Queensland Parliamentary Service

THE CLERK OF THE PARLIAMENT
Parliament House Ph: +61 7 3553 6451
George Street
Brisbane Qld 4000
email: ClerksOffice@parliament.qld.gov.au
www.parliament.qld.gov.au

Our Ref: A587907

27 April 2021

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

pccc@parliament.qld.gov.au

Dear Mr Krause

Five-year review of the Crime and Corruption Commission's activities

I refer to your correspondence of 1 June 2020 and thank the Parliamentary Crime and Corruption Committee's (the committee) invitation to make a submission to the five-year review of the activities of the Crime and Corruption Commission (CCC). I seek the committee's leave to table this late submission to the inquiry.

This submission is set-out under seven headings:

- Ongoing need for the CCC
- Focus of the CCC
- Independence of the CCC and the mix on the Commission
- Transparency of the CCC and its activities
- The CCC as an investigator and reporter
- Accountability of the CCC
- The PCCC.

Ongoing need for the CCC

It must never be forgotten that standing investigatory bodies like the CCC are a relatively recent phenomena in our Westminster system of government. The Independent Commission Against Corruption (ICAC) was established in New South Wales in 1988 to address growing community concern about the integrity of public administration in NSW. The NSW ICAC was the first of a growing number of standing commissions in Australia. Queensland's Criminal Justice Commission (CJC), later to be rebadged as the Crime and Misconduct Commission (CMC) and then the Crime and Corruption Commission (CCC), commenced in 1989 following the Fitzgerald inquiry and report.

Prior to the CCC, ad hoc Royal Commissions were the most vigorous type of inquiry in Australia. Royal Commissions are initiated by the executive (ie the government rather than parliament) to inquire into a particular matter or area of public importance. A Royal Commission's aim is not to settle disputes between parties (unlike a court), nor necessarily generate prosecutions. The aim of Royal Commissions has generally been to get to the "truth" of a matter, and in the process of doing so, create clear air about a matter.

Royal Commissions investigate serious allegations of impropriety or corruption or systems of administration and provide recommendations for redress and/or policy and law reform. Royal Commissions, although technically an instrument of executive government, are viewed as independent, and although exercising broad and far-reaching powers of investigation, including powers to compel the production of documents or attendance by witnesses to give evidence, are generally very transparent about their operation and ultimately accountable for their actions via the risk of judicial intervention and through their reports. Royal Commissions almost inevitably conduct most proceedings in public and publish findings in a report and make recommendations. This generally public operation of Royal Commissions is important to note.

In my submission the first issue that should always arise in the review of the activities of the CCC is whether there is a continuing need or justification for the CCC. That is, is there a continuing need for a standing body with broad and far-reaching powers of investigation in Queensland?

In my submission the answer to this question is a resounding yes, there is a continuing need for a standing body with broad and far-reaching powers of investigation in Queensland. The reason for this is that there is an ongoing need for (a) the independent and (b) the transparent investigation of public sector misconduct and oversight of public sector systems to reduce misconduct.

The misconduct uncovered by the Fitzgerald inquiry and report, could still easily emerge in Queensland. Indeed, some of the wider safeguards that existed prior to and immediately after the Fitzgerald inquiry and report have now been fatally weakened. The weakening of these other safeguards bolsters the need for the CCC.

Decline of the media

Take, for example, the decline of the media, the often titled "fourth estate". It has long been maintained that investigative journalism may uncover examples of institutional corruption, abuse, or mismanagement.[1] But commercial media revenues have been gutted by the rise of the internet and social media. Media cut-backs have seen the decline of resources for investigatory journalism.

The Australian Competition and Consumer Commissions report on its *Digital Platforms Inquiry*[2] noted that digital disruption has created disincentives for investment in investigative journalism:

> *media organisations that republish articles are able to compete effectively for online audiences with the content originators who may have invested significantly in uncovering and/or producing the story. This may potentially reduce the incentives for news media businesses to invest in investigative journalism and other news content that is costly to produce.*
>
> ...

[1] D Wilding, P Fray, S Molitorisc, E McKewon, The Impact of Digital Platforms on News and Journalistic Content', Centre for Media Transition, University of Technology Sydney, NSW, 2018, p. 19; The Civic Impact of Journalism Project, Submission to the Senate Select Committee on the Future of Public Interest Journalism, June 2017, p. 2.

[2] https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf

> ... *investment in the production of news content such as investigative journalism – the level of investment and resources media businesses allocate to understanding and meeting changes to algorithms is likely taking away resources that may be better utilised in the production of high quality news content* ...

Although there are some that argue that investigative reporting is adapting to the new digital media landscape,[3] the best that can be said is that we are in a time of flux.

From my own experience and observation I can attest to the fact that state based serious political and investigative journalism has been in decline since the public broadcaster's decision to axe the state-based 7.30 Reports in the mid-1990s. The Queensland based *7.30 Report* was absolutely required viewing for everyone in the public sector in the 1990s, especially those that worked in parliament or politics. The *7.30 Report* largely set the agenda for scrutiny in the Legislative Assembly and follow-up reporting by the print, TV and radio media. Since the demise of the *7.30 Report*, state-based TV political coverage has largely vanished. This has been exasperated by the conversion of serious radio programs on the public broadcaster to light "magazine" formats or otherwise rescheduling such programs to dead hours.

Commercial news media spends only a fraction of their time reporting state-based political and accountability matters, with far more time spent on the goings on in football or other sport (particularly the private lives of their participants). The time spent on state-based political and accountability matters by the commercial broadcasters is usually incomplete, sensational and inept. I do not necessarily blame the journalists for this, but rather the content and editorial decision makers.

In the United States of America, media organisations have become intensely partisan, being essentially a contest between the Fox right and the CNN left. The balanced, sensible middle ground is abandoned in that fight. The media in Australia is trending like that of the USA, where media is retreating from the balanced, sensible middle ground to locked-in partisan positions.

