to public reporting, there is a need for a clear hierarchy in a situation where democratic principles and collective rights collide with individual rights of privacy and fair process. Recognising both collective and individual rights allows for greater comparison, prioritisation and accommodation between them. Given the importance of corruption-free institutions, reinforced by the principles of executive accountability in the Australian constitutional framework and the integrity purposes of anti-corruption agencies, it is our view that the collective right to transparency and good government should be prioritised, *provided it is pursued fairly* so as to ameliorate concerns of individual rights infringement. The ability to issue public reports is critical for ACAs to achieve their objectives of addressing, deterring and preventing corruption in government. Within this framework, individual rights protections should not be trumped, but their primary protection is in enhanced procedural fairness requirements rather than the elevation of other rights to an equivalent status. In particular, rights to due criminal or disciplinary process, and associated rights to privacy and reputation, are relevant only so far as those processes are actually contemplated or on foot. If this is not case, or ceases to be the case, then far from the reporting functions of an ACA having been "exhausted", they may just be beginning.

Institutions for Protecting Constitutional Democracy (CUP 2021). Contrast this with some judicial scepticism as to the concept of fourth branch: e.g, WMC Gummow, 'A Fourth Branch of Government?' (2012) 70 *AIAL Forum* 19; Stephen Gageler, 'Three is Plenty' in Greg Weeks and Matthew Groves (eds) *Administrative Redress In and Out of the Courts: Essays in Honour of Robin Creyke and John McMillan* (Federation Press, 2019) 12.

80 *Human Rights Act 2004* (ACT); *Charter of Human Rights and Responsibilities Act 2006* (Vic); *Human Rights Act 2019* (Qld).

IV. REVIEWING THE OUTCOMES: THE HIGH COURT, HOLMES AND ULTIMATE LEGISLATIVE APPROACH

Applying the above framework in Part III, how well have each of the three key approaches to date contributed to solving when and how an ACA like the Queensland Crime and Corruption Commission should be able to publish reports on individual investigations? We first examine the High Court's interpretation of the existing statute in *Carne*, which concluded that parliament had never intended to grant the Commission any power to publish individual investigation reports. Then we examine the detailed model for a heavily constrained reporting power, developed by the Holmes Review; before examining the [proposed] legislative outcome under the *Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025* (Qld).

A. No Reports: The Implications of the High Court in *Carne*

The High Court's interpretation of the *CC Act* in *Carne* sits close to one end of a spectrum of reporting, in that it allows for very limited public reporting. The High Court held that while the CCC could report generally in relation to the performance of its corruption functions under s 64(1), it did not have the ability to publicly report on individual corruption matters through s 69(1)(b) or any other provision of the CC Act.

Kiefel CJ, Gageler and Jagot JJ rejected that the Carne Report, issued as an investigative report under s 49, was one which could trigger parliamentary tabling and publication under s 69(1). They found that there was no provision of the CC Act that authorised the publication of the report.[81] This was because, on their analysis, the only reports that could trigger s 69 tabling had to be made under the Commission's general power to report in s 64. And, according to the judges, that section provided the CCC with a broad power to report about the performance of its functions, such as through an annual report – but did not include reports about specific investigations concerning specific individuals:[82]

> Reports made by the Commission under s 64(1) may concern many matters which come to its attention in the course of the performance of its functions, save for that of its crime function. The purpose of such reports is the attainment of the broad statutory objectives of the CC Act, concerning corruption in the public sector.[83]

The judges decided that s 49 reports, containing conclusions about potential criminal or disciplinary misconduct, were of a distinct nature, as they involve the investigation of

---

81 *Carne* [24].
82 Ibid [59].
83 Ibid [62].

individuals – and were intentionally excluded from the s 69 tabling and publication procedure. The judges noted:

> The ultimate conclusion to be drawn from the process of construction is that there is only one power which may be exercised to report on a particular investigation into alleged corrupt conduct on the part of an individual, and that is found in s 49.[84]

