



PARLIAMENTARY CRIME AND CORRUPTION COMMITTEE

Members present:

Mr JM Krause MP—Chair
Mr MJ Crandon MP
Mrs MF McMahon MP
Mr BL O'Rourke MP
Mr DJ Brown MP
Dr MA Robinson MP
Mr JA Sullivan MP

Staff present:

Ms E Jameson—Committee Secretary
Mr G Thomson—Assistant Committee Secretary

PUBLIC HEARING—REVIEW OF THE CRIME AND CORRUPTION COMMISSION'S ACTIVITIES

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 14 MAY 2021

Brisbane

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The committee met at 9.00 am.

CHAIR: I declare open this public hearing of the Parliamentary Crime and Corruption Committee's review of the Crime and Corruption Commission's activities. Welcome to everyone. I am Jon Krause, the member for Scenic Rim and chair of the committee. Joining me on the committee are: Mr Jimmy Sullivan, member for Stafford and the deputy chair; Mr Michael Crandon, member for Coomera; Mrs Melissa McMahon, member for Macalister; Mr Barry O'Rourke, member for Rockhampton; Dr Mark Robinson, member for Oodgeroo; and Mr Don Brown, member for Capalaba, who is a substitute today for Mr Duncan Pegg, the member for Stretton, who sends his apologies; and we send our best wishes to Mr Pegg.

Section 292(f) of the Crime and Corruption Act provides that the committee must review the activities of the Crime and Corruption Commission and report to the parliament by 30 June 2021 about any action that should be taken in relation to the act or the functions, powers and operations of the commission. In undertaking the review, the committee will examine the CCC's overall performance over the last five years and consider its jurisdiction, responsibilities and powers.

The purpose of today's hearing is to hear evidence from the Clerk of the Parliament, who made a submission as part of the committee's review. Only the committee and invited witnesses may participate in these proceedings. They are proceedings of the parliament and are subject to the standing rules and orders of the parliament. As proceedings of the parliament, under standing orders any person may be excluded from the hearing at the discretion of the chair or by order of the committee.

These proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that they may be filmed or photographed during the proceedings and that images may also appear on the parliament's website or social media pages. I ask everyone to turn mobile phones off or to silent. The program for today has been published on the committee's webpage and there are hard copies available.

LAURIE, Mr Neil, Clerk of the Parliament

CHAIR: Mr Laurie, I welcome you to the hearing this morning. We have received your submission and invite you to make an opening statement, after which committee members no doubt will have some questions for you.

Mr Laurie: Thank you, Mr Chair and members of the committee. Since my submission was published by the committee there has been considerable media and public commentary about the submission. People will take from that submission the parts that they see fit to use. Some commentators have asked what I am really asking for at the end of the day. The fundamental point of my submission is that Queensland needs the CCC and that the CCC must continue. I support the CCC, because I strongly believe that 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 the independent and transparent investigation of public sector misconduct and oversight of public sector systems to reduce misconduct. That is never so important than in a jurisdiction like ours, which is a unicameral system. However, I also believe that the CCC must improve.

Improvement can be undertaken by a number of relatively simple measures: stop the drift from an independent agency to fight organised crime and corruption to restore and maintain confidence in public institutions to an agency increasingly focused on major and serious crime—if this cannot be satisfactorily achieved then structural separation may be required; work to increase the CCC's transparency so that the general public has more than just a flavour of the CCC's activities; and re-legislate an entrenchment of diversity of background for the commission. The recent trend to have the leadership of the CCC dominated by lawyers does not satisfy the original vision of the organisation. The commission needs leadership that includes lawyers; people with a background in and understanding of government and how it works in a practical sense; people with a background in civil liberties; and people with academic expertise. If the number of commissioners needs to increase to ensure diversity then so be it.