The migration of senior or experienced political journalists from both commercial and public media to government at all levels is a very concerning trend that remains under-reported, I suspect because of media solidarity. But their migration bells the cat about the health of political journalism, the under-investment in serious journalism and the decline of the fourth estate as an accountability mechanism. It is apparent that there are more resources for spin than there is in serious journalism.

Decline of academic commentary

Another example is the decline of academic commentary on accountability, ethics and politics. There are few academics that regularly contribute to political commentary or debate public accountability, particularly state-based political/accountability matters. I am not certain of the reasons for this decline, but I suspect it is a combination of decreasing investment in teaching government and related issues, an increasing focus by academics on commercial matters, engagements by academics in governmental roles or consultancies (thereby creating conflicts) and, perhaps workload management and reporting issues. In any event, there has been a significant decline in this alternative and under recognised source of critic that was very active in the 1980s and 1990s.

Professional organisations and stakeholder groups

Professional organisations and stakeholder groups (including employer groups, unions etc.) can play an important role in highlighting government ineptitude, wasted resources, misguided regulation, unfairness and

---

[3] A Carson (2019), *Investigative Journalism, Democracy and the Digital Age*, Routledge.

misconduct. However, the primary purpose of all these groups is by necessity biased towards protecting the profession or stakeholders they represent.

As society and government becomes larger and more complicated, such organisations and groups struggle to deal with the increasing multitude of issues with which they have to cope. The views of the executive of such organisations and groups largely dictates the direction and focus of these groups. And the executive of such organisations and groups can often also be infected by the political bias of the executive.

The Parliament

The Parliament has undergone significant reform in the last 30 years. The journey of reform began with the introduction of Members' and Related Persons' Registers of Interest in 1988. It continued with significant modernisation of procedural reform. The importance of the introduction of a Code of Ethical Standards and a Standing Ethics Committee, together with the consolidation of constitutional provisions regarding the legal obligations on members cannot be understated. Nor can innovative initiatives like e-petitions and regional sittings.

Whilst parliamentary committees in the 1990s and 2000s played an important role, the Fitzgerald vision of a "comprehensive system of parliamentary committees" was unfortunately not realised until 2011 when the portfolio committees were introduced.

Parliament has a number of distinct functions: to form a government, to legislate, to approve the raising and spending of money, to air grievances and provide a forum for general debate, to make the government of the day accountable and act as a grand inquisition. As we stand here in 2021 the Queensland Parliament is achieving most of those functions better than it has ever done in its history. The legislative process in 2021, whilst not perfect, is more open, transparent and achieves better outcomes than at any time in our history. Our financial process (annual budget) is the subject of periodic criticism and could be improved, but it is far superior to that of 25 years ago. If the system was used better by the actors in the system, there would be better outcomes. The public have never been able to access and participate in parliamentary processes like they can today.

However, we must also acknowledge weaknesses. The ability of the Legislative Assembly or its committees to hold any government to account or act as an inquisitor is weakened by the arithmetic of the vote in the House and committee. Committees are performing exceptionally well in the legislative space and being given an increasing role in policy development through law reform referrals, but how are they performing the role of keeping government to account for its actions? At the end of the day what a committee investigates and how it investigates will be subject to the will of the majority and sometimes the decisions themselves will not be revealed.

Focus of the CCC

Having established that there is a continuing need for the CCC, attention must now shift to the focus of the CCC itself.

I have had some recourse to the CCC's (and its predecessors) reporting to try and identify the focus of the CCC over the years and whether that focus has altered.

The CCC's *Strategic Plan 2020-2024*[4] outlines its Strategies as follows:

[4] https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/CCC-Strategic-Plan-2020-2024.pdf

- Advance major crime investigations and help the QPS solve major crime
- Remove the financial benefit and support for serious criminal offending
- Investigate and oversee investigations into serious and systemic public sector corruption and police misconduct
- Work with stakeholders to build corruption resistant public institutions
- Inform public policy about major crime and corruption by providing independent advice to government.

It is noted that major crime and confiscation of assets takes precedence of order to public sector corruption and police misconduct in the strategic plan. Importantly, the strategy indicates that the CCC will only involve itself in serious or systemic corruption and misconduct: "Investigate and oversee investigations into serious and systemic public sector corruption and police misconduct".

The CMC's Annual Report 2009-2010[5] detailed the following statistics:

- The CMC conducted investigative hearings over 162 days in Brisbane, Cairns, Townsville, Mackay, Yeppoon, Maroochydore and Proserpine to obtain critical evidence in 39 serious crime investigations.
- The CMC conducted 33 investigations into 111 allegations involving official misconduct by members of the QPS. This resulted in 8 people charged with 138 criminal offences and 6 people recommended to be charged with 35 criminal offences and 28 people subject to 122 disciplinary recommendations
- The CMC conducted 63 investigations in to the public sector. Of the 63 investigations, 30 involved 100 allegations of misconduct by public officials in public sector agencies other than the QPS. The two most common were corruption and favouritism and official conduct.
- The most complex crime investigation ever undertaken by the CMC led to the dismantling of several drug networks, the arrest of 63 people on 291 charges and the restraint of assets worth over $7 million.
- CMC operations seized drugs with an estimated street value of $4.5 million.
- Efforts to identify and recover proceeds of criminal activity resulted in the restraint of assets worth $19.543 million and the forfeiture of assets worth $5.568 million.
- The CMC received 4665 complaints containing over 11 000 allegations — the largest number since the establishment of the CMC — and assessed 97 per cent of them within a month.
- Of approved establishment 331 FTE – The allocation was Crime 49 FTE, Misconduct 90 FTE, and Intelligence 32 FTE with other areas making up the remaining 160 FTE.