The judges concluded that the power under s 49 to report to authorities who could take action was distinct from the s 64 power; its existence should 'be understood to mean that the Commission is not to exercise an unqualified power to report on the investigation of a complaint to a different audience'.[85] In fact, Kiefel CJ, Gageler and Jagot JJ indicated they took a dim view of what they saw as an attempt to bypass a careful and detailed legislative scheme for dealing with complaints against individuals:

> Despite the Commission not proposing that any criminal action be taken and the Attorney-General's consideration of disciplinary action against the respondent being terminated by reason of the respondent's resignation, the Commission took steps to compose a report on the allegations and the investigations which it sought to make available to the public.[86]

Gordon and Edelman JJ agreed on this ground as well, for largely similar reasons. They also seemed to be motivated by similar sentiments:

> But what the Commission cannot do under s 64 is to prepare a report concerning allegations of corrupt conduct which seeks to circumvent the limits on its reporting powers and functions contained in Part 3 of Ch 2 of the CC Act.[87]

Hence, in effect, the High Court's decision meant that while the CCC could report generally in relation to the performance of its corruption functions, it did not have the ability to publicly report on individual corruption matters under the CC Act.

There was considerable criticism of the High Court's position, including by Neil Laurie, Clerk of the Queensland Parliament:

> … it is not necessary for independent commissions to make findings of corrupt conduct or criminal behaviour against individuals in a public report. Such matters can be decided by other more appropriate bodies. However, Commissions should be able to report a narrative of facts, expose broad behaviour and corruption risks and advise that they have referred matters to the appropriate body. It is necessary for the public to be appraised of the wider facts of a matter and the behaviours of public officials and an appreciation of the mischief at hand. …
>
> Without statutory amendment, the public will remain 'in the dark' about the outcomes of a large number of corruption investigations where a decision does not result in

84 Ibid [68].
85 Ibid [65].
86 Ibid [7].
87 Ibid [104].

> criminal proceedings but nonetheless contain lessons for, and usually recommendations to reduce the incidence of corruption or misconduct in, Queensland's public sector.… Should we be so protective of individual rights (reputation) that it keeps the public in the dark about matters of corruption and misconduct by public officials? Should the public not be able to judge for themselves the conduct of public officials by knowing the factual circumstances of an issue and the behaviours that occurred? [88]

Applying our principles based analytical framework developed earlier, a first conclusion about the High Court's approach is the very narrow reading given to the Commission's statutory objectives and functions. While it paid great heed to investigative powers and activities, including referrals or reports for the purposes of criminal or disciplinary action, it saw no connection between the same powers and the Commission's other statutory roles and responsibilities. These were summarised in the Carne report itself:

- to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector: s. 4(l)(b)
- helping to prevent corruption (s. 23) by, amongst other things, reporting on the ways to prevent corruption: s. 24(1)
- to raise standards of integrity and conduct in units of public administration: s. 33(l)(a), and
- to investigate and otherwise deal with conduct liable to allow, encourage or cause corrupt conduct: s. 33(2)(a)(i).

> The CCC also has an overriding responsibility to promote public confidence in the integrity of units of public administration: s. 34(d).[89]

The Foreword to the report made clear that while its report related to an individual's conduct, its recommendations were oriented towards these broader objectives, including concrete prevention reforms but also general awareness to maintain and raise standards:

> Where senior public servants and public officials who hold positions of trust behave in a way that does not meet the standard expected of them, they should be held accountable for those behaviours. One way to achieve this is to inform the people of Queensland of instances where standards have undoubtedly and repeatedly not been met.[90]

At first instance in the Supreme Court, and in the dissenting reasons of Freeburn J in the Court of Appeal, the relationship between investigative powers and these broader functions was interpreted far less narrowly. Freeburn J found that the report was validly prepared in the performance of functions which included assessing the appropriateness of procedures, making recommendations, and raising standards in public administration. On his view, the CCC's

---

88 Neil J Laurie, 'Mount Erebus to Ann Street: Forty years of judicial supervision of ad hoc and permanent commissions of inquiry and the intersection with parliamentary privilege and doctrines of mutual respect' (2023) 38(2) *Australasian Parliamentary Review* 73, 94.

