Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

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CRIME AND CORRUPTION AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (4.12 pm): I move—

That the bill be now read a second time.

The Crime and Corruption and Other Legislation Amendment Bill 2018 was introduced on 15 February 2018 and referred to the Legal Affairs and Community Safety Committee. I thank the Legal Affairs and Community Safety Committee for its consideration of the bill. I am pleased to inform the House that on 15 March 2018 the committee tabled report No. 4 and made one recommendation: that the Crime and Corruption and Other Legislation Amendment Bill 2018 be passed.

In my explanatory speech on introduction of the bill I noted the bill replicates the content of the lapsed Crime and Corruption and Other Legislation Amendment Bill 2017. The committee, in their report, refer to the work of the Legal Affairs and Community Safety Committee of the 55th Parliament, being the previous committee, and its consideration of the lapsed bill and note that their report is based on the evidence gathered by the previous committee. I would also like to thank the previous committee for its work and the organisations that took the time to make submissions on and attend the public hearing in 2017 for the lapsed bill. I welcome the recommendation of the committee that the bill be passed. I do note the statement of reservation from the non-government members of the previous committee in the 2017 report which is why I will comment on some of the concerns raised by stakeholders in 2017 in relation to certain provisions in the lapsed bill throughout my contribution today.

Last year marked the 30th anniversary of the broadcasting of the ABC's *Four Corners* program *Moonlight State* which brought serious allegations about police corruption and misconduct to the attention of ordinary Queenslanders. This was a watershed moment in Queensland's history. The day after the *Four Corners* program, acting premier Bill Gunn announced a Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, commonly known as the Fitzgerald inquiry. Initially expected to last about six weeks, the inquiry spent almost two years conducting a comprehensive investigation of long-term systemic political corruption and abuse of power in Queensland.

The Fitzgerald inquiry changed the policing and political landscape in Queensland and across Australia. It made over 100 recommendations covering the establishment of the Electoral and Administrative Review Commission and the Criminal Justice Commission and reform of the Queensland Police Service. Today marks another step in the fight against corruption and ensuring that the Crime and Corruption Commission is appropriately equipped so that it may continuously improve the integrity of, and reduce the incidence of corruption in, the public sector.

The bill before the House delivers on the government's 2015 election commitment to widen the definition of 'corrupt conduct' in the Crime and Corruption Act 2001. It is the product of an extensive period of public consultation with stakeholders as to the appropriateness of the current definition of

'corrupt conduct'. While there was general support for the scope of the current definition of 'corrupt conduct', in responding to the feedback received, the bill proposes a series of changes to the definition of 'corrupt conduct' in section 15 of the Crime and Corruption Act.

Firstly, the bill simplifies the existing definition of 'corrupt conduct' under section 15(1) by removing the requirement that conduct is engaged in for the benefit of, or detriment to, a person. As the commission noted in its submission to the previous committee, the omission of this element removes an unnecessary layer of complexity from the definition of 'corrupt conduct'. The bill also removes the list of criminal offences in section 15(2). This subsection is merely a list of conduct which may constitute corrupt conduct if it satisfies the elements of subsection 15(1), but is not necessarily conclusive of corrupt conduct. Some of the conduct listed, for example sedition, grievous bodily harm and murder, have no immediate association with general concepts of corruption and would not of themselves constitute corrupt conduct unless the elements of section 15(1) are satisfied. As the commission noted in its testimony to the previous committee, section 15(2) has not really assisted in the interpretation and assessment of corrupt conduct and it was always a bit of an oddity that the long list of offences was included.

