



22 July 2021

Mr Jon Krause
Chair
Parliamentary Crime and Corruption Committee
Parliament House
George Street
BRISBANE QLD 4000

SUBMISSION TO THE INQUIRY INTO THE CRIME AND CORRUPTION COMMISSION'S INVESTIGATION OF FORMER COUNCILLORS OF LOGAN CITY COUNCIL; AND RELATED MATTERS

Introduction

The LGAQ lodges the following submission in response to Terms of Reference b, e, f, h, i, j, and k of this inquiry.

Term of reference b – The decision and considerations of the CCC to charge these former councillors

1. In response to this term of reference, the LGAQ repeats and relies on the matters listed in paragraphs 47 to 60 (inclusive) of its letter of complaint dated 5 May 2021.
2. Further, the LGAQ draws your attention to certain comments made by the Chair of the CCC at the "PCCC – Public Meeting with the Chair of the CCC", which occurred between 9.30am and 11.00am on Friday 14 May 2021.
3. In response to a question as to whether the CCC listened to, or reviewed transcripts of, the evidence in the QIRC proceeding prior to laying charges, at around [1.13.52] of the Public Hearing, the Chair of the CCC states: -

"We reviewed ... we had summaries of the evidence that had been given, as opposed to the actual evidence that had been given. And they were the ones that had been referred to in the submissions made by Ms Kelsey's lawyers to the Commission."

4. The LGAQ suspects that "the submissions made by Ms Kelsey's lawyers to the Commission" referred to by the Chair are, in fact, the written outline of closing submissions delivered by Ms Kelsey's lawyers on 19 March 2019 (see paragraph 1p of the LGAQ's letter of complaint dated 5 May 2021). Those submissions were ordered by VP O'Connor to be prepared by Ms Kelsey's lawyers in advance of the final two days of the QIRC hearing scheduled for 2 and 3 May 2019.



5. In the LGAQ's submission, this is evidence of partial and unfair conduct on the CCC's behalf for the following reasons: -
- a. Each councillor that gave evidence in the QIRC proceeding gave evidence of their individual conduct over an extended period of time prior to the day that Ms Kelsey's employment was terminated, and the reasons why they voted in favour of the Council decision to terminate Ms Kelsey's employment.
 - b. Whilst given in the context of a civil proceeding before the QIRC, it was nevertheless evidence that was given under oath and each councillor that gave evidence was subjected to lengthy and extensive cross-examination by Queens Counsel representing Ms Kelsey.
 - c. To establish whether there was sufficient evidence of a prima facie case of fraud in relation to the very same conduct, one would have thought that the CCC would have taken enormous and detailed interest in this evidence, given under oath, in the QIRC proceeding.
 - d. To the contrary, it appears that the CCC: -
 - i. Ignored, in its entirety, the existence of this evidence; or
 - ii. Alternatively, elected to have regard only to summaries of this evidence, prepared by the lawyers for Ms Kelsey – remembering that Ms Kelsey was but one of four parties separately legally represented in the QIRC proceeding.
6. The LGAQ also draws the PCCC's attention to the following comments made by the Chair of the CCC to the Institute of Public Administration Australia – Queensland Branch Challenger Seminar Series on 30 August 2020. A link to this presentation is as follows: - <https://www.youtube.com/watch?v=cClpoGpE9NE>
7. At around [27:40] the Chair of the CCC talks about the reasons for charging the former councillors (his discussion of the Logan City Council - Kelsey matter begins at [26:58]): -
"And we uncovered also, and this is before the Courts, they'll be deciding this in due course....
- He and his fellow councillors, the Fab Seven he called them, in his block, the majority of councillors in his camp, got wind of the fact that this poor woman, Sharon Kelsey, the newly appointed CEO, came to me to report his misconduct. That then led to a campaign by him to have her sacked, which he's done. The last 2 years she's been fighting for reinstatement through the commission. The councillors are all funded by directors insurance or equivalent, doesn't cost them a cent, they've taken every point,*



they've dragged it out for as long as they can. Sharon Kelsey as the CEO has no support other than moral support, and she's hanging by a fingernail whilst she tries to get a just outcome in all of this.

The courts will decide.

We charged the Fab Seven plus the mayor with fraud based upon their disgraceful conduct... dishonest conduct ... in causing a detriment to her by sacking her without the proper reasons. And that will play out as you say."