89 Carne Report 8-9.

90 Ibid 7.

functions were not limited to roles in support of prosecutions or sanctions, nor were they limited temporally by the completion of an investigation with a decision that criminal prosecution would not ensue.

The narrowness of the High Court's view of the CCC's functions is reinforced by its interpretation of the Commission's general power to report in s 64(1). This had previously been interpreted as giving the commission power to issue reports as part of performing *any* of its functions, as again endorsed in the dissent of Freeburn JA:

> … a commission such as this one would ordinarily perform much of its work through reports. The CC Act makes that clear. For example, the Commission may perform its preventative function by reporting on ways to prevent major crime and corruption. Adopting a confined view of the broad reporting power in s 64 would restrict the Commission's capacity to report on systemic or public confidence issues.[91]

Further, in support of a broad reading, Freeburn JA placed stock in the express provision that nothing in Part 3 of the CC Act 'limits the action that may lawfully be taken by the commission… to discipline or otherwise deal with a person for corruption' (s 51(1)), including the power to refer criminal or disciplinary evidence to prosecuting authorities under s 49.

In contrast, the High Court's narrow interpretation of the Act reflects the second major trend recognised in our framework: growth in the importance of respecting individual rights. The Court's analysis of the statute, and its focus on s 49 as the exclusive vehicle through which to deal with individual investigative reports, not only reflects a narrow view of the Commission relevant functions, but its interpretation results in a much higher priority being placed on the protection of individual rights through the criminal and disciplinary process, than the public's collective rights to know about corruption issues and responses.

B. The Independent CCC Reporting (Holmes) Review

As noted at the outset, the Queensland Government established the Independent Crime and Corruption Commission Reporting Review (the Review)[92] in direct response to the *Carne* decision. The Review was tasked to recommend appropriate legislative amendments to the CCC's ability to publicly report in the performance of its corruption functions and corruption prevention functions, particularly in relation to the investigation and disposition of individual corruption matters (whether ongoing or concluded).

---

91 *Carne v Crime and Corruption Commission* [2022] QCA 141 (5 August 2022) [136].
92 Holmes Review (n 5).

The Holmes Review produced a detailed model for when investigation reports could be published, and was immediately accepted by the then government, but was also criticised in many media, not least because it still remained unclear if reports such as the Carne or Trad reports could ever be published. While less restrictive than the result flowing from the High Court's interpretation, the Review's proposals still heavily constrained when investigation reports which named any individuals could be made public. The Review provides a second test of our principles-based analytical framework, providing the most substantive, detailed and contextualised examination of these questions to date, some of which informed the final outcome.

The Review's first recommendation trod a middle path between the Commission's largely unfettered statutory discretion to report prior to *Carne*[93]; and the High Court's interpretation against almost any ability to report on individual investigations. Instead it proposed mandatory statutory criteria to inform the public interest discretion of the Commission, including:

- the need for transparency and accountability in government and the public sector;
- the effect on the human rights of the persons who may be identified, including their rights to privacy, reputation, the presumption of innocence and a fair trial;
- the need to ensure that any pending legal proceedings are not prejudiced;
- the seriousness of the matter under investigation or assessment;
- whether the matter in question has been the subject of significant public controversy.

The Review also made recommendations on principles to define when public statements can be made by the CCC, during or after investigations, applying the same public interest test.[94]

However, the Review then also proposed a model of specific circumstances for public reporting that would further constrain the discretion, with different prescriptions based on the category of report and class of person involved.[95] Two of its six proposed report types were uncontroversial: a **public hearing report**, as already provided for by the existing Act; and an **unfounded allegation report**, confirming after investigation that corruption allegations about a person were unfounded, but which could not identify the person 'unless reasonably necessary' or they wished to be identified, and could not include critical commentary or

93 For the Holmes Review's rejection of this, see pp,179-180 (reporting) and 183 (public statements). See also comments in the Preface (1).
94 Ibid 6.
95 Ibid 5.