The CMC's Annual Report 2013-2014[6] detailed the following statistics:

- 348 days of hearings relating to major crime investigations with 79 persons charged with 402 offences
- 61 official misconduct investigations completed with 8 people charged with 138 criminal offences and 6 people recommended to be charged with 35 criminal offences and 28 people subject to 122 disciplinary recommendations
- 89% of 3943 complaints of official misconduct assessed within 4 weeks
- Of 329 FTE – The allocation was Misconduct (including Applied research and Evaluation) 104.10 FTE, Crime (including intelligence) 99.50 FTE, other areas 125.50 FTE
- There is no breakdown of public v. private hearings.

[5] https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CMC/CMC-Annual-Report-2009-2010.pdf

[6] https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CMC/CMC-Annual-Report-2013-2014.pdf

The CCC's *Annual Report 2018-2019*[7] details the following statistics:

- 208 days of hearings relating to crime investigations and 126 people charged with 126 criminal offences relating to crime investigations
- 36 days of hearings relating to corruption investigations and 23 people charged with 192 criminal offences relating to corruption investigations and 17 recommendations for disciplinary action made from corruption investigations relating to 10 people
- The CCC assessed a total of 3381 complaints and 76 per cent of corruption complaints were assessed within four weeks
- Of 341.46 FTE – The allocation was 75.65 FTE in the Corruption Division and 58.08 FTE in the Crime Division and 41.59 in the Intelligence Division (total 99.67 FTE) and 166.14 FTE in other Divisions[8]
- The report indicates that there were 16 days of public hearings re Taskforce Flaxton (relating to the operation of prisons), but does not indicate the total mix of private/public hearing days.

Identifying 'like for like' statistics from the annual reports is not easy. In any event, reporting is at such a high level that it is virtually impossible to determine the significance or nature of the crime investigations or the corruption investigations undertaken.

The strategic plan and the annual report only gives an overall 'flavour' of the CCC's focus and resource allocation. From a long time observer's point of view, it is my perception that the CCC's focus since its establishment has drifted from an independent agency to fight organised crime and corruption to restore and maintain confidence in public institutions, to an agency increasingly focussed on major and serious crime. Whether this trend has been driven by demand, internal focus or legislative change requires further inquiry and the PCCC is probably better placed to make that assessment.

The questions that remain are:

- What is major and serious crime sufficient to warrant the CCC's powers and resources?
- Why are the resources and powers of the Queensland Police Service insufficient to deal with these matters?
- What is the cost in time, effort and resources to corruption investigations by the CCC increasingly involving itself in major and serious crime?

Transparency of Crime and Misconduct investigations

I submit that there needs to be an effort to increase the CCC's transparency, so that the general public can get more than a "flavour" of the CCC's activities. Whilst confidentially may be important to prevent any ongoing investigation being jeopardised, confidentiality of the CCC's involvement in a matter should be able to be detailed when that matter is concluded.

I say more about transparency generally below.

Independence of the CCC and the "mix" on the Commission

Diversity

The original *Criminal Justice Act 1989* provided that the commission consisted of the chairperson and four other members. Appointment of the chairperson was full-time and the others part-time. The chairperson was

[7] https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/CCC-Annual-Report-2018-19.pdf

[8] Exact comparisons are difficult to make due to organisations and reporting restructures.

to be a lawyer qualified to be a judicial appointment. Of the remaining commissioners, one was to be a person in legal practice who had demonstrated an interest in civil liberties, the three remaining were to be persons with an interest and ability in community affairs. Persons were disqualified for appointment if they held any judicial, political or other units of public administration.[9]

Under the current *Crime and Corruption Act 2001* the commission also consists of a full-time commissioner who is the chairperson; a part-time commissioner who is the deputy chairperson; and 3 part-time commissioners who are ordinary commissioners. Both the chairperson and the deputy chairperson must be a lawyer qualified to be a judicial appointment. The qualification for the other commissioners is simply that person is qualified for appointment as an ordinary commissioner if the person has qualifications, experience or standing appropriate to assist the commission to perform its functions.[10]

The CCC's *Annual Report 2018-2019* indicates that four of the five commissioners were at the time in fact lawyers of considerable reputation and experience. However, only one of the commissioners was not a lawyer, that commissioner being an academic also having public sector experience. It is noted that the former and current CEO is also a lawyer, although I understand that the latter has considerable public sector administrative experience.

The bottom line is that the CCC is now dominated by lawyers, a situation that was not contemplated by the Fitzgerald vision. Without casting aspersions on any member of the commission, past or present, I query whether the ongoing 'mix' of persons appointed to the commission is appropriate. I suggest the re-legislative entrenchment of diversity of background for the commission.

Ineligibility

No commissioner can be an ineligible person – and a long list of prohibitions are listed in the Dictionary as follows:

> ***ineligible*** *person means any of the following—*
>
> *(a) a person who has been convicted, including by summary conviction, of an indictable offence;*
> *(b) a person who is an insolvent under administration;*
> *(c) a person holding judicial appointment;*
> *(d) a member of the Legislative Assembly or the Executive Council;*
> *(e) the parliamentary commissioner;*
> *(f) a person appointed as the public interest monitor or a deputy public interest monitor under this Act or the Police Powers and Responsibilities Act 2000;*
> *(fa) a person appointed to act as the public interest monitor or a deputy public interest monitor under this Act or the Police Powers and Responsibilities Act 2000;*
> *(g) the director of public prosecutions;*
> *(h) a member of the police service, or, other than in relation to appointment as a senior officer, a person who has been a member of the police service within the 5 years before the time at which the person's qualification for appointment arises;*
> *(i) a public service employee;*
> *(j) a person who holds an appointment on the staff of a Minister;*
> *(k) a local government councillor;*
> *(l) a local government employee.*

[9] See s.8 to 10 of the Criminal Justice Act 1989 https://www.legislation.qld.gov.au/view/html/repealed/current/act-1989-111#Act-1989-111

[10] See sections 223 to 225.