Other measures are: strengthen the statutory ineligibility requirements to reduce any potential conflict of interest; strengthen independence by having single, lengthy, fixed-term appointments for the leadership; reverse the thinking on secrecy and closed hearings—start with the assumption that everything is in public unless there are compelling reasons to undertake it in private; stop reporting by press release and press conferences; report comprehensively to the parliament on all significant investigations at an appropriate time; review the policies for referrals of complaints back to agencies, especially the QPS—there is no doubt a necessity for the CCC to refer to agencies for investigation many of the complaints it receives, but it must be remembered that public confidence is undermined by agencies investigating themselves; strengthen independence and encourage reporting by amending the legislation to enable the CCC to report directly to the parliament on any matter it sees fit—not shackling it to the requirement to be a public hearing as a prerequisite to its own reporting power; and, lastly, abandon the policy change whereby the CCC no longer sends briefs to the Director of Public Prosecutions before charges are laid. It should revert to the previous policy whereby complex, serious and contentious cases were referred to the DPP for a decision to prosecute. The situation at the moment is that the DPP gets cases that are a bit like a pig in a poke: they have made no assessment before they have to deal with them. That is my submission to the committee, thank you.

CHAIR: Thank you, Mr Clerk, for your submission. We note that we have received the written one. Members will now have some questions. I want to start off on the matter you finished on, which was about concerns that have been aired publicly about the CCC's role in court matters and the process through which police officers are seconded to the CCC to maintain discretion for charging persons before briefs are submitted to the DPP. Do you want to expand on the comments you just made about the necessity of briefs being given to the DPP before charges are laid?

Mr Laurie: At a meeting with the PCCC on 19 October 2018 Mr MacSporran stated—

What we used to do before my time was routinely and certainly in the more contentious matters refer under that section a report of the investigation with our recommendation and observations to the director's office to allow him or her to assess the evidence and make a decision as to whether the charges should be laid. My view was, and my commissioners supported me in this, that given who we are and the staffing we have, which includes senior lawyers, including myself, and commissioners, we thought that was a bit of an unnecessary aspect to the way we operate. We took the view that where the evidence in our view was sufficient we should and could lay charges ourselves and then hand the prosecution itself over to the prosecuting authority, which would either be the police if it was a simple offence or the Director of Public Prosecutions if it was an indictable offence. It is then a matter for the director as to whether they think the matter should proceed.

I strongly submit that this was a poor decision. There are very sound reasons that investigators generally should not be prosecutors. Investigators can lose objectivity. They get too close to the case. They see evidence in terms of how it contributes to the case; they do not necessarily see that the evidence can be viewed in a different light. Nicholas Cowdery, the former director of public prosecutions in New South Wales and past president of the International Association of Prosecutors, talking about the New South Wales DPP, stated—

Again in simple terms: we prosecute ... and conduct court proceedings (appeals and other proceedings of various kinds). We do not conduct investigations—that is done by the Police Force and other investigative agencies that have the resources and the abilities to carry them out. We do give advice to police and other investigators, but limited to the sufficiency of evidence to prove offences and the appropriateness of particular charges—we do not give operational advice to police or direct or engage ourselves in their investigations.

Later he says—and this is the important part—

There is a profound problem of principle in having investigators conduct prosecutions, especially if they are not officers of the court: ie. qualified legal practitioners. It is perhaps an example of the separation of powers not being observed, in the sense that police have one foot in the executive and the other in the operation of the judiciary ... More importantly, it weakens the confidence that the community should have that prosecutions are run and prosecution decisions are made completely independently of executive considerations.)

Independence is the watchword of DsPP—independence in decision making in the course of the prosecution process and related legal proceedings. It is partly for that reason that we do not become involved in investigations. When the result of an investigation—the evidence—is supplied to us, we need to be in a position to assess it objectively, impartially and according to law and that would be not assisted if we had already made some personal investment in the investigation process, as police do.

I would suggest to you that many of the words he is using about police also, in the context of the CCC, apply to the lawyers within the CCC itself. It is a necessary human failing that investigating matters will tend to lead to the loss of objectivity. That is why the DPP is there.

In October 2018 Mr MacSporran indicated that the policy change was due to resourcing and time issues with the DPP. In my strong submission, the DPP, the CCC and the Attorney-General should work to solve those issues. The policy that was adopted should be abandoned and the spirit of the act, which provides that reports are to be provided to the DPP, should be followed.

CHAIR: We have had a failed prosecution recently in relation to—and we will talk about this later today—Logan City Council. Do you want to make any reflections about that matter and the policy you were just speaking about?

Mr Laurie: I do not want to talk about the Logan City Council matter because I do not know the evidence and I do not know the criminal case. I have read the industrial relations case, but I do not know enough to talk about the individual case, except to say that I think in May before this committee Mr MacSporran indicated that the charges were laid in that before they were sent to the DPP, which is getting back to the first point I was making. That was a contentious and complex case. Once again, I think that as a matter of policy—not about the particular case—that should have gone to the DPP.

