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Committee Secretary

Parliamentary Crime and Corruption Committee

Sent by email 10 August 2020

Submission – 5 year review of the crime and corruption commission's activities.

I thank the chair and the committee for the invitation to make a submission to the committee's review pursuant to section 292 (f) of the *Crime and Corruption act 2001.*

Since the 2011 statutory review conducted by the Parliamentary crime and misconduct committee (as it was then) I made a number of submissions concerning provisions of the then *Crime and Misconduct Act* .

As advised in my letter of 26 June 2015, following the review of the Queensland Parliamentary committee system the Department of justice and Attorney General undertook a consequential review of certain provisions of the *Crime and Misconduct Act,* I did a submission to the Attorney General on specific issues relating to the Parliamentary Crime and Misconduct committee.

In July 2013 I provided a submission to the Attorney General concerning recommendations made in the report by the Honourable Ian Callinan QC AC and Professor Nicholas Aroney on their review of the *Crime and Misconduct Act* and related matters, and recommendations made in report number 90 of the Parliamentary crime and misconduct Committee.

In February 2014 I provided comments to the Attorney General in relation to proposed amendments to the Crime and Misconduct Act relevant to the office of the Parliamentary crime and misconduct Commissioner. The proposed amendments have since being enacted in the *Crime and Corruption Act.*

In December 2014, in response to an invitation to make a submission to the Legal Affairs and Community Safety Committee in relation to the *Justice and other legislation amendment bill 2014*

I provided a response which reflected recommendations I had previously made in a report to the Attorney General concerning section 24 of the *telecommunications interception act*.

In my submission dated 26 June 2015 to the committee I recommended that section 14 (h) be amended to require the keeping of certain records. The amendment was made in accordance with my recommendation.

I standby those recommendations.

I disclosed that, at present I am a sessional member of QCAT and a sessional commissioner at the crime and corruption Commission (the CCC).

In the latter role I conduct hearings as required. In my opinion the use of the hearings in the context of the role of the commission is a very important tool available to the commission. I will make further comment about that later in this submission.

After I received the invitation from the committee dated 2 June 2020, I contacted the chairperson of the CCC and met with him 16 June 2020. At that meeting we discussed matters concerning the CCC which were of mutual interest including some recent court decisions concerning hearings held by the CCC.

At my request I have been provided with a draft copy of the submission to be made by the CCC.

I have had the opportunity of reading and considering those submissions in detail. As I informed the chairperson of the CCC, where I can I support the submissions made on behalf of the CCC.

In the most part the CCC is in the best position to report on the implementation and success of recommended changes to legislation and operational matters. I do not have access to the raw data but I have no reason to doubt what has been put forward by the CCC.

As I said earlier, in my opinion the use of coercive hearings and powers is a very useful tool for the CCC and its operations. In that regard some of the more recent decisions of courts concerning the use of the hearings and the information obtained may require further monitoring with a view to

making amendments to the legislation so as to ensure a balance between the use of the powers, the use of information gained from the exercise of the powers and the rights of individuals concerned.

The use of a bench book with the relevant decisions and draft homilies goes along way to ensuring the appropriate balance.

I accept the list of recommendations which the CC see submits have been addressed and resolved. I also accept the recommendations the CCC submits have been addressed by Action which is ongoing. There is no need for me to address the recommendations which have not been addressed but I no longer pursued by the CCC.

As to the recommendations made by the CC from this review I support recommendations 1,2,3,4,7,8,9,10,14,16, and 19.
I query recommendation 5.
I Particularly Support recommendation 6, 11,12,13,15,17 and 18.

May I respectively suggest that consideration be given, so far as recommendation 6 is concerned, to it being made clear whether prior political affiliation can be a reason for withholding support.

Finally, may I suggest that consideration be given as to whether blockchain technology can have a genuine place in fighting corruption in the CCC context and/or governmental agencies or at all.

Yours Sincerely.
Paul Favell
Chambers

10 August 2020

In August 2020 the Queensland Government introduced a bill for an act to amend the *Crime and Corruption Act 2001* for particular purposes.

In essence it sought to introduce a new section 216B to the *Crime and Corruption Act 2001*. That proposed section sought to make it unlawful for a person to publish a corrupt conduct allegation about a candidate for a state election during the election period for the election.