But I query why the ineligibility requirements do not apply to the wider notion of a person holding an office in or engagement with (ie consultancy) with units of public administration. The obvious intention is to preclude conflicts of interest and independence from the public sector, but the current formulae has deficiencies. For example, under the current formulae an officer of the Parliamentary Service is not an ineligible person (which is clearly not appropriate). A contractor or consultant to an agency may not be ineligible (which is clearly not appropriate).

Pension

One of the election commitments of the Australian Labor Party for the 2015 election was to "Revise the terms of appointment of the chair of the Crime and Corruption Commission to make the employment conditions similar to that of a Supreme Court Judge, with access to a judicial pension."[11] In 2015[12] the Act was amended so that Division 2, Subdivision 3 now enables the Chairperson of the Commission to have access to a judicial pension. This subdivision gave effect to the government's election commitment.

The change essentially means that if the CCC chairperson serves in the office for at least five years they become entitled to receive a pension calculated at 6% of the chairperson's prescribed salary (indexed annually) for each completed year of service up to a maximum of 60% of the prescribed salary. The pension will be calculated on the amount of the prescribed salary, which the bill provides is the total of the annual salary, jurisprudential allowance and expense of office allowance of a Supreme Court judge. This in itself appears modest and reasonable.

The residual benefit is that if a person who serves as the CCC chairperson is subsequently appointed as a Supreme or District Court judge they can aggregate the years of judicial service and service as CCC chairperson for the purposes of pension entitlements under the Judges Pensions Act.[13] I must admit to having concerns about this amendment at the time, as I thought it created the impression that a chairperson was on an implicit 'promise' to be appointed to the judiciary. On reflection I have come to the conclusion that the provision cannot create any such expectation and is fair and reasonable.

Term

However, the fact that officers of the commission cannot be appointed for a term longer than 5 years, but can be reappointed for terms not exceeding 10 years in total is worthy of careful consideration. Is it really in the interests of the independence of the CCC for senior appointments (such as the chairperson or commissioners) to be made for periods and subject to renewals? Isn't a single, longer fixed term appointment (not exceeding 10 years) more likely to safeguard independence?

Transparency of the CCC and its activities

I reserve my strongest criticism of the CCC for four interrelated matters:

- Effectively outsourcing some investigations to other agencies that it should, in the public interest, conduct itself;
- Increasing use of closed hearings and secrecy restraints on persons receiving orders to produce etc.;
- Increasing calls by the CCC to restrict public commentary about CCC complaints; and
- Failing to issue public reports on significant investigations.

---

[11] https://www.ourfuture.qld.gov.au/assets/custom/docs/progress-report-2015-election-commitments-june-2017.pdf
[12] Electoral and Other Legislation Amendment Act 2015 – see s.45
[13] https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2015-1852

There is no doubt a necessity for the CCC to refer to agencies for investigation many of the complaints it receives. However, over the past decade there have been investigations involving serious allegations of police misconduct referred back to the Queensland Police Service (QPS) that would make people that recall the pre-Fitzgerald era scratch their heads.

Increasing use of closed hearings and secrecy restraints on persons receiving orders to produce means that there is very little information available for public scrutiny of the CCC's investigations and actions within those investigations, even when those investigations are closed. Any inconsistency of approach or excessive use of powers are difficult to scrutinise. There needs to be consideration of a statutory time limit to the CCC's secrecy restraints on closed investigations and on persons receiving orders to produce.

Increasing calls by the CCC to restrict public commentary about CCC complaints should be ignored. One result of any such legislative action would be to make the CCC less accountable for its actions, or lack of action. It would be a very dangerous road to traverse. I treat with 'a grain of salt', the refrain from the CCC that public airing of complaints hurts their investigations. It may place pressure on the CCC to act more hastily than it otherwise would, but I am yet to be convinced by any hard evidence that public airing of complaints has thwarted an investigation. If that is the CCC's contention, then it needs to back that claim with multiple examples of cases jeopardised. I suspect that delay has caused more issues than public airing.

More significantly, there has been an increasing trend for the CCC to not publically and comprehensively report on its investigations, especially regarding high profile or 'political' inquiries. Instead there has been a trend to issue a press statement, followed by a press conference. Often the information revealed at the press conference is far more detailed (and damaging) than the matters detailed in the press release.

I stress that the outsourcing of complaints and the failure to report often does not benefit the person the subject of complaint. Without a detailed, publically available report, matters may never be properly closed and the failure to comprehensively report can lead to their continual reopening. Without a final comprehensive report, information about an investigation is at risk of being drip fed to the public via press release, press statement, follow-up questioning at PCCC or estimates hearings. A comprehensive report is in my opinion the most effective and fairest way to bring matters to an end when there is no criminal sanction to be undertaken.

Reporting – legislative issues

In respect of reporting, I wish to bring the attention of the committee to the diminution of the CCC's reporting powers and thus its independence.

