

Review of the Crime and Corruption Commission's activities

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Committee Secretary
Parliamentary Crime and Corruption Committee
Parliament House
George Street
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By email: pccc@parliament.qld.gov.au

Dear Committee,

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

I refer to the 16 June 2025 letter from the Chair of the Parliamentary Crime and Corruption Committee (the Committee) inviting me to make a submission to the Committee's five-year review of the activities of the Crime and Corruption Commission (CCC). The Committee advised that it will examine the CCC's performance, jurisdiction, responsibilities, functions and powers. Other matters to be examined include oversight arrangements, the roles of the responsible Minister, the Committee, the Parliamentary Crime and Corruption Commissioner and the Public Interest Monitor.

This submission briefly discusses particular issues which have been identified during the performance of my functions. I commenced my term of office in 2025 and I have consulted Mr Mitchell Kunde of my office with respect to issues predating my appointment but subsequent to the last review.

In summary, the majority of recommendations from the last review have been actioned but have not been implemented operationally for a sufficient period of time to gauge their success or otherwise. There are certain other matters which I raise for specific consideration below.

By way of observation, since undertaking the specific functions under my remit I have noticed a positive culture of co-operation and transparency with those that my office and I deal with at the CCC.

1. Parliamentary Commissioner's own initiative investigations under s.314(4)

In the previous review, my office sought an amendment to s.314(4)(a) of the *Crime and Corruption Act 2001* (the Act) to extend the Parliamentary Commissioner's own initiative investigative power to include not just conduct of a Commission officer that involves or may involve corrupt conduct, but conduct that would be corrupt conduct if the Commission officer were an officer in a unit of public administration (UPA). Pursuant to s.20(2)(a) of the Act, the CCC is not a UPA so purely internal

conduct of a CCC officer which did not adversely affect the performance of functions or the exercise of powers of a UPA could not amount to corrupt conduct.

The *Crime and Corruption and Other Legislation Amendment Act 2024* amended s.314 to clarify that the Parliamentary Commissioner may conduct an own initiative investigation in relation to conduct of a Commission officer that would be corrupt conduct if the officer were an officer in a UPA. I am pleased that amendment was made to remove a significant impediment on the Parliamentary Commissioner's own initiative investigative jurisdiction and what appeared to be a lacunae in the oversight scheme.

The 2024 amending legislation also included two other amendments advocated by my office in the course of the Committee's previous review. Changes were made to the Parliamentary Commissioner's obligation to secure and control the records of the Connolly Ryan Commission of Inquiry, and an amendment to the *Telecommunications Interception Act 2009* allows me and the Public Interest Monitor to report to the Attorney-General on contraventions of conditions of telecommunications interception warrants issued under Part 2-5 of the *Telecommunications (Interception and Access) Act 1979 (Cth)*. Previously, the PIM and I could only report on contraventions of the Queensland and Commonwealth telecommunications interception Acts themselves – not warrant conditions.

The *Crime and Corruption and Other Legislation Amendment Act 2024* also made a number of other significant amendments to the Act. These amendments were largely the result of the Committee's previous five-year review, the Committee's December 2021 Report No. 108 on its *Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters*, and the 2022 *Commission of Inquiry relating to the Crime and Corruption Commission* conducted by the Hon. G.E. Fitzgerald AC KC and the Hon. A.M. Wilson KC.

In accordance with Recommendation 32 of the Commission of Inquiry, the CCC has reported regularly and progressively to the Committee and to me about the implementation and delivery of the Commission of Inquiry's recommendations. For example, it can be noted in August 2023 a memorandum of understanding was finalised between the Office of the Director of Public Prosecutions and the CCC outlining the practices and procedures for the CCC's referral of corruption matters to the DPP for the provision of advice prior to charging.

These amendments to the Act requiring that the CCC seek the advice of the DPP on possible charges arising from corruption investigations, and a number of other significant amendments under the *Crime and Corruption and Other Legislation Amendment Act 2024* only commenced on 31 August 2025. It is too early to come to a concluded view on the impact of these recent amendments on the activities and performance of the CCC. However, I do wish to repeat some of the some issues raised in my office's submission to the Committee's 2020 review which have not been resolved. As a

matter of principle however I would support the DPP's involvement recognising that office's unique, independent and expert role in maintaining that part of the rule of law. A worst case scenario of what can happen if prosecutions are done 'in house' emerged in the UK in the Post Office Horizon IT inquiry¹ and it would be sound risk avoidance to ensure nothing like that ever happened in this jurisdiction by ensuring the input of the DPP as part of the checks and balances built into our system.

2. Use of surveillance device warrants in Corruption Investigations

The Committee may wish to consider revisiting Recommendation 15 from the 2020 Review - that the government address the uncertainty and potential conflict caused between s.325(4) of the *Police Powers and Responsibilities Act 2000* (PPRA) and s.255(5) of the *Crime and Corruption Act* and the example in that section. Section 325(4) of the PPRA provides:

(4) *A function conferred under this chapter [Chapter 13 – Surveillance Devices] in relation to the activities of the CCC is only conferred for the purpose of a function conferred on the CCC under the Crime and Corruption Act 2001 relating to major crime as defined under that Act. (My underlining.)*

This indicates that the CCC may only use PPRA surveillance device warrants for the purpose of its major crime function. (For corruption investigation, the CCC can use surveillance warrants obtained under Chapter 3 Part 6 of the *Crime and Corruption Act*.) However, the example beneath s.255(5) of the *Crime and Corruption Act* conflicts with s.325(4) of the PPRA to some extent. Section 255(5) includes a note:

A police officer seconded to the commission may exercise the powers of a police officer under the Police Powers and Responsibilities Act 2000 for an investigation of alleged corruption involving a relevant offence as defined in section 323 of that Act. (My underlining.)

