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## **SUBMISSION TO THE REVIEW OF THE CRIME AND CORRUPTION COMMISSION'S ACTIVITIES**

This submission is made on my own behalf as a private citizen of Queensland. It is intended to be brief.

In the course of research for my thesis for my PhD in constitutional law which was awarded in 2010, I examined closely the structure and jurisprudence of the then CJC/CMC. My thesis was concerned with the institutional relationship between the Courts and Parliament and tensions in that relationship. In the context of challenges to the equilibrium that existed in that relationship in Westminster-style parliaments and the United States Congress, I identified that Queensland was probably the most active jurisdiction in terms of emerging jurisprudence concerning parliamentary privilege, largely as a result of cases in which the CJC/CMC asserted its new authority.

The introduction into a Westminster-style jurisdiction of a body which is quasi-judicial and has very extensive coercive powers but is not part of the judicial branch of government, yet is not responsible to the Parliament through a minister, is something that has not been seen the Court of Star Chamber. Many would say such a body has no place in a Westminster style democracy at the beginning of the 21<sup>st</sup> Century, for the same reasons that Star Chamber was abolished when Parliament asserted its primacy over the unchecked executive power of the Crown during the English Civil War at the end of the 17<sup>th</sup> Century.

The concern I raised in my thesis, and which has only been heightened since then, is the degree to which the Parliament and in particular the CCC Committee understands the

importance of the oversight role they perform and is resourced to do so in any meaningful way.

Furthermore, I personally doubt that there was a proper understanding amongst Members at the time when Parliament subjected itself to the jurisdiction of the CMC as a 'unit of public administration' for the purposes of the relevant legislation. In so doing they went against hundreds of years of tradition and a core consideration of the Westminster system which has had predictable though unintended consequences.

Take for example the press release issued by the CCC concerning a complaint made against the Premier.<sup>1</sup> It is hard to see how the contents of that release are not a *prima facie* breach of Article 9 *Bill of Rights 1688*. Apparently, this was of no great concern to members or the Committee.

I note that the Clerk of the Parliament raised concerns about the CCC's jurisdiction in February 2020 in a submission about declaration of members' interests.<sup>2</sup>

If Parliament did actually intend to renounce its primacy, and allow Art.9 *Bill of Rights 1688* to be infringed, it was a perverse and ill-considered decision especially for a unicameral jurisdiction with a recent history of executive government abuse. It should be reconsidered and the legislation amended. Parliament could easily have achieved independent oversight by appointing as a parliamentary officer a Parliamentary Commissioner of Standards, perhaps as an adjunct to whichever committee from time to time superintends members' ethics, and thus keep that function within the legislature where it can be accountable to and publicly overseen directly by democratically elected members of parliament.

The parliamentary CCC committee has unusual powers and a unique oversight function, but it is unclear from publicly available material the extent to which it and its parliamentary commissioner asserts those powers and acts of their own motion to direct and to investigate the CCC itself and to hold those to account. The concern, in the absence of the contrary on the record and to borrow from *Yes, Minister*, is that they are not proactive and have become a 'pleasure to work with' from the CCC point of view.

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<sup>1</sup> <https://www.ccc.qld.gov.au/news/ccc-finalises-assessment-complaint-mr-robbie-katter-mp>

<sup>2</sup> <https://www.couriermail.com.au/news/queensland/queensland-government/crime-and-corruption-commission-laws-slammed-by-clerk-of-the-parliament-neil-laurie/news-story/909734910e5096de305e6ec7a40de2c5>

There are numerous important topics which could be usefully explored, but two in particular strike me as of topical systemic importance. I have not researched the responses but if I were participating in the review I would examine these matters as an audit sample:

1. What did the Committee and the CCC do to satisfy themselves and to offer reassurance to the citizens of Queensland that unlike some of their Victorian colleagues, Queensland police have never used a lawyer as a confidential source in what the High Court of Australia described in *AB v CD* [2018] HCA 58 as “fundamental and appalling breaches” of the lawyer’s duty to her clients and the court, and “atrocious breaches of the sworn duty of every police officer”?
2. What oversight does the Committee undertake and what are its views about the appropriateness or otherwise of the CCC using ‘star chamber’ hearings under Part 4 *Crime and Corruption Act 2001*? In particular, are the Committee aware, and if so, what view do they take on the following issues:
  - a. The hearings are closed to the public: Section 177 of the Act;
  - b. The hearings are not conducted in accordance with the rules of evidence; those conducting the hearing may decide on the procedure; and the fact that the hearing is occurring and what transpires at such a hearing, may be ordered to be secret: Section 180 of the Act;
  - c. There is no right to legal representation: Section 181 of the Act;
  - d. Other than on the grounds of legal professional privilege, a person cannot refuse to answer a question asked of them even if it incriminates them (Part 2 and 3 of the Act);
  - e. A refusal to answer a question is punished as if it were a contempt of the Supreme Court, and depending on the circumstances there are mandatory prison sentences and a possible maximum of life imprisonment: Section 199 of the Act;
  - f. Contempt proceedings must not be published on the Supreme Court’s daily law list and the material on the Court file must be kept secret: Section 200A of the Act;
  - g. Despite the recommendation of the *Fitzgerald Report* [5.3.3] to the contrary these hearings have become routine and not exceptional occurrences, and

their authorisation does *not* require a warrant issued by a Supreme or District Court judge.

- h. What are the views of the professional legal bodies such as the Bar Association of Queensland and the Queensland Law Society, and have they been sought?
- i. These concerns were raised publicly in 2013<sup>3</sup> and in 2018<sup>4</sup> and what if any action was taken?

Tacitus offered the following cautionary observation in the *Annals* 1.81 about certain 'reforms' under the Emperor Tiberius which tended to destroy old institutions and liberties and concentrate executive power:

"A plausible profession this in words, but really unmeaning and delusive, and the greater the disguise of freedom which marked it, the more cruel the enslavement into which it was soon to plunge us."

One could also ask the question from antiquity, "Who watches the watchmen?"

The democratic liberties of which Parliament is the custodian do not automatically apply around the world. That the system by and large works so well that these freedoms are just assumed by us, means that any changes to that system must be carefully scrutinised and not just accepted as 'reforms'. The matters with which the Committee is concerned require constant and careful oversight by the Parliament itself and not just by the Committee.



**Dr. Daniel Morgan**

**10 August 2020**

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<sup>3</sup> <https://www.couriermail.com.au/news/queensland/cmc-hearings-using-star-chamber-powers-at-record-rate/news-story/fdb2b86f3ee01b9d69783bdbae937205?sv=be65ee75e3dd593df345a91febf68184>

<sup>4</sup> <https://www.abc.net.au/news/2018-06-26/inside-qld-corruption-watchdog-secretive-star-chamber/9894948>