opinions or recommendations based on their conduct. However, the remaining four report types raised further workability questions:

- **Serious corrupt conduct report**: The Commission would be able to report on specific investigations, but only if the corruption was 'serious', and the subject of the investigation was found guilty, had their services terminated, had a declaration made against them that their services would have been terminated if still employed, or had a finding of corrupt conduct against them by the Queensland Civil and Administrative Tribunal;
- **Report about elected official**: The Commission would be able to report on corruption allegations about elected officials even if the person was not found guilty, but the report could not include critical commentary or opinions or recommendations based on their conduct.
- **Systemic corrupt conduct report**: The Commission would be able to report on investigations that reveal systemic corruption, but individuals could not be named unless 'reasonably necessary', they had been named in a public hearing, or they could be named in a serious corrupt conduct report.
- **Prevention report**: The Commission would be able to report on corruption investigations in the exercise of its prevention function but, again, individuals could not be named unless 'reasonably necessary', they had been named in a public hearing, or they could be named in a serious corrupt conduct report.[96]

Problems with this model included: both the equity and value of having different thresholds for different classes of officials; the inability to publish any report until all formal criminal or disciplinary action had been concluded (and typically only positively), by which time it might be useless or irrelevant; and inability to use the publication of a report to force or stimulate the necessary action. The recommendations that even where permissible, reporting be limited so as not include critical commentary or opinions was also problematic. At a practical level, the line between reporting findings of an investigation into corrupt conduct and critical commentary on that conduct may be difficult to draw, and yet it will often be the CCC's commentary that contains the most important benefits in controlling and preventing corruption.

There was also uncertainty as to whether the assessment that it was 'reasonably necessary' to identify an individual was within the Commission's discretion, or an invitation to further defensive litigation by affected persons. A prevention report which met this last threshold would have been the only pathway for release of the Carne or Trad reports.

---

96 Ibid 5.

Otherwise, the recommendations continued to prohibit reporting of investigations conducted in private into any non-elected official unless it was serious corrupt conduct and they had been found guilty or terminated. This means that officeholders such as the Public Trustee or in the Trad case, the Director-General, may have been found by the CCC to have engaged in corrupt conduct but still could not be reported on, undermining the ability of the Commission to reinforce the relevant norms or promote higher standards among others.

Applying our design framework from the previous part highlights strengths, but again helps explain these weaknesses in the Holmes Review model. First, the Review had much closer regard to the Queensland statutory context, and history, functions and practices of the Commission.[97] Unlike the High Court, the Review especially acknowledged the Commission's corruption prevention purpose and endorsed the importance of public reporting about investigations as part of that function. This was reinforced by the Review's conclusion, unlike the High Court, that the Commission had no statutory power to make findings of corruption.

Nevertheless, the complex layering of constraints on reporting seems explained by significant limits on the Review's interpretation of the CCC's statutory purposes, evident in its assessment that 'transparency in how the Commission carries out its investigative work is not a primary focus'.[98] In particular, the Review noted that the Queensland CCC had no statutory mandate to 'expose' corruption or provide a public education function, unlike some other ACAs. Rather, the Queensland CCC's purposes were currently limited to raising standards of integrity and conduct and dealing in an appropriate way with complaints about corruption, with the Review describing the Act as having a greater focus 'on investigation and improvement of systems than on exposure of its activities to that end.'[99] The Review saw this as reinforced by the largely secret nature of the Queensland CCC, with its presumption in favour of private hearings ('a great deal else of what the Commission does by way of investigation is designed to be secret'[100]), and public reporting itself having been 'the exception, not the rule, for corruption investigations' over many years.[101]

This limited view may well have flowed from the Review's Terms of Reference, which probed the desirability of public reporting within the existing statutory objectives of the CCC, which did not explicitly include exposure of corruption. However, as seen earlier, either consideration as to how the Commission's functions *should* best be framed, or more complete