CHAIR: You have recommended legislative amendment to entrench conventional things that are in place at the moment around the chair of the PCCC. Do you have any other comments to make about the membership of the PCCC—the number of members from each party, the composition, or the qualifications that should be in place for members of the PCCC?

Mr Laurie: No, not really. I think the recommendation from 2011 that the chair be a non-government member should be legislatively recognised. I think there is no need to do much more in that respect about the PCCC. What I would like to emphasise, though—this is basically a call to all the members here—is that the CCC is not the government; it is not an instrument of government. What the CCC does, government is not responsible for. Your job is to hold the CCC accountable. You should look at that and conduct your job that way, not thinking about the partisan considerations, because the entire parliament has to take collective responsibility for the CCC.

CHAIR: There has been some public reporting of the concerns about the PCCC’s adequacy in being the primary oversight body of the CCC. You have probably just touched on it in your answer, but do you have any comments about how it could be improved or whether any changes should be made in that regard, maybe in relation to the commissioner’s role vis-a-vis the committee?

Mr Laurie: I think we have to recognise that the commissioner is one person assisted by one legal officer, so there is a limit to how much the commissioner can actually do. I think the commissioner is a part-time officer, too—60 per cent part-time or something. We have to be realistic about the limitations of resources by the commissioner. I think the commissioner should have the ability to look into matters that are of public concern, maybe on her own motion without the committee, but I actually think a better model is for the commissioner and the committee to work together a lot more.

Mr SULLIVAN: Mr Laurie, I would like to ask a couple of questions about comments in your submission in relation to openness and transparency of the CCC and public reporting. You made it very clear in your submission, particularly at page 2, that you believe in the future of the CCC—and you have expressed that again this morning. That is the tone in which I ask this question. Can you expand further on the issue of the CCC reporting on significant issues versus issuing media releases?

Mr Laurie: I will give some examples. In doing so, I am very conscious that I do not want to reopen old wounds. I want to go back to the mangocube investigation or inquiry that was going on—I think it started in 2016 or thereabouts, from memory. As a fairly keen observer of the CCC and being in the parliament all the time and listening to what is going on, I have struggled to understand exactly what the form of that investigation was. I think that is because there was never a report into it. Here in 2021 we are still talking about issues arising from that.

That matter should have been dead a long time ago, and it could have been dead if the CCC had tabled a comprehensive report of what the investigation was, what the investigation found—end of. The reason it has dragged on for years and keeps reappearing is that there was never a final report. There was never a report. There were press releases and statements. Then there was drip feeding of information through the committee. One week I heard there were 20 emails in question and the next week it was four. That should have been a report to the parliament to say, ‘This is what happened, this is how it was investigated, this is how it was supervised,’ or whatever the case may be, and ‘this is what was found’—end of.

Mr SULLIVAN: You flagged in your opening statement—and I do not want to verbal you—that you think the CCC should assume everything is public unless it is not. How does that sit with their extraordinary powers, particularly powers to compel evidence, when you also require independent prosecution and that sort of thing? Do you think their extraordinary powers need to be reduced or are you suggesting that, despite the fact that those extraordinary powers could harm—

Mr Laurie: We had this thing called the Fitzgerald inquiry that had extraordinary powers and took evidence from a whole lot of people. There were a whole lot of people prosecuted afterwards and there were a whole lot of people who were not prosecuted afterwards. It was all pretty well done in public. I think there were very few parts of it done in private. It disturbs me when I see the number of private hearings. The committee may well know, but I certainly do not know what those private hearings are all about. I think in a free and democratic society we have to have some concern about that.

Mr SULLIVAN: Again, I do not want to misquote you, Mr Laurie, but I think you said at the start that the focus of the CCC seems to be increasingly on major crime rather than on organised crime and corruption. What exactly do you think the focus should be or where do you think the focus has gone? I do not quite get the point of not focusing on organised crime but focusing on major crime where I would have thought the two overlapped.

Mr Laurie: I think the reason for the focus on organised crime in the early days of the CCC—or CJC—and even Fitzgerald himself, was that there is often a linkage between organised crime and misconduct. Often organised crime leads to misconduct in the police force or other agencies et cetera. There is a natural linkage between misconduct, corruption and organised crime. These other terms of major crime or serious crime—what is that? At what point should individual crimes that are not linked in any way to organised crime and misconduct but that are simply serious or major crimes be the responsibility of the CCC—or just the QPS? That is my point.