Secondly, the bill inserts a new section 15(2) with the effect of extending the definition of 'corrupt conduct' to capture the conduct of people outside the public sector that impairs or could impair public confidence in public administration. This extended definition is limited to the following types of conduct which would, if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for terminating a person's services: collusive tendering; certain frauds relating to the application for a licence, permit or other authority; dishonestly obtaining or helping someone to dishonestly obtain a benefit from the payment of application of public funds or the disposition of state assets; evading a state tax, levy or duty or otherwise causing the loss of state revenue; and fraudulently obtaining or retaining an appointment within a unit of public administration. The amendment is generally consistent with changes made in New South Wales and Victoria. This enlarged definition is appropriate given the increasing degree of outsourcing and public-private partnerships in the delivery of government services. The boundaries of government service delivery are evolving in the 21st century and this new definition recognises the need for the commission to remain agile and alert to this changing environment so that it can continue to fulfil its overriding responsibility to promote public confidence in the integrity of the public sector. That changing environment includes increasingly sophisticated challenges that must be addressed.

I now turn to the concerns that the Queensland Law Society raised during the previous committee process, specifically that the new definition of 'corrupt conduct' is too broad. The committee in its report noted the differing views of stakeholders but was satisfied of the response provided by the Department of Justice and Attorney-General to the previous committee in relation to these concerns. First, I want to expel the myth that the commission does not currently investigate the conduct of private citizens. This is simply not true.

Currently, section 15(1) recognises that the commission may investigate the conduct of private citizens that adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of a unit of public administration or a person holding an appointment. For example, if a private individual was to bribe a public official for favourable treatment and this influenced a decision taken by that official in relation to the awarding of a contract, this conduct of the private individual would be captured by section 15(1) and be within the jurisdiction of the commission.

Section 15(1) is currently limited to situations in which the holder of an appointment acts dishonestly or improperly. A new section 15(2) will enable the commission to investigate allegations of corrupt conduct that affects the way in which a unit of public administration performs its functions regardless of whether it is the result of dishonest conduct by a holder of an appointment. The requirements in new section 15(2) are cumulative. Essentially, it is conduct that: impairs, or could impair, public confidence in public administration; involves or could involve the conduct included in an exhaustive list of examples, such as collusive tendering or frauds relating to obtaining licences or permits; and would, if proved, be a criminal offence or be a disciplinary breach providing reasonable grounds for termination of employment. This is a significant threshold.

By way of example, a person who submits false qualifications for an appointment in a unit of public administration in a one-off situation is unlikely to be captured by section 15(2). However, if, over a period of many years, an individual creates and uses false academic qualifications for the purpose of applying for and obtaining employment across a number of units of public administration, this conduct may impair public confidence in public sector recruitment processes and, therefore, be captured by section 15(2).

Equally, the new definition will empower the commission to investigate the conduct of an employee of a private training company who accepts bribes from individuals with links to organised crime to provide qualifications to unqualified people so they could obtain government issued licences. In this situation, the conduct of the private employee has resulted in a government agency issuing licences in good faith to unqualified people and, as a result, undermines the overall integrity in the agency's licensing process. It is appropriate, and the people of Queensland would expect, that the commission has the ability to address this type of corruption.

I note that the changes to the definition of 'corrupt conduct' will commence on a day to be fixed by proclamation. While it is not anticipated that there will be a need for a long implementation lead-in time, a methodical rollout will enable units of public administration and the commission to discuss the impacts of the definitional changes, including the appropriate assessment of how and when a matter impairs or could impair public confidence in public administration. This, in turn, will allow units of public administration to educate and build capacity among their employees to identify and deal with the new category of corrupt conduct. This approach will also minimise the potential for a large number of unnecessary notifications to be made by units of public administration to the commission once the changes commence. Therefore, on the whole, the new definition of 'corrupt conduct' is justified in its scope and application.

I note that if a person considered the commission was conducting a corrupt conduct investigation unfairly, which includes grounds that no investigation is warranted or that the commission does not have jurisdiction, the person may, under section 332 of the Crime and Corruption Act, seek judicial review before the Supreme Court. The commission will also be able to assess the effects of the new definition to determine whether it has resulted in any unintended consequences through its monitoring role under section 48 of the Crime and Corruption Act, which includes the ability to review or audit the way a public official has dealt with corrupt conduct. I also note that, in accordance with the most recent review of the operations of the commission, the Parliamentary Crime and Corruption Committee and its successors have committed to continue to monitor whether the definition of 'corrupt conduct' is inhibiting the commission from investigating any conduct that ought to be subject to its jurisdiction.

