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Office of the President

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Our ref: KB-OccD

Parliamentary Crime and Corruption Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: pccc@parliament.qld.gov.au

Dear Committee Secretariat

Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters

Thank you for the opportunity to provide feedback on the Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters. The Queensland Law Society (QLS) appreciates being consulted on this important inquiry.

This submission has been drafted with the assistance of members of the QLS Occupational Discipline Law Committee, who have substantial expertise in the issues raised by this inquiry.

Our submission addresses paragraphs f. and j. of the inquiry's terms of reference, however, we have not been able to provide a comprehensive examination of these issues. Instead, this submission raises some general points which we would be pleased to expand on further in a supplementary submission and/or at a public hearing.

f. the CCC's use of coercive powers and matters relating to the dissemination of information obtained

Chapter 3 of the *Crime and Corruption Act 2001 (Act)* provides the Crime and Corruption Commission (CCC or Commission) with extremely broad investigative powers. In submissions to previous inquiries by this Committee and other Parliamentary Committees, we have outlined why there should generally be a prohibition against the derivative use of evidence and why this is a fundamental tenet of our justice system. The authorities referred to in the material before the Committee of *Flori v Commissioner of Police & Another* [2014] QSC 284 and *R v Leach* [2018] QCA 131 provide that evidence obtained by an authority, such as the Queensland Police Service, for one purpose cannot be admitted into evidence in a separate proceeding. Material obtained pursuant to the compulsion of a search warrant may only be used for the statutory purpose for which the warrant was granted, that is, to obtain evidence of the commission of an offence.¹

¹ *Flori v Commissioner of Police* [2014] QSC 284, paragraph 41

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Therefore, it is of significant concern, and contrary to law, if the CCC obtains documents or information using its coercive powers and subsequently seeks to use, or have the documents or information used, for another purpose, including another legal proceeding other than as permitted by the Act.

Given the scope of its powers, QLS recommends that better guidance is provided to CCC officers about compliance with the Act in respect of disclosure of documents and information including the circumstances in which disclosure is permitted under section 60 of the Act, and how this intersects with section 213.

Section 60 provides:

60 Use and disclosure of information, document or thing

(1) The commission may use any information, document or thing in the commission's possession in performing the commission's functions.

(2) The commission may give intelligence information or other information to any entity the commission considers appropriate, including, for example—

- (a) a unit of public administration; and
- (b) a law enforcement agency; and
- (c) the auditor-general; and
- (d) a commissioner under the *Electoral Act 1992*; and
- (e) the ombudsman.

Note— See section 213 in relation to making a record of, or wilfully disclosing, information given to a person under this section on the understanding, express or implied, that the information is confidential.

Section 60(2) is not exhaustive and "entity" is not defined in the Act, though we note in Schedule 1 of the *Acts Interpretation Act 1954* the term can include "a person and an unincorporated body." The Explanatory Notes state that the provision allows the commission, where appropriate, to give information and evidence to other law enforcement agencies if it has evidence of an offence against a law of the State, the Commonwealth or another state. The commission may also give information to a unit of public administration with a proper interest in receiving the information. The explanatory material does not speak to giving information specifically to a court or commission or in respect of a legal matter that is not the prosecution of an offence.

Therefore, we consider it necessary for a policy or guidelines to be developed to give clear advice on how and when information should be disclosed. As stated above, it is the view of QLS that information about a person obtained via coercive means should not be used as evidence in legal proceeding involving that person, without their express consent.

j. the CCC's role in charging persons with an offence arising from its investigations;

Similarly, we have also previously submitted on our concerns with the CCC effectively prosecuting matters, or being involved in the prosecution of matters, when these matters should

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be referred to a prosecuting authority. We note that this Committee, in the recent "Review of the Crime and Corruption Commission's activities" recommended as follows:

Recommendation 25

The committee recommends that further consideration of the Crime and Corruption Commission's prosecutorial practices and interaction with the Director of Public Prosecutions, be reported on as part of the committee's Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters.²

The Act, when read as a whole, together with information publicised about the Commission³ clearly outlines that it investigates matters and, if it considers there should be criminal charges following an investigation, refers the matter to a prosecuting authority. This is explicitly provided for in section 49.

While there is a specific provision in section 50 outlining when the CCC can prosecute a matter, section 49 necessitates that a prosecution following a corruption investigation should be undertaken by a prosecuting authority and not by the CCC itself.

We note that a Western Australian inquiry recommended that there be a separation between the investigation of serious misconduct and the prosecution of criminal offences.⁴ This is how similar criminal and corruption oversight commissions were designed.

The following is extracted from this Committee's recent review report:

At the public meeting on 7 February 2020, CCC Chairperson Mr Alan MacSporran stated in response to a question as to whether the CCC has discretion in relation to prosecution, that:

Not really. We do not prosecute. It is just a quirk of fate that we have police officers from the QPS seconded to us. When they are seconded to us, they retain their normal police powers, which include powers of arrest and charge and so forth. What we do, just for convenience, is once we decide, through our chain of command, including up to me, that there is sufficient evidence to charge someone, we then give that material to an independent police officer at the commission and say, 'Would you mind looking at this and exercising your discretion as to whether you think it is one you would be happy to charge or not?' That is how the charge is laid if we lay it. When I say 'we', it is really the police officer. It is then handed over to the DPP.

² Report No. 106, 57th Parliament Parliamentary Crime and Corruption Committee June 2021

³ For example, see information published by Legal Aid Queensland in relation to "What happens if the CCC finds there is misconduct?" accessed via: <https://www.legalaid.qld.gov.au/Find-legal-information/Criminal-justice/Crime-and-Corruption-Commission-and-Australian-Crime-Commission#toc-what-will-the-ccc-do-with-my-complaint--2>

⁴ Joint Standing Committee on the Corruption and Crime Commission: The ability of the Corruption and Crime Commission to charge and prosecute accessed via: <https://www.legalaid.qld.gov.au/Find-legal-information/Criminal-justice/Crime-and-Corruption-Commission-and-Australian-Crime-Commission#toc-what-will-the-ccc-do-with-my-complaint--2>
[https://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3914897acf75c8953a7a8d5b4825806e0032aa27/\\$file/4897.pdf](https://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3914897acf75c8953a7a8d5b4825806e0032aa27/$file/4897.pdf)

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... Yes, we never prosecute, yes.⁵

While these comments mostly align with section 49 of the Act, we consider that the role of a seconded police officer is unclear and may require better regulation to ensure that the independence of the Commission is not compromised.

Further, and in addition to issues about the involvement of seconded police officers in the Commission's operations, some of our members report occasions where the CCC has pursued a prosecution in circumstances where this should have, or at least ordinarily would have, been referred to the QPS or DPP. We consider that the appropriateness of these actions needs to be reviewed, including whether legislative clarification is needed about the CCC's role in prosecutions.

We would be pleased if the Committee could:

- investigate these issues further, including by seeking feedback from individuals on instances where the CCC has taken an active role in the prosecutions;
- recommend clarification of the role of seconded police officers, including in relation to their involvement in decisions to refer matters for prosecution;
- recommend legislative clarification or at least better guidance for all CCC officers in referring matters to prosecuting authorities.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED]

Yours faithfully



Elizabeth Shearer
President

⁵ Report No. 106, 57th Parliament Parliamentary Crime and Corruption Committee June 2021 at page 88.