8. These allegations about the conduct of the former councillors are completely and utterly unsupported by the evidence that was presented to the QIRC hearing – evidence which the CCC elected to completely ignore. These comments do demonstrate, in the LGAQ's submission, that the former councillors were going to be charged by the CCC, regardless of the true state of affairs that existed at the time of the decision to terminate Ms Kelsey's employment.
9. Why did the CCC only have regard to a summary of evidence (and outline of closing submissions) of only one party to the QIRC proceeding? For balance and fairness, why didn't the CCC also review the summaries of evidence (and outline of closing submissions) of each of the other parties to the proceeding? If the CCC had undertaken this task, it would have clearly become apprised of an alternative view of the conduct that occurred prior to, and on the day of, Ms Kelsey's termination of employment - the very same conduct that was relevant to the laying of the fraud charges. This alternative view was, ultimately, the view accepted by VP O'Connor in his 1 April 2021 judgement.
10. To only have regard to the summaries of evidence, and outline of closing submissions prepared by the applicant/claimant in the QIRC proceeding, but have no regard to either the actual evidence, or the other summaries of evidence and outlines of closing submissions prepared by the three other teams of lawyers representing the opposing parties, suggests bias, partiality and unfairness on behalf of the CCC. This position of bias, partiality and unfairness appears to be supported by the comments made by the Chair of the CCC to the IPAA (Qld) referenced above. This is conduct that is entirely contrary to section 57 of the *Crime and Corruption Act*.



Term of reference e. - The CCC's involvement in related civil matters including those which were brought before the Queensland Industrial Relations Commission and Queensland Industrial Court, including the CCC's interaction with former councillors, the former CEO of Logan City Council and any other relevant officers of Logan City Council at relevant times

11. In response to this term of reference, the LGAQ repeats and relies on the matters listed in paragraphs 2 to 60 (inclusive) and the annexures referenced therein of its letter of complaint dated 5 May 2021.

Term of reference f. - The CCC's use of coercive powers and matters relating to the dissemination of information obtained under coercion to parties in non-criminal proceedings

12. In response to this term of reference, the LGAQ: -
- a. As specifically detailed in paragraphs 6s of its letter of complaint dated 5 May 2021, respectfully adopts the conclusions expressed by Commissioner Black of the QIRC in his published reasons for decision in the matter of *Kelsey v Logan City Council & Ors [2018] QIRC 108*; and
 - b. Specifically repeats and relies on the matters listed in paragraphs 7 to 38 (inclusive) of its letter of complaint dated 5 May 2021.

Term of reference h. - The CCC's interaction with the DPP more broadly, including existing information sharing and other processes that facilitate interaction, and whether the current processes and guidelines are appropriate

13. Having regard to the ultimate outcome of the prosecution of the fraud charges against the former councillors of the Logan City Council, it is the LGAQ's submission that the current processes and guidelines identified in this term of reference (of which the LGAQ has no direct knowledge) are inappropriate.

Term of reference i - Whether current provisions enabling the CCC to report on an investigation to particular entities under section 49 of the *Crime and Corruption Act 2001* is appropriate and sufficient

14. It is noted that section 49, in its current form, did not apply to the fraud charges laid against the former Logan City Councillors. If the section did apply, prior to laying the fraud charges, the CCC would have first been required to report on its investigation to the DPP, which report would have detailed all relevant information known to the CCC that supports: -
- a. The laying of the charges; and



- b. A defence that may be available to any person liable to be charged.
15. As noted at paragraph 55 of the LGAQ's letter of complaint dated 5 May 2021, at the time of dismissing the criminal charges (as a consequence of the DPP's offering no further evidence in relation to same), the Magistrate stated words to the effect that based on what he heard in evidence during the committal hearing [in late 2020], the DPP's decision to withdraw the charges was the proper decision. Further, and as noted at paragraph 56 of the LGAQ's letter of complaint dated 5 May 2021, it is the LGAQ's submission that a proper prior review by the DPP of the evidence which the CCC had gathered, would have resulted in the charges never having being laid in the first place.
16. Accordingly, in response to this term of reference, it is the LGAQ's submission that section 49 is not appropriate and sufficient and should be amended to prevent what happened to the former councillors of Logan City Council from ever occurring again. At the very least, from the LGAQ's perspective, section 49 should be amended to require an intended CCC decision to lay criminal charges for a "disqualifying offence" (see section 153(6) of the *Local Government Act 2009* – discussed further in response to term of reference k below) to be first subject to a report to, and review by, the DPP, prior to such charges being laid.