A CCC officer who is not a police officer cannot apply for a PPRA surveillance device warrant for the purposes of a corruption investigation. However, according to the example in s.255(5), a senior police officer seconded to the CCC can. There is no valid reason for that distinction.

In its report on the 2020 Review, the Committee recommended that the government review the uncertainty and potential conflict between these two sections. A review of the sections was conducted and the Government's response acknowledged the uncertainty and potential conflict between s.255(5) of the *Crime and Corruption Act* and s.325(4) of the PPRA which resulted from amendments made to s.255 in 2006 by the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*. The

¹ <https://www.postofficehorizoninquiry.org.uk/>
<https://www.judiciary.uk/wp-content/uploads/2022/07/Hamilton-Others-v-Post-Office-judgment-230421.pdf>

Government concluded that police officers seconded to the CCC retained their powers and responsibilities as police officers under the PPRA but subject to the express limitation provided in s.325(4) of the PPRA - that the special powers in Chapter 13 of the PPRA may only be used by the CCC for the purposes of its major crime function.

The Government's response explained the policy rationale was that the PPRA surveillance device warrant powers are part of model laws for a national set of powers for cross-border criminal investigations. Corruption commissions are not part of that regime. *"The existing example in section 255 is therefore not consistent with the underlying policy intent and the Queensland Government will consider progressing an amendment to address this issue in consultation with relevant stakeholders."*

3. Surveillance device warrants in the office of a practising lawyer

The Committee may wish to clarify its Recommendation 19 from the 2020 Review concerning the use of surveillance devices in the offices of a practising lawyer.

My office's submission to the Committee's last review noted that s.330(3) of the PPRA states that, *"The judge or magistrate may issue a warrant for the use of a surveillance device in the office of a practising lawyer only if the application for the warrant relates to the lawyer's involvement in a relevant offence."* This prevents the use of surveillance devices in a target's lawyer's office which could be used to monitor the target's legal strategies and other conversations which may or may not attract legal professional privilege. This is a worthwhile provision but it may not go far enough and perhaps the QLS and BAQ should be consulted.

Many legal practitioners use their mobile telephones to provide legal advice from home or while driving their vehicles (hands-free). These situations would not be covered by s.330(3) as presently worded.

There is no suggestion that the CCC has sought, or would seek, such a warrant. The Public Interest Monitor would be expected to oppose any such application, but as an added protection and to reflect contemporary practice, perhaps the section could be reworded to the effect that *"The judge or magistrate may issue a warrant for the use of a surveillance device **in relation to** a practising lawyer only if the application for the warrant relates to the lawyer's involvement in a relevant offence."*

As noted in relation to the second point, this third issue concerns the exercise of the CCC's powers under PPRA provisions inserted by the *Cross-Border Law Enforcement Legislation Amendment Act 2005*. That Act adopted the provisions of model laws for a national set of powers for cross-border criminal investigations. Any amendment of these provisions must take into account the need to maintain cross-border recognition of Queensland's exercise of the powers.

Other matters

Corruption complaints from Government Owned Corporations

At the time of writing this submission there was media discussion of an allegation that employees of Government Owned Corporations (GOC) could only make corruption complaints through Treasury and that there was a delay in passing on those complaints.² That this is an accurate description of the process seems to have been accepted by the newspaper in question, and one article states that a CCC spokesperson also accepted that this was correct. I reviewed the legislation and also read the publicly available corporate governance provisions of the GOC in question and candidly can neither find a basis for the suggestion as a matter of statutory construction, nor in fact having regard to the GOC's policies on this point. I wrote to the CCC Chair to raise the matter and to establish their official position and Mr Barbour replied in detail to that letter.

Regardless of the proper construction of the section - and I think definitive advice from the Solicitor-General should be obtained - it seems that a particular practice has gained traction. Properly in my view this is something for the Committee to investigate in order to ensure alignment of any competing legislative schemes, because I cannot detect any particular reason why the GOC legislation would deliberately be framed to contradict the CCC Act.

It also seems that there has been a conflation of the concepts of 'public interest disclosure' under the *Public Interest Disclosure Act 2010* (often referred to as whistleblower protection legislation) and the mandatory reporting regime under the CCC Act,

Matters raised relating to this office in other submissions

I have read other submissions to the review which are publicly available on the Committee's website submitted prior to the closing date. One submission contained comments concerning my office's statutory functions which in my respectful view are factually inaccurate because:

1. The submission failed to recognise the Commissioner's own initiative function under s.314(4).
2. The prescribed routine inspections, audits and reviews of CCC and QPS which the Commissioner undertakes are mostly under the PPRA and the TI Acts, which have not been taken into account.

² <https://www.couriermail.com.au/news/opinion/editorial-time-to-put-trust-and-transparency-first-for-states-whistleblowers/news-story/43a055eeb76780181db72ff2bd7f03f9>
<https://www.couriermail.com.au/news/queensland/qld-politics/inside-treasurys-handling-of-gladstone-ports-corruption-claims/news-story/2ea25b78bb7fef2833f3ce1b6aaf876b>

3. Members of the public can refer complaints directly to the Commissioner – however it is the Committee which is the principal oversight body, not the Commissioner. The Committee has many more options as to how to deal with complaints. The Parliamentary Commissioner can only investigate on their own initiative if the matter relates to conduct of a commission officer that involves or may involve corrupt conduct and only if satisfied of the matters in s.314(4)(b)(i), (ii) or (iii).

Yours faithfully



Dr Daniel Morgan
**Parliamentary Crime and
Corruption Commissioner**