97 Holmes Review (n 5) 112, Chapter 2, Chapter 10.
98 Ibid 165.
99 Ibid 165.
100 Ibid 165.
101 Ibid 9.

recognition of the centrality of public education and awareness in existing standard-raising and prevention activities, leads naturally to a somewhat different outcome. As discussed in Part III, accountability and transparency are a vital part of the constitutional architecture within which the CCC operates, to an extent surprisingly neglected by the Review. Even without the *exposure* of corruption being an explicit statutory objective, and even if much of the Commission's work is necessarily discreet or confidential – and indeed, because of that fact – the existing corruption and prevention objectives rely on a flexible, timely approach to public reporting in multiple ways – including reaffirming and lifting anti-corruption norms and standards, brokering confidence from those in government as well as the public about the work and independence of the ACA, ensuring that the findings and recommendations of the body cannot be ignored by government, and promoting rational decision making. If the Review was correct that the existing functions did not prioritise transparency, this should only have raised alarm bells about the design of the CCC and its capacity to address corruption.

Second, the Review plainly was established to help provide greater confidence that statutory powers are being exercised in accordance with human rights, noting the statutory context in Queensland now included the *Human Rights Act 2019* (Qld), and recommending that a range of rights – both collective and individual – be reflected in the criteria to guide publication discretions.[102] The Review considered a number of possible collective rights as mitigating in favour of public reporting – including freedom of expression (including the right to receive information) and the right to participate in public life – and also noted that the 'balancing' of rights would differ depending on the context, such as where elected officials or systemic corruption were involved.[103] Nevertheless, the effort to 'balance' rather than reconcile the competing rights helps explain the impractical results, with affected officials' individual rights to privacy and reputation, fair hearings and the presumption of innocence clearly still pushing heavily against public reporting.[104] This apparent prioritisation of the impact on individual rights, at the expense of the collective rights associated with public reporting, again seemed influenced by legal unease about the role of the Commission relative to other traditional institutions. The Review expressed its concern regarding the 'extraordinary powers' of the Commission, where individuals subject to investigation 'have very little recourse' and 'prospective consequences of public reporting for individual rights are significant'.[105]

---

102 Ibid 113-114. HR Act s 58. The Review also concluded that the Commission 'now… has a greater responsibility to avoid damage to reputation…by virtue of its obligations under the Human Rights Act': 202.

103 Ibid 116-117.

104 Ibid Chapter 9.

105 Ibid 179-180.

Overall, the Review marked an important moment in the maturation of the analysis of anti-corruption agencies in Australia. Ultimately, it did not achieve its goal of setting up 'a workable regime which balances the considerations of human rights protection and the desirability of public sector transparency and accountability.'[106] However, as the best attempt yet to do so, it laid out the logic of several areas of reform. Most importantly, and more consistently with our own suggested framework, it also recommended that 'procedural fairness requirements should be strengthened', and 'should apply to decisions to prepare, table or otherwise publish reports'.[107] As identified in Part III, reforms of this kind appear to hold greater promise for effective reconciliation of the various rights than complex prescriptions as to when different particular reports might, if ever, be made public.

C. Crime and Corruption (Restoring Reporting Powers) Amendment Bill

The proposed legislative outcome provides a third and final test of our framework. As mentioned at the outset, a change of government in October 2024 brought an alternative response, influenced by political claims that implementation of the Holmes Review would perpetuate an alleged cover-up of investigations such as the Carne and Trad reports. However, while the thrust of the final reform was said to be simply "restoring" the reporting powers that were assumed to exist before *Carne,* in fact the outcome entailed significant changes. Most importantly, it confirmed and clarified, by way of both extension and restriction, the statutory functions served by public reporting. It also implemented the Holmes Review recommendations to introduce mandatory criteria that must be considered as part of the discretion to present reports or statements for publication, as well as enhanced procedural fairness requirements. However, it abandoned – wisely, in our view – any attempt to otherwise prescribe particular types of reports that could only be published depending on the class of conduct or official concerned, or on proceedings outside the Commission's control.