I think it is very difficult for somebody who is largely an outsider looking at the reports and the reporting mechanisms here—and I try to keep a handle on what is going on here in terms of the public hearings. I do not necessarily have confidence or am aware of where major crime starts and finishes at the CCC. I suspect that there are more and more resources going there, and that worries me in terms of the other things they should be looking at.

I started my submission back in August last year. I was in two minds as to whether to submit it or not, to be honest with you. I was toing and froing about it. When I became resolved to actually submit it was when in the House on 21 April correspondence was tabled that had been released by the committee. It was a letter to the committee about matters that had been raised in a public hearing. The issue dealt with the Gladstone ports. I will quote the letter. On page 2 it states—

The EABG noted that breaches of the Ministerial Code of Conduct would not constitute corrupt conduct and may be appropriately referred by the GPC Chairman for consideration by the Speaker of the House.

The Speaker of the House has no responsibility for ministerial codes of conduct. It continues—

The allegations against the Minister's Chief of Staff were referred to the Department of the Premier and Cabinet ...

This matter was raised in the House. It is quite apparent that the Premier, who was the responsible minister, was never informed about the issue. Rather, there was a misapprehension by the CCC that the Speaker was somehow going to be involved in it. It was inappropriate on two points. They misconstrued the ministerial code of conduct and who is responsible for it. Then they sent the matter back to the ports to deal with it rather than themselves referring it to the appropriate minister. It was at that point I started to think the focus of the CCC needs to get a lot sharper around misconduct issues and where their attention is being given.

Mr CRANDON: I want to change tack, if you like, around diversity of the CCC. On pages 6 and 7 of your submission you talk about diversity of the CCC. You suggest the 're-legislative entrenchment of diversity of background for the commission'. On page 6 you say that the criminal justice act 1989 provided that the commission consisted of certain members. Then on page 7 you refer to the Crime and Corruption Act 2001 and the change between those two documents. Could you expand on that for us and give us some insights into your thinking in relation to that diversity aspect?

Mr Laurie: I think the Fitzgerald report was quite clear that the CCC should have diversity on its commission. I think it was an interesting insight by Fitzgerald in building the CCC. He realised that strength of leadership actually comes from diversity. Diversity is important because it stops groupthink. It not only stops groupthink but also allows people with different disciplines and different backgrounds to look at problems in different ways.

Lawyers are trained in a particular way and they think and act in a particular way. I do not staff my committee office with all lawyers, because we would have a poorer office for it. I staff my committee office with a whole range of people who have economics backgrounds, legal backgrounds and social science backgrounds, because there is a need for that diversity to make a good organisation, I think.

The other thing about lawyers is that lawyers are probably the most hierarchical profession that you can find. There are not too many professions that have seniority lists which outline what number you are in the state; lawyers do. There are not too many professions in which where you sit at a table depends on how long you have been at the bar. Lawyers are very hierarchical. I suspect that the senior lawyers would take the lead in discussions.

I think people with background and understanding of government and how it works in a practical sense are really needed on the commission. I think people with background in civil liberties and the like are desperately needed as well. They may not always win the argument, but it would be good if they had the argument.

Mr CRANDON: Again, referring to page 13 of your submission, you say that you see 'no valid reason' for the restrictions placed on the CCC by section 69(1). You also make the statement that the requirement impinges on the independence of the CCC and places us as a committee in an invidious position. I would like you to expand on your thinking.

Mr Laurie: Prior to that amendment in 1997, there was no restriction on what the CCC could report on. The CCC could conduct an investigation or research a topic and decide that it was going to table a report to parliament. Literally there would be contact made with the Speaker's office, the responsible minister's office and the chair. Each would be given the report at the same time and the report would be tabled in parliament.

CHAIR: And privileged.

Mr Laurie: And privileged, yes. There was no fetter on the CCC's ability to table the document. There were some issues with the act pre 1997 because there was a bit of an argument that some reports that were being tabled by the commission on their website should have been table in parliament pursuant to the section, so there was probably some legislative clarification required. Instead, the act was amended to allow the CCC to self-table reports only where there had been an open inquiry, a public inquiry, and then allow other reports to get the consent of the committee before they could be tabled.

