

# Review of Crime and Corruption Commission

Submission by Legal Aid Queensland

## Introduction and background

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to the Review of the Crime and Corruption Commission.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly, or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

## Funding of legal representation in CCC criminal investigations hearings

LAQ does not provide funding for people appearing in Crime and Corruption Commission (CCC) criminal investigations hearings. If a person requires financial help for them to obtain legal representation at a criminal investigations hearing they must apply for assistance directly to the Attorney-General under s.205 of the *Crime and Corruption Act 2001*. The application form is similar to an application to LAQ for legal assistance. A private law firm can apply directly to the department on behalf of a client or an in-house practitioner at LAQ can assist the person to apply. The Attorney-General may approve the financial help if he/she considers the person “may suffer substantial hardship if help is not given” or “in the particular circumstances, help should be given”. Under the Act the cost of the financial help must be met by the CCC.

Often people are summoned to criminal investigations hearings at short notice and do not have time to apply for financial assistance or the application may not have been determined by the time of the hearing. In many cases, even though formal approval of financial assistance has not been received, LAQ lawyers will still assist the person in the hearing, to ensure they understand their legal position and obligations and the risks associated with the evidence they may give at the hearing.

It would assist LAQ if the process for payment of LAQ’s costs could be simpler and faster.

## Mandatory sentences for repeat contempt offences

LAQ also has concerns about the severity of sentences for people convicted of repeat contempt offences under section 199 of the *Crime and Corruption Act 2001*. Under that provision a person convicted of contempt of the presiding officer conducting a Commission hearing is liable, in the first instance, to a sentence of imprisonment of a term decided by the court. For a second contempt in a hearing dealing with the same subject matter, the person is liable to a mandatory minimum sentence of imprisonment of two and a half years, and for a third contempt, the minimum penalty is 5 years imprisonment.

We are concerned that these mandatory penalties are unreasonably harsh, especially when compared with the penalty for contempt provided for under the *Independent Commission Against Corruption Act 1988* (the ICAC Act). Under section 99 of the ICAC Act, the Supreme Court may punish the person (if found guilty) as if the person had committed the contempt in proceedings in the Supreme Court. There is no provision in the ICAC Act for mandatory minimum penalties or increased mandatory minimum penalties for repeat offences.

Mandatory sentencing provisions that remove the courts' sentencing discretion increase the risk of harsh and unjust sentencing outcomes where the defendants' individual circumstances and mitigating factors in the case cannot be reflected in the sentence.

We would suggest that consideration be given to amending the contempt provisions to bring them in line with the penalties for contempt provided for under the ICAC Act.

## **Mandatory sentences for repeat contempt offences**

The Act gives the CCC extraordinary powers to compel evidence from witnesses with the threat of imprisonment for a refusal to answer a question. These powers override longstanding civil liberties including the right to silence and privilege against self-incrimination. As noted earlier, the sanctions of imprisonment, particularly for repeat contempts, are particularly severe. The investigative hearings are invariably conducted in secret with witnesses and legal representatives prohibited from publication of what has occurred during a hearing. These circumstances mean that the officers of the CCC wield great powers in choosing whether to compel a witnesses attendance at a hearing, whether to require a question to be answered at a hearing and any subsequent hearing, whether to charge a witness with a simple offence of failure to answer a question or to initiate Supreme Court proceedings for contempt, including repeat contempts.

Currently, the only effective mechanism restricting the use of such powers to appropriate cases is the precondition of a reference from the Crime Reference Committee. Whilst the Committee is required to consider whether it is in the public interest to refer a matter for investigation (s 28 of the Act), it is not specifically required to take into account whether the nature of the matter to be investigated is such that it is appropriate that witnesses ordinary rights and privileges should be overridden. Such consideration should be legislated as a relevant consideration.

Once a matter has been referred, there is no effective oversight of decisions by officers of the CCC whether to compel a witnesses attendance at a hearing, whether to require a question to be answered at a hearing and any subsequent hearing, whether to charge a witness with a simple offence of failure to answer a question or to initiate Supreme Court proceedings for contempt, including repeat contempts. These decisions should be the subject of oversight, whether it is by greater oversight by the Crime Reference Committee or by way of oversight by the Public Interest Monitor.

Finally, the CCC should be required to report in a detailed way to the Parliamentary Crime and Corruption Committee as to the use of its investigative powers, including the circumstances said to justify in each case the institution of Supreme Court contempt proceedings.