First, the *Crime and Corruption (Restoring Reporting Powers) Amendment Bill* (Restoring Powers Bill) directly tackled the uncertainties over the relationship between reporting and the broader statutory functions of the Commission associated with prevention, standard-setting and awareness-raising. Unlike the courts in *Carne,* and much more than the Holmes Review, the Restoring Powers Bill placed a premium on principles of and the collective public interest in transparency and accountability as intrinsic to the agency's mission and

---

106 Ibid 1.

107 Ibid. The Review proposed that 'For reports, a person affected should be given a minimum of 30 days to respond to the initial draft, and then a further 14 days to respond to the final version to be tabled or otherwise published'.

purpose, above and beyond its role in law enforcement or disciplinary processes. The Attorney-General, Deb Frecklington MLA said upon the introduction of the Bill:

> Under the public interest principle [in the existing CC Act] the CCC has an overriding responsibility to promote public confidence in the integrity of the public sector and to assure the public that if corruption does happen it is dealt with appropriately. How can the CCC do this if it cannot appropriately tell the public about its corruption investigations?[108]

The Bill answered the High Court, and Holmes Review, by making explicit the wider statutory purposes of reporting, by extending the clauses specifying how the Commission performs its existing corruption functions to include:

> (k) providing information generally about how it performs its corruption functions by reporting and making statements to the public; …
>
> (m) providing information to the public and to appropriate authorities and entities, by reporting and making public statements, about particular complaints or particular investigations if the commission considers it appropriate and necessary in the circumstances to do so to—
>
> (i) provide transparency about how it performs its corruption functions; or
>
> (ii) assure the public and other authorities and entities that allegations of corruption are appropriately dealt with; or
>
> (iii) continuously improve the integrity of, and reduce the incidence of corruption in, the public sector.[109]

Simultaneously, the amendments responded to the primacy of traditional criminal and disciplinary processes assumed by the High Court's interpretation, by making it explicit that supporting those processes in a subservient manner was not the Commission's role. The strange notion that the Commission's general reporting discretion did not extend to individual corruption matters was explicitly corrected.[110] While reinforcing that performance of its functions indeed included 'reporting on investigations to appropriate authorities and entities if it decides that prosecution proceedings or disciplinary action should be considered',[111] the amendments also put paid to the implication, drawn from s 49, that once the Commission makes such a referral, its own functions and ability to report are somehow exhausted:

---

108 Hon. D K Frecklington (Nanango—LNP), Attorney-General and Minister for Justice and Minister for Integrity, Second Reading Speech, *Crime and Corruption (Restoring Reporting Powers) Amendment Bill*, Queensland Legislative Assembly Debates, 20 February 2025, 231 <https://documents.parliament.qld.gov.au/events/han/2025/2025_02_20_DAILY.pdf#page=54>.

109 CCA Act, s 35(1) (How commission performs its corruption functions), as proposed to be amended (Reporting Powers Bill, s 4).

110 New s 64A (Commission reports—particular corruption matters): 64A(1) 'Without limiting section 64, the commission may report on a corruption matter under section 64(1)' (Reporting Powers Bill, s 14).

111 CCA Act, s 35(1) (l) (How commission performs its corruption functions), as proposed to be amended (Reporting Powers Bill, s 4).

> To remove any doubt, it is declared that the commission may report on a corruption matter under [new s. 64A(1)] regardless of whether the commission has reported on the matter under section 49.[112]

These amendments affirm the wider constitutional role of an anti-corruption agency, and provide the clarity necessitated by the interpretations arising from the High Court and Holmes Review.

However, we are concerned in relation to a new limitation on the types of findings that the Commission may make in any reports that was included in the amendments:

> **48B Limitation on commission's findings, recommendations and statements**
>
> (1) … [T]he commission must not—
>
> (a) 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; or
>
> (b) make any finding, recommendation or statement that—
>
> (i) a person should be prosecuted for a criminal offence or be the subject of disciplinary action; or
>
> (ii) prosecution proceedings or disciplinary action should be considered in relation to a person; or
>
> (c) make any finding or statement that there is evidence, or insufficient evidence, supporting the start of a proceeding against a person.[113]