My problem with the consent of the committee is twofold. The first is: what if the commission wants to table a report and the committee says no? That is affecting the independence of the CCC. I am not suggesting that has ever happened, but that is the first problem. Theoretically that could arise. The second and I think more common issue is that the CCC, under decisions like Ainsworth and under provisions in its own act, is responsible for providing people who are the subject of reports procedural fairness. I am a little concerned that the committee, by endorsing the tabling of a report, is essentially also endorsing that there has been procedural fairness. The committee cannot do that. They have to rely on the CCC to do that. It is the CCC's report. The obligation of procedural fairness is on the CCC, and they should take responsibility for that should it be found after the tabling that it was not provided. I think the act needs to be changed back to what it was, or something similar to what it was, pre 1997.

Mr BROWN: Mr Laurie, you were talking about public confidence when it comes to reports to the DPP and reports to the parliament. It has been talked about in silos at the moment. Do you see a restoration of public confidence if there were fulsome reports tabled in parliament? The DPP could then, in a public and transparent and fulsome way, prosecute based on those because—

Mr Laurie: Yes. Let me be clear about that. If the CCC investigates a matter and there are charges arising out of it, the report should first go to the DPP, who then would prosecute matters if there was a case. They may not be the appropriate ones for a report to parliament at that particular time, but at some point in time, after the prosecutions are finished, it may well be that there is a more fulsome report of the inquiry if there are other outstanding issues arising. In other situations where the CCC investigate and there is no-one to be prosecuted or it is simply a disciplinary prosecution, I think there should be a report to parliament. I think public confidence will be emboldened by the fact that there has evidently been an inquiry and the details of the inquiry and the outcomes are actually in the report.

Public confidence starts to slip where no-one really understands the inquiry that took place, when there was no outcome of prosecution. I am not concerned about the cases where there are investigations and there is prosecution, because that is the legal system working. I am concerned about the cases where there is an investigation and no report but a press release or something similar.

CHAIR: And no prosecution?

Mr Laurie: And no prosecutions.

Mr BROWN: And continual letters that may—

Mr Laurie: It is also fair to the people who were the subject of investigation. There should be a report of what happened and what was found—in some cases nothing.

Mr SULLIVAN: To the issue of what I think you described as a single long-term appointment of the chair, I do not know how that sits with other arguments you have made about the requirement for oversight and the tendency of human behaviour—groupthink, I think you described it as. Is there not a risk that over a 10-year period people get captured by an organisation where there is less oversight?

Mr Laurie: I am really talking about the statutory appointments. I am not talking about the permanent senior officers; I was talking more about the commissioners. I have always had a problem—this does not relate just to the PCCC; it also relates to the Auditor-General, the Ombudsman and those sorts of offices. I have always been uncomfortable with people getting a five-year term and then getting an extension of three years. Why not just give them a seven-year term or something and no extensions—a single fixed term? I think the extension of terms for people whose independence is significant is problematic, for two reasons.

Dr ROBINSON: In terms of reporting, you mentioned before that you thought there should have been a report on Minister Bailey’s use of his mangocube email for potentially work purposes.

Mr Laurie: For Minister Bailey as much as anyone else, I might just add.

Dr ROBINSON: Given that the Premier used private emails, do you think that should also have been a report?

Mr Laurie: I would have thought that would have been captured within the mangocube original report. All of those subsequent issues arose out of that. That would have killed it. If there had been a comprehensive investigation and a report, it would have killed it then.

Dr ROBINSON: So you agree that there should have been a report on the Premier’s emails as part of that?

Mr Laurie: The Premier’s email matter was coming out of the mangocube.

Mr SULLIVAN: Perhaps, Chair, the member did not hear the Clerk’s comment about partisanship of this organisation.

Dr ROBINSON: Sorry, I missed the response.

Mr Laurie: The Premier’s matter was something that arose incidentally from the mangocube matter. If there had have been a proper investigation and report on the mangocube issue, the Premier matter would have been revealed in the report.

CHAIR: Thank you, Mr Laurie. I thank you very much for participating today. Thank you for your submission to the five-year review. As you know, the report is due to be tabled on 30 June. We have a lot of work ahead of us to consider all of the submissions, including yours. A transcript of these proceedings will be available on the committee’s parliamentary webpage in due course for all interested. I declare this public hearing for the committee’s five-year review closed.

The committee adjourned at 9.33 am.