Term of reference j – The CCC's role in charging persons with an offence arising from its investigations

17. Having regard to: -
- a. The very serious and career-ending injustice inflicted on the former councillors of the Logan City Council;
 - b. The detailed reasons provided in the LGAQ's letter of complaint dated 5 May 2021; and
 - c. The further reasons provided above in response to term of reference i,
- it is the LGAQ's submission that the CCC should not be permitted to charge councillors with any "disqualifying offence", as that term is defined in section 153(6) of the *Local Government Act 2009*.

Term of reference k – any other related matters

18. As already raised in the LGAQ's response to terms of reference i and j, when a councillor is charged with a "disqualifying offence", by virtue of section 175K of the *Local Government Act 2009*, they are automatically suspended as a councillor. By virtue of section 153(6) of the *Local Government Act 2009*, if convicted of a "disqualifying offence", the person convicted automatically stops being a councillor.



19. Section 153(6) identifies a “disqualifying offence” as being either “a treason offence”, “an electoral offence”, “a serious integrity offence” or “an integrity offence”. The table below identifies the definition of each of these offences: -

Offence name	Defined by	Meaning
“treason offence”	<i>Local Government Act 2009</i> , section 153(2)	an offence of treason, sedition or sabotage under the law of Queensland, another State or the Commonwealth.
“electoral offence”	<i>Local Government Act 2009</i> , section 153(3)	(a) a disqualifying electoral offence under the Electoral Act; or (b) an offence that would be a disqualifying electoral offence had the conviction been recorded after the commencement of the <i>Electoral and Other Acts Amendment Act 2002</i> .
“serious integrity offence”	<i>Local Government Act 2009</i> , section 153(4)	an offence against – (a) a provision of a law mentioned in schedule 1, part 1 if, for a circumstance stated for the offence (if any), the stated circumstance applies to the offence; or (b) a provision of a law of another State or the Commonwealth that corresponds to a provision mentioned in paragraph (a).
“integrity offence”	<i>Local Government Act 2009</i> , section 153(5)	an offence against a provision of a law mentioned in schedule 1, part 2 if, for a circumstance stated for the offence (if any), the stated circumstance applies to the offence



20. On 26 April 2019, the former Logan councillors were charged with the crime of fraud, as prescribed by section 408C of the *Criminal Code*. As noted at paragraph 1q of the LGAQ's letter of complaint dated 5 May 2021, the charge included a circumstance of aggravation, namely, that the detriment to Ms Kelsey was of a value of at least \$100,000. As a consequence, the charge fell within the definition of "serious integrity offence" as defined by section 153(4), and schedule 1, part 1, of the *Local Government Act 2009*, meaning that each of the councillors charged was, by virtue of section 175K of the *Local Government Act 2009*, automatically suspended from office.
21. The committal hearing in relation to this charge did not commence until 30 November 2020. This was 19 months after the former councillors were first charged. The committal hearing concluded, with dismissal of the charges, on 14 April 2021. This was more than 23 months (i.e. 12 days short of 2 years) after the councillors were first charged.
22. It is the LGAQ's submission that section 175K of the *Local Government Act 2009* must be amended so that the suspension of a councillor charged with a disqualifying offence does not occur until the earlier of:
 - a. A councillor advising a court of an intention to plead guilty to the charge; or
 - b. A Councillor being committed to stand trial over the charge.
23. The LGAQ's request for this amendment of section 175K of the *Local Government Act 2009* is based on:
 - a. Its view that the CCC has demonstrated, via its conduct in relation to the charging of the former Logan City councillors, that it is not competent to properly conduct itself in matters relating to the investigation of alleged corrupt conduct of councillors; and
 - b. The inevitable delays in the Queensland criminal justice system that occur between when a person is charged with a serious criminal offence (such as a "disqualifying offence", as defined by the *Local Government Act 2009*) and the time the person is committed to stand trial for that offence.

Other general matters

24. In relation to the proposed public hearings for this inquiry, could you please note that I am unavailable to attend any hearing scheduled between 16 and 31 August 2021, due to being required to be in attendance at a District Court trial occurring in Cairns.



25. The responsibility for the preparation of a significant amount of the content of both this submission, and the LGAQ's letter of complaint dated 5 May 2021, rests with LGAQ's legal representative, Tim Fynes-Clinton, Executive Partner, King & Company Solicitors. If you do require me (or another representative of LGAQ) to be available to address the Committee at a public hearing, I would request that Mr Fynes-Clinton also be permitted to attend and, as required, address the Committee on the LGAQ's behalf.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Greg Hallam', with a long horizontal line extending to the right.

Greg Hallam AM
CHIEF EXECUTIVE OFFICER