The sting is contained in the proposed definition of "*corrupt conduct allegation*". That is because, in part, the term means a "*relevant complaint about the person has been made or notified to the commission.(CCC)*"

The bill also allowed for applications for injunctions for contraventions of section 216B.

The bill was withdrawn on the day it was put before Parliament.

The Premier was reported as saying "she was withdrawing the laws given the limited time for the Parliamentary legal affairs committee to consider the changes the CCC seeks". It was also reported that the premier argued against the CCC's push in 2016 for laws stopping the publication of corruption allegations against local government candidates as an affront to whistle-blowers.

In December 2016 the Premier wrote in the Courier mail "I am very concerned that the new offences proposed by the CCC inquiry... might deter those who can expose corrupt behaviour from doing so".

After the proposed changes to the Act were withdrawn the press reported comments that alleged that the introduction of the bill was an attempt to "crush the freedom of the press".

It is noteworthy that almost all subparts of the *definition of "corrupt conduct allegation"* involves notification to the Commission. The exception is "*an allegation that a person has been involved, is involved, or may be involved in corrupt conduct*". It is also noteworthy that there are circumstances provided for where an injunction can be sought.

I understand the recommendations made in the past by the CCC are to the effect that the consider implementing legislation restricting the publication of complaints of corruption made to the CCC. Further, I understand that the recommendation is repeated in the submissions by the Commission in the current five year review.

There are good reasons for such recommendations. One of them is to stop the CCC being used as a vehicle for political gain. Another is to stop legitimate CCC investigations being hampered, potential witness being scared off and potential evidence being interfered with or destroyed.

The bill was introduced after a decision in *F v CRIME AND CORRUPTION COMMISSION [2020] OSC 245* when an application sought to stop the CCC from further proceeding in questioning the applicant in relation to the corruption investigation. The applicant also asked the judge

to decide whether the claims of privilege on the ground of public interest immunity were established and whether they are to be upheld.

The decision in my view is correct. As far as it goes, it correctly sets out the law.

In my view, the bill is an over reaction to the decision and is not a proper understanding of what the Crime and Corruption Commission (and the various reports) was advocating. That is so because of the inclusion of subparagraph(d) in the definition of "*corrupt conduct allegation*".

Further, the reaction of the press in claiming there was a war on free speech is an overreaction which mistakenly assumes that the concept of free speech exists in Australia without any impediment. The phrase, "*chilling effect*" is often seen in American discussions and court rulings on Alleged breaches of Free Speech in America.

The concepts of "*shield laws*", "*free speech*"and "*chilling effect*" are most often found discussed in defamation judgements.

Australia does not have explicit freedom of speech in any constitutional or statutory declaration of rights with the exception of political speech which is protected from criminal prosecution at common law because of the decision in *Australian Capital television Pty Ltd v Commonwealth*.

The High Court has inferred a freedom of political communication primarily from sections 7 and 24 of the constitution which require that members of the parliament be directly chosen by the people.

Freedom of political speech was first recognised by the court in *Nationwide News Pty LTD v WILLS and Australian Capital television Pty Ltd v The Commonweal*th in 1992.

The Freedom exists as an incident of the system of representative government established in the Constitution. It is not a right conferred directly on individuals. (*Comcare v Banerji [2019] HCA 23*

Under the headline "War on Free speech" in a Saturday Courier Mail the byline "CCC must be free of pollies influence" appears. Exactly. That is what is contended for. Unfortunately that is where the accuracy of the so called analysis ceases. In what some might consider an arrogant statement the author contends that the CCC has been played by politicians who attempt to use one of it's proposals for improper ends. The author concludes by saying the CCC should "stick to catching "crooks" and leave what's in the public interest to "professionals". Really?

With respect, the CCC and its associated entities are the appropriate "professionals" and the methods it lawfully employs to catch "crooks" are both appropriate and efficient.
Further, when a journalist has been "played" by person who is under lawful investigation and that journalist, when lawfully questioned by the CCC in a lawful hearing in relation to the investigation as a matter relevant to the performance of it's functions refuses to answer

questions asked of him or her on the ground of public immunity the presiding officer has an obligation to determine whether the claim is in the public interest. *(Sections 192(2A(b)) - 196.*

I standby the submissions I have already made which in part support the submissions made by the CCC.

Paul Favell (Former Parliamentary Crime and Corruption Commissioner)