Section 2.18 and 2.19 of the original *Criminal Justice Act 1989* provided:

> ***2.18 Commission's reports.***
> *(1) Except as is prescribed or permitted by section 2.19, a report of the Commission, signed by its Chairman, shall be furnished-*
> *(a) to the chairman of the Parliamentary Committee;*
> *(b) to the Speaker of the Legislative Assembly; and*
> *(c) to the Minister.*
> *(2) The Commission may furnish a copy of its report to the principal officer in a unit of public administration who, in its opinion, is concerned with the subject-matter, of the report.*
> *(3) If a report is received by the Speaker when the Legislative Assembly is not sitting, he shall deliver the report and any accompanying document to The Clerk of the Parliament and order that it be printed.*

(4) A report printed in accordance with subsection (3) shall be deemed for all purposes to have been tabled in and printed by order of the Legislative Assembly and shall be granted all the immunities and privileges of a report so tabled and printed.
(5) A report received by the Speaker, including one printed in accordance with subsection (2), shall be tabled in the Legislative Assembly on the next sitting day of the Assembly after it is received by him and
be ordered by the Legislative Assembly to be printed.
(6) No person shall publish, furnish or deliver a report of the Commission, otherwise than is prescribed by this section, unless the report has been printed by order of the Legislative Assembly or is deemed to have been so printed.
(7) This section does not apply to an annual report of the Commission referred to in section 7.10.

2.19 Commission's report on court procedures and confidential matter.
(1) A report of the Commission relating to procedures and operations of any court of the State; procedures and practices of the registry or administrative offices of any court of the State, shall not be furnished as prescribed by section 2.18 but shall be furnished-
(a) to the Chief Justice of the State, if the report deals with matters pertinent to the Supreme Court;
(b) to the Chairman of District Courts, if the report deals with matters pertinent to District Courts;
(c) to the judicial officer, or the principal such officer if there be more than one, in the court, or the system of courts, to which the matters dealt with in the report are pertinent.
(2) Notwithstanding any other provision of this Act, if the Commission is of the opinion that information in its possession is such that confidentiality should be strictly maintained in relation to it-
(a) the Commission need not make a report on the matter to which the information is relevant; or
(b) if the Commission makes a report on that matter it need not disclose that information or refer to it in the report.

The above provisions were not without their difficulty, for example they did not foreshadow the CCC needing to publish reports that were not needed to be tabled in the Assembly. But s.2.18 did mean that the CCC itself determined the provision of a report to the Legislative Assembly.

Furthermore, the own initiative reporting process still preserved the duties of the CCC to act in the public interest and ensure procedural fairness to those the subject of inquiry.

In *Ainsworth v. The Criminal Justice Commission* the High Court held that the CJC in compiling its report on Poker Machines in Queensland had not afforded the appellant procedural fairness. The subject report had been tabled in Parliament pursuant to s.2.18 of the *Criminal Justice Act 1989* and was, therefore, a proceeding in Parliament. The High Court, by granting declaratory relief that the report had been compiled in breach of procedural fairness avoided issues raised in the full court of the Supreme Court of Queensland which had refused the applicant relief by way of certiorai or mandamus.[14] It is clear from this decision and the current

[14] During the course of the judgement McPherson J stated:

The Report having, pursuant to s.2.18 of the Act been printed and tabled in the legislative Assembly, it now forms part of the proceedings in Parliament. Mr Morrison QC submits that to award certiorai in this case will involve a breach of art 9 of the Bill of Rights 1688, which precludes proceedings in Parliament from being questioned in any court. That may well be the so; but it is not necessary to determine the point in that way. The procedure for certiorai, if followed to its conclusion, involves the issue of a writ, of which the general form is seen in Form No. 469 in the Schedule to the Supreme Court Rules. It embodies a command by the sovereign directed to the person to whom the writ is addressed. That you send us in our Supreme Court of Queensland under your hand and seal forthwith ... the proceedings aforesaid with all things touching the same, as fully and entirely as they remain in your custody ... that we may further case to be done thereon what right we shall see fit to be done.

provisions of the Act, that the CCC has a duty to afford procedural fairness, and it is for the CCC to ensure the discharge of that duty.

The current reporting provisions are more complicated and contained in ss.49, 64, 65 and 69:

> ***49 Reports about complaints dealt with by the commission***
>
> *(1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, corruption and decides that prosecution proceedings or disciplinary action should be considered.*
> *(2) The commission may report on the investigation to any of the following as appropriate—*
> *(a) a prosecuting authority, for the purposes of any prosecution proceedings the authority considers warranted;*
> *(b) the Chief Justice, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;*
> *(c) the Chief Judge of the District Court, if the report relates to conduct of a District Court judge;*
> *(d) the President of the Childrens Court, if the report relates to conduct of a person holding judicial office in the Childrens Court;*
> *(e) the Chief Magistrate, if the report relates to conduct of a magistrate;*
> *(f) the chief executive officer of a relevant unit of public administration, for the purpose of taking disciplinary action, if the report does not relate to the conduct of a judge, magistrate or other holder of judicial office.*
> *(3) If the commission decides that prosecution proceedings for an offence under the Criminal Code, section 57 should be considered, the commission must report on the investigation to the Attorney-General.*
> *(4) A report made under subsection (2) or (3) must contain, or be accompanied by, all relevant information known to the commission that—*
> *(a) supports a charge that may be brought against any person as a result of the report; or*
> *(b) supports a defence that may be available to any person liable to be charged as a result of the report; or*
> *(c) supports the start of a proceeding under section 219F, 219FA or 219G against any person as a result of the report; or*
> *(d) supports a defence that may be available to any person subject to a proceeding under section 219F, 219FA or 219G as a result of the report.*
> *(5) In this section—*
> *prosecuting authority does not include the director of public prosecutions.*
>
> ***64 Commission's reports—general***
>
> *(1) The commission may report in performing its functions.*
> *(2) The commission must include in each of the reports—*

Failure to obey the writ amounts to a contempt of court. This has only to be stated for its implications to be grasped. The Report is presumably now in the possession of the Speaker, or perhaps it is of the Clerk of Parliament. For the court to order a writ to issue against either the Speaker or the Clerk of Parliament would be accounted to a gross breach of privilege. To attempt to force it by apprehending either of those individuals so as to bring them before the court to face charges of contempt would be an act without parallel since Charles I tried to arrest five members in 1642. The constitutional distribution of power in a democracy proceeds on the footing of mutual respect by legislature and judiciary for the integrity of their respectful functions. We should be overstepping the proper limits of our responsibilities by a wide margin if we were to order a writ of certiorai to issue to being up a record that now forms part of the proceedings of Parliament.