This restriction on the CCC's ability to fact-find, draw conclusions as the sufficiency of evidence, and make recommendations seems to us unnecessary, and unwise. It has likely been included to help clarify the unique constitutional place of the CCC. But clarity as to the Commission's purposes and powers, especially vis-à-vis other institutions such as the judiciary and disciplinary tribunals, would be better served by a provision stating expressly that the Commission has a fact-finding and recommendatory role, rather than a guilt-finding or determinative one.[114] It is difficult to see how the Commission could fulfil a function of referring outcomes for the consideration of criminal or disciplinary action, if it needed to do this publicly rather than or in addition to a private referral, without actually stating that opinion. It is similarly difficult to see how the Commission could substantiate corruption and report meaningfully to parliament and the public on other action needed to prevent or remedy it,

---

112 New s 64A(4) (Reporting Powers Bill, s 14).

113 New s 48B (Reporting Powers Bill, s 7).

114 A better provision may be one such as s 150 of the *National Anti-Corruption Commission Act 2022* (Cth), '**Effect of findings or opinions about corrupt conduct':**

> ' (1) This section applies if an investigation report includes a finding or opinion that a person has engaged, is engaging or will engage in corrupt conduct or conduct that could constitute or involve corrupt conduct.
>
> (2) The finding or opinion does not constitute a finding or opinion that the person is guilty of or has committed, is committing or will commit an offence.'

including awareness-raising, without trespassing into the banned territory of stating conclusions that corruption had occurred, or explaining the sufficiency of evidence as to that conduct.[115]

Second, again applying our framework, how well do the amendments deal with the heightened demand for respect for collective and individual human rights? Here, the outcome is clear. Informed by the Holmes Review, the amendments include a comprehensive list of issues the Commission must consider when making a decision about reporting on any particular corruption matter (new s 64A(2)), including several relevant individual rights:

(a) 'the need for accountability and transparency in government and the public sector';

(b) 'whether the report will be for the public benefit';

(c) whether the commission has finalised its 'assessment of the corruption matter, and any action taken…';

(d) 'the seriousness of the corruption matter';

(e) whether the report may prejudice 'any proceeding that the commission is aware of, or any reasonably foreseeable future proceeding' in the matter; or any 'investigation by the commission or other law enforcement agency'; and

(f) if a person's identity is readily apparent, or can reasonably be ascertained—

  (i) 'whether the standing and status of the person warrants greater public scrutiny';

  (ii) 'whether the report may unreasonably damage the person's health, safety or wellbeing';

  (iii) 'the seriousness of the person's conduct';

  (iv) 'whether the person consents to being identified'; and

  (v) 'whether the report may unreasonably interfere with the person's privacy or reputation'.[116]

This outcome goes a long way to satisfying the need identified in Part III, for adequate recognition of collective along with individual human rights. The approach also evidences a clearer hierarchy of rights, beyond the implicit prioritisation of individual rights or simple presumptions about 'balance' in the previous approaches. This is evident in the extension of the Commission's functional methods, already noted, linking transparency and accountability to the Commission's 'overriding responsibility' to promote public confidence in the public sector. It is even more explicit in the Statement of Compatibility prepared by the Attorney-

---

115 See also the Submission of the Queensland Parliamentary Crime and Corruption Commissioner, 11 March 2025, raising related if more limited concerns <https://documents.parliament.qld.gov.au/com/JICSC-CD82/CCRRPAB202-C677/submissions/00000008.pdf>.

116 New s 64A(4) (Reporting Powers Bill, s 14). See a similar set of mandatory considerations for public statements: new s 65(4) (Reporting Powers Bill, s 15).