(a) any recommendations, including, if appropriate and after consulting with the commissioner of police, a recommendation that the Police Minister give a direction to the commissioner of police under the Police Service Administration Act, section 4.6; and

(b) an objective summary of all matters of which it is aware that support, oppose or are otherwise relevant to its recommendations.

(3) If the Police Minister decides not to give a direction under the Police Service Administration Act, section 4.6 following a recommendation made under subsection (2)(a), the Police Minister must table in the Legislative Assembly, after giving the reasons—

(a) a copy of the recommendation; and

(b) the Minister's reasons for not giving the direction.

(4) The commission may also include in a report any comments it may have on the matters mentioned in subsection (2)(b).

(5) In this section—

Police Minister means the Minister administering the Police Service Administration Act.

Police Service Administration Act means the Police Service Administration Act 1990.

65 Commission reports—court procedures

(1) This section applies to a commission report about—

(a) the procedures and operations of a State court; or

(b) the procedures and practices of the registry or administrative offices of a State court.

(2) The report may be given only to—

(a) the Chief Justice, if the report deals with matters relevant to the Supreme Court; or

(b) the Chief Judge of the District Court, if the report deals with matters relevant to the District Court; or

(c) the President of the Childrens Court, if the report deals with matters relevant to the Childrens Court; or

(d) the Chief Magistrate, if the report deals with matters relevant to the Magistrates Courts; or

(e) the judicial officer, or the principal judicial officer if there is more than 1 judicial officer, in the court, or the system of courts, to which the matters dealt with in the report are relevant.

69 Commission reports to be tabled

(1) This section applies to the following commission reports—

(a) a report on a public hearing;

(b) a research report or other report that the parliamentary committee directs be given to the Speaker.

(2) However, this section does not apply to the commission's annual report, or a report under section 49 or 65, or a report to which section 66 applies.

(3) A commission report, signed by the chairperson, must be given to—

(a) the chairperson of the parliamentary committee; and

(b) the Speaker; and

(c) the Minister.

(4) The Speaker must table the report in the Legislative Assembly on the next sitting day after the Speaker receives the report.

(5) If the Speaker receives the report when the Legislative Assembly is not sitting, the Speaker must deliver the report and any accompanying document to the clerk of the Parliament.

(6) The clerk must authorise the report and any accompanying document to be published.

(7) A report published under subsection (6) is taken, for all purposes, to have been tabled in and published by order of the Legislative Assembly and is to be granted all the immunities and privileges of a report so tabled and published.

(8) The commission, before giving a report under subsection (1), may—

(a) publish or give a copy of the report to the publisher authorised to publish the report; and

(b) arrange for the prepublishing by the publisher of copies of the report for this section.

I see no difficulty in the reporting provisions contained in ss.49, 64 and 65, but I see no valid reason for the restrictions placed on the CCC by s.69(1). In accordance with s.69(1) the CCC is impliedly restricted to only reporting directly where there have been a public hearing on a matter. All other reports (a research report or other report) must first receive the sanction of the committee. This requirement impinges on the independence of the CCC and places the committee in an invidious position. I stress that the CCC has a duty to afford procedural fairness, and it is for the CCC to ensure the discharge of that duty, it is not for the PCCC to warrant that the CCC has provided procedural fairness.

What is puzzling is why this reporting section was changed. The requirement to limit reporting to matters where there had been a public hearing or where a matter was approved by the committee pre-dates the current 2001 Act and has its genesis in amendments to the *Criminal Justice Act 1989* by the *Criminal Justice Legislation Amendment Bill 1997.* That bill amended both s.26 and 27 of the then act (which were the successors of sections 2.18 and 2.19 of the original *Criminal Justice Act 1989* detailed above.

The explanatory notes to the bill provide the following information about the two amending provisions:

Clause 16 provides for the amendment of section 26 (Commission's reports) in order to clarify the commission's obligation to furnish reports and to achieve the parliamentary committee's recommendations in reports 13 and 38 that there should be a definition of "a report of the Commission" for the purposes of section 26.

Clause 17 provides for the amendment of section 27 (Commission's report on court procedures and confidential matter) in accordance with recommendations of the parliamentary committee. The second parliamentary committee concluded that s.27(2) has the potential to reduce the efficiency of the accountability process and the capacity of the parliamentary committee to review the commission. The current parliamentary committee was concerned that the commission is not required to advise the committee of the reasons why it deems a matter to be confidential and may not inform the parliamentary committee that it has withheld information. The amendments permit the disclosure of confidential information to the parliamentary committee, the Minister or the Speaker. The amendments provide a procedure in which the commission may refuse to disclose information to the parliamentary committee, but must disclose the reasons for the decision as to non-disclosure. The amendment establishes a register of information withheld under this provision and provide for inspection of that register.[15]

It is correct that the parliamentary committee had made commentary about and recommendations concerning s.27 of the then *Criminal Justice Act 1989* in reports in 1997[16] and 1991.[17] However, I have been unable to find any justification for the amendment to s.26 in reports of the parliamentary committee. Indeed, in the 1991 report the parliamentary committee simply recommended the following:

---

[15] https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-1997-392

[16] https://www.parliament.qld.gov.au/documents/committees/PCCC/1994/three-year-review-94/rpt-26-210295.pdf see recommendation 27 and commentary at p.210

[17] https://www.parliament.qld.gov.au/documents/committees/PCCC/1991/Review-of-the-operations-1991/rpt-13-031291.pdf see recommendation 13

The Committee recommends that as a matter of practice the Criminal Justice Commission should in investigations which culminate in a public report and in which individuals are likely to be singled out, give notice to affected persons of allegations likely to be made against them and provide them with the opportunity to be heard (in the sense of an opportunity to respond) in relation to those allegations before the report is published.[18]

The report of the parliamentary committee in 2001[19] noted that the CCC had raised the difficulties inherent in the then s.26 provision:

15.6.3 Analysis and comment - definition of 'report of the Commission'

The CJC has previously expressed concern about the definition of 'report of the Commission' under section 26(9) of the Act. The CJC, in a letter dated 23 November 1999, has submitted that section 26(9), as it is presently drafted, 'arguably limits the Commission to tabling reports only where there has been an investigative hearing, or where the PCJC has directed that a report be tabled'. The CJC has further submitted that it is inappropriate that it cannot table a report in Parliament (other than a report relating to a matter where investigative hearings were held) without a direction from the Committee.

The CJC has further submitted that:

It is not difficult to envisage that the Commission might wish to table a report in circumstances where both sides of politics might have some interest in declining to give such a direction.

The CJC has suggested the following amendments to subsections (9)(a) and (9)(b) of section 26 to define 'report of the Commission' as:

> *(a) a report authorised by the Commission to be furnished in accordance with subsection (1) other than a report under section 33;*
> *(b) a report prepared by the Commission that the Parliamentary Committee directs the Commission to furnish in accordance with subsection (1).*

The CJC had submitted that its suggested amendment:

to section 26(9)(a) would allow the Commission to table any report which it considered should be made public, including reports on matters where investigative hearings had been held (except reports under section 33);
to section 26(9)(b) would allow the Committee to direct that a report prepared by the Commission should be tabled, where it considered it appropriate and where the Commission had not already determined to table the report under subsection (a).

Section 27 would still allow the Commission to report separately on confidential matters in the case of such a direction.

The Committee gave the CJC's submission careful consideration. The Committee was prepared, in principle, to support the CJC's suggestion, but on one proviso only. The Committee considered that prior to tabling of a report (falling under the redefined section 26(9)(a)), the Committee should be provided, on an embargoed basis, with an advance copy of a CJC report intended for tabling (other than a report

---

[18] https://www.parliament.qld.gov.au/documents/committees/PCCC/1991/Review-of-the-operations-1991/rpt-13-031291.pdf see recommendation 12

[19] https://www.parliament.qld.gov.au/documents/committees/PCCC/2001/three-year-review-01/Report55-3yrReview.pdf see pages 320-323

on a hearing conducted by the CJC under section 25). This option is consistent with the current practice in respect of research and other reports publicly released by the CJC. The Committee was of the view that if the CJC maintained its position that the definition be clarified, that an embargoed CJC report intended for tabling, should be provided to the Committee, for example five days in advance of tabling (or such lesser period as agreed), and that the Committee simply have a right to make comments to the CJC in respect of any such report, prior to tabling.

The Committee is not seeking a right to veto or otherwise prevent the CJC from tabling a report in the Parliament. The Committee firmly believes that any such action by a Parliamentary Committee would be highly inappropriate.

The CJC, during the Committee's recent public hearings in respect of this review, has clarified its position in respect of the issue of an appropriate definition of a 'report of the Commission'.

The CJC Chairperson, Mr Butler SC stated:

> *The Commission has considered this from time to time. I think our view has changed, because it is a very difficult section. Because of the way in which it is structured, any change to it can give you quite unexpected results in terms of the ability to produce reports. After a great deal of deliberation on it, we determined that it is probably better to leave it the way it is rather than create some further anomaly in attempting to improve it. It seems to have worked in practice in recent times, certainly in the relationship between the CJC and this Committee. I do not see any reason why it could not work in practice in the future. It might be a little inconvenient for the Committee to find that it has to consider some reports before they can be provided to the Speaker, but that might be better than a situation which creates other problems.*

The Committee considers that, rather than seek an amendment to the Act, a more appropriate course may be to consult with the CJC with a view to issuing an appropriate guideline to the CJC pursuant to section 118A of the Act, to require the CJC, prior to tabling a report pursuant to section 26, to provide the Committee on an embargoed basis with an advance copy of its report intended for tabling (other than a report on a hearing conducted by the CJC under section 25).

I submit that s.69(1) must be amended to enable the CCC to decide when reports should be tabled pursuant to the section.

The CCC as an investigator and reporter

I think there needs to be some clarity provided about the role of the CCC as an investigator and reporter and whether it is also a prosecution agency. Generally there is separation between investigators and prosecutors. There are sound reasons for this separation. This separation is particularly important for the exercise of prosecutorial discretion, which refers to when a prosecutor has the power to decide whether or not to charge a person for a crime (despite there being a prima facie case), and which criminal charges to file or discontinue. It is also important when there are serious and complex charges which may be issued in a matter.

Under the *Director of Public Prosecutions Act 1984* and guidelines made pursuant to the Act[20], the Director of Prosecutions and their staff are responsible for initiating and discontinuing cases in accordance with guidelines, although it is conceded that in most instances charges are initiated by police charge.

---

[20] https://www.justice.qld.gov.au/__data/assets/pdf_file/0015/16701/directors-guidelines.pdf

Recent statements at public hearings suggest CCC frustration with Director of Prosecution resources and timeliness.

Accountability of the CCC

The CCC is accountable to the Parliamentary Crime and Corruption Committee (PCCC) and the PCCC in turn may use the Parliamentary Crime and Corruption Commissioner (the Commissioner). The Commissioner also has specified independent responsibilities and powers. The CCC is also accountable to the courts, and there are a multitude of mechanisms for judicial approval for the use of powers and the review of the exercise of powers. However, these accountability mechanisms are often focussed on individual or specific matters and are always restricted by resources. I would submit that transparency of the CCC's operations is, at the end of the day, the best form of accountability.