General under the *Human Rights Act 2019* (Qld), explaining how the Reporting Powers Bill engaged with the relevant protected rights: freedom of expression; taking part in public life; property rights; privacy and reputation; right to liberty and security of the person; fair hearing; and rights in criminal proceedings.[117] The key human right promoted by the amendments was identified as freedom of expression, described as a collective 'right of all persons to hold an opinion without interference and… seek, receive and express information and ideas, including… the right to receive information about corruption':

> Indeed, freedom of expression takes on particular importance in a democracy where it promotes transparency regarding corruption in the public service and in public office. .... The public has a significant interest in ensuring corruption is properly investigated and that there is transparency and accountability in public administration. …
> On balance, while there are limitations on human rights, promoting freedom of expression in relation to corruption by ensuring public confidence in how the CCC performs its corruption functions, and the related public confidence and trust in the public service and wider democratic institutions, is of foundational importance.[118]

Finally, apart from the deference to criminal and disciplinary processes involved in prohibiting findings of corrupt conduct, the Bill's primary direct strengthening of rights protections came in the field of procedural fairness, as proposed in Part III. Here, the amendments followed the Holmes Review in making the CCC subject to more detailed requirements and timeframes for providing affected persons with draft reports, proposed adverse comment and supporting material – and for ensuring their responses are fairly reflected in the final report, whether by correction, amendment or direct inclusion.[119] Whether these enhancements are enough is likely to remain subject to scrutiny. The Queensland Council of Civil Liberties submitted it was not enough to require individual rights to be more explicitly considered within the reporting discretion, or strengthen obligations to provide procedural fairness, calling also for full merits review of Commission decisions:

> [The solution] will not, in practice, prove to be the case because of the Commission's ongoing ability and frequent practice… to give only a 'perfunctory' nod to reputational issues while continuing the almost invariable stance that reports should be published.[120]

In our view, by comparison with the approaches taken by the High Court and Holmes Review, and with the caveat we have made above regarding the proposed limitation on the

---

117 Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025, Statement of Compatibility Prepared in accordance with Part 3 of the Human Rights Act 2019, February 2025 <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5825t0121/5825t121.pdf>.

118 Ibid, p.3, 6-7.

119 New Chapter 2, Part 6, div 4A 'Procedural provisions', ss 69A-D (Reporting Powers Bill, s 19).

120 Queensland Council of Civil Liberties, Submission to Justice, Integrity & Community Safety Committee, Queensland Parliament, 11 March 2025, 8 <https://documents.parliament.qld.gov.au/com/JICSC-CD82/CCRRPAB202-C677/submissions/00000009.pdf>.

Commission's ability to make findings, the final legislative outcome represents a significant step forward in terms of a principled approach to legislative design of ACAs reporting powers that we recommended in Part III. The result is a clearer, more workable model for ACA reporting powers, which is also more up to date with current public expectations and standards, than existed prior to *Carne* – and one providing a useful new benchmark for reporting powers nationally.

V. CONCLUSION

The appropriate roles, powers and procedures of anti-corruption agencies are, by definition, likely to remain controversial in public debate. This article has sought to more critically analyse the appropriate powers and procedures of ACAs by focusing on a previously neglected element —the power to report publicly on the outcome of corruption investigations. The divergent approaches taken in response to the challenges in Queensland – a presumption against public reporting arising from the High Court's decision in *Carne*, a highly constrained reporting model proposed by the Holmes Review, and the final legislative outcome – both demonstrate the need for, and provide an opportunity to test, a more purpose-built, principled approach to institutional and legislative design.

Queensland's Trad/Carne saga confirms that regimes need to be updated to deal more systematically with modern day rights concerns, in order to have the respect of stakeholders including affected parties, and other (sometimes jealous) institutions of government. In addition, statutory objectives have to be made clear: the role of and relationship between prevention, 'exposure' and sanction functions needs to be more explicit and better understood. We argue that when it comes to corruption (whether soft/grey or criminal), the people's collective rights to know should be prioritised over individual rights to privacy and reputation, provided procedural fairness is properly respected.

Overall, our principles-based framework supports the type of purpose-built, flexible but structured discretion for public reporting ultimately achieved by the 2025 amendment Bill, providing a basis for how such powers might be better framed in other jurisdictions. Without an ability to publicly report their findings, the purposes of modern anti-corruption regimes of addressing, deterring and preventing corruption in government will be undermined. This landing point provides a powerful reminder of why legislatures, whether in Australia or worldwide, have felt it necessary to establish stronger, independent ACAs in the first place.