The PCCC

The Committee System Review Committee report noted at 48-49:[21]

> *Operations of the Parliamentary Crime and Misconduct Committee*
>
> *A considerable portion of the oversight role regarding the Crime and Misconduct Commission is reported upon in the form of reports by the Parliamentary Commissioner to the committee, many of which are tabled by the Parliamentary Crime and Misconduct Committee in the Legislative Assembly. A number of these reports relate to the activities of the Crime and Misconduct Commission in the exercise of a range of its coercive powers, such as covert searches, surveillance devices and controlled operations, and the reporting is in accordance with statutory requirements.*
>
> *Other reports by the Parliamentary Commissioner are tabled by the Parliamentary Crime and Misconduct Committee where appropriate. The Parliamentary Crime and Misconduct Committee also conducts a wide-ranging review of the Crime and Misconduct Commission every three years. As part of that review, the Parliamentary Crime and Misconduct Committee calls for submissions from the public, holds public hearings, and tables a report on the review. The Parliamentary Crime and Misconduct Committee has also reported on complaints and other matters considered by it. Where appropriate, this has been done in a non-identifying manner.*
>
> *The Parliamentary Crime and Misconduct Committee also meets with senior officers of the Crime and Misconduct Commission, usually on five or six occasions a year, to question Commissioners about the activities of the Crime and Misconduct Commission and discuss various issues arising from the operations of the Crime and Misconduct Commission. These meetings are held in camera and are informed by confidential reports provided in advance by the Crime and Misconduct Commission, which contain detailed information about the activities of the Crime and Misconduct 164 Parliamentary Crime and Misconduct Committee, Report on Activities, report 63, November 2003. As a previous chair of the Parliamentary Crime and Misconduct Committee observed:*
>
> > *It is an unavoidable reality that those meetings are constrained by appropriate requirements of confidentiality, which allow for a full and frank exchange of views on matters often of a highly sensitive and delicate nature and often involving serious criminal matters. However, balanced against this are the many broad systemic issues which are appropriate for public airing and discussion, such as was the case for the public inquiry process of the PCMC's recent three-year review of the commission.*

[21] https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2010/5310T3777.pdf

Whilst acknowledging that many of the operations of the Parliamentary Crime and Misconduct Committee need to be carried out in private, this Committee believes there would be merit in a greater degree of openness in some respects. One possibility might be for the Parliamentary Crime and Misconduct Committee to hold at least part of these meetings in public. (Indeed, the last above quotation comes from the transcript of such a meeting held in public.) This would allow greater public scrutiny of the Crime and Misconduct Commission. Requirements for confidentiality could be satisfied either by holding other confidential meetings or by having both public and in camera sessions of meetings.

As a parliamentary committee, the Parliamentary Crime and Misconduct Committee consists solely of members of Parliament. It is assisted in its consideration of complaints and concerns regarding the Crime and Misconduct Commission by the Parliamentary Crime and Misconduct Commissioner. The Commissioner must be a person of considerable legal experience. There might also be merit in the Parliamentary Crime and Misconduct Committee having input from external expertise, and the possibility of the membership of that committee including lay members should be considered.

Recommendation

The Committee recommends that the Crime and Misconduct Act 2001 be reviewed with a view to:
- *having lay members included on the Parliamentary Crime and Misconduct Committee and*
- *greater transparency of the operations of the Parliamentary Crime and Misconduct Committee.*

In 2014 the Act was amended to insert s.302A:

302A Meetings of parliamentary committee generally to be held in public

(1) A meeting of the parliamentary committee must be held in public.
(2) However, the parliamentary committee may decide that a meeting or a part of a meeting be held in private if the committee considers it is necessary to avoid the disclosure of—
(a)confidential information or information the disclosure of which would be contrary to the public interest; or
(b)information about a complaint about corrupt conduct dealt with, or being dealt with, by the commission; or
(c)information about an investigation or operation conducted, or being conducted, by the commission in the performance of its crime function, corruption functions or intelligence function.
Note—

The standing rules and orders of the Legislative Assembly provide for who may attend a public or private meeting of the committee—see standing order 207.

I must admit to being sceptical about the practicality of this section. However, I must now concede that I believe the provision has improved the transparency and accountability of both the PCCC and the CCC. It arrested the trend in the previous decade or more of the PCCC and CCC operating largely in secret.

Later, the committee at p.22-23 also discussed the Chair of the PCCC and recommended:

The Committee recommends that the Crime and Misconduct Act 2001 be amended to provide that the chair of the Parliamentary Crime and Misconduct Committee be a Member nominated by the Leader of the Opposition.

This has never been actioned by legislation, but instead there has been a "convention" established that a non-government member be appointed Chair.

However, there have been difficulties with this provision and other provisions of the Act that require bipartisan votes:

- In 2012 an Independent member was appointed chair of the Parliamentary Crime and Misconduct Commission that was not the choice of the Opposition.
- In November 2013 the entire Parliamentary Crime and Misconduct Commission was discharged by the House and a new membership appointed. The effect of this was to remove the Independent member as chair. The chair then appointed was a government member.
- In 2015 the government refused to appoint the nominated opposition member as chair, because the candidate was thought to be unsuitable.
- In 2015 an independent member was substituted for a government member on the PCCC to enable the appointment of the chair of the CCC. This was after delay in appointment by the opposition.

All of the above was legal, but that does not mean it should be allowed into the future.

The Act requires amendment to entrench the Chair of the PCCC as the nominee of the Leader of the Opposition. This provision could also provide an ability for required endorsement by the government and stated reasons for lack of endorsement. However, the time has come for it to be dealt with legislatively.

Tactical substitutions to avoid bipartisan provisions also need to be addressed in the legislation.

Yours sincerely

Neil Laurie
The Clerk of the Parliament