More broadly, the bill includes amendments that will expand the commission's investigatory jurisdiction to allow the commission to investigate and otherwise deal with conduct liable to allow, encourage or cause corrupt conduct; and conduct connected with corrupt conduct. The commission will be able to investigate this conduct, as well as corrupt conduct, that may have happened, may be happening or may happen. The change will enable the commission to investigate and proactively address corruption risks and will be enlivened in a number of ways, including: by way of a complaint; by the commission on its own initiative; or through a referral of a matter by the Parliamentary Crime and Corruption Committee, with bipartisan support.

Beyond the changes to the commission's corruption functions, the bill also implements recommendations from the Parliamentary Crime and Corruption Committee report No. 97, *Review of the Crime and Corruption Commission*, and report No. 99, *Report on a complaint by Mr Darren Hall*. In delivering on the government's response to these reports, the bill includes a number of amendments that will improve the operations of the commission. These include: lengthening the time frame for the commission or a prescribed person to seek QCAT review of a reviewable decision from 14 to 28 days; streamlining the process that the commission must follow to commence disciplinary proceedings against current and former public sector employees, in both its original or review jurisdiction; addressing anomalies in relation to post-separation disciplinary proceedings so that the commission and other public sector entities may transfer a disciplinary finding or delegate the authority to make a disciplinary finding to one another when an officer changes employment; allowing the commission and public sector entities to share information relating to the disciplinary history of current and former commission officers in prescribed circumstances; and improving civil liability protections for the commission, its officers and police service review commissioners.

The bill also inserts a new section 40A into the Crime and Corruption Act, which will require units of public administration to prepare and retain complete and accurate records of any decision not to notify the commission of an allegation of corrupt conduct. This will enable the commission to perform its corruption monitoring role for corrupt conduct under section 48 more effectively. As the commission noted in its submission to the committee, this requirement 'promotes visibility of public administration decision making that is essential to ... a robust integrity system that serves the people of Queensland'.

I now turn to clause 18 of the bill, which proposes amendments to section 197 of the Crime and Corruption Act, which deals with information disclosed or produced under compulsion. Currently, section 197 abrogates the privilege against self-incrimination and states that an individual who is appearing before a commission hearing is unable to claim this privilege and must answer the question put to them or produce the document, thing or statement that is requested.

Section 197(2) provides a direct use immunity where the elements of section 197(1) have been satisfied and have not otherwise been expressly excluded. This protects against the direct use of a person's answer, document, thing or statement which was provided under compulsion in a later proceeding. This existing protection is not affected by the amendment in the bill and will remain.

The amendment in the bill makes clear that the commission may make 'derivative use' of an answer, document, thing or statement disclosed by a person during a coercive hearing to gain other evidence for use in subsequent proceedings. Currently, the act is silent as to derivative use. The amendment to section 197 is generally consistent with reforms in Victoria and the Commonwealth in which it was made clear that the fact that material is derivative evidence does not prevent it from being admissible against the person in subsequent proceedings.

The Queensland Law Society, in their submission to the previous committee, raised some concerns regarding this amendment. While I acknowledge and respect the views of the Queensland Law Society, I note that their opposition to derivative use is borne out of a fundamental philosophical objection to this type of use being made.

However, the amendment to section 197 does no more than confirm the existing position that evidence of a compelled witness cannot be used directly against them in a civil, criminal or administrative proceeding, but it may be used indirectly or derivatively against them. It is also important to note that this amendment merely clarifies that the direct use immunity under section 197(2) does not prevent derivative evidence from being admissible in subsequent proceedings. The result of the amendment does not mean that such derivative evidence will be automatically admissible. The bill in no way affects or restricts a court's inherent jurisdiction to supervise and control its own processes and determine the admissibility of evidence in a proceeding.

Further, in a criminal proceeding the courts will continue to have the ability under section 130 of the Evidence Act 1977 to exclude evidence if satisfied that it would be unfair to the person charged to admit that evidence. Fundamentally, if the commission were unable to derive evidence from answers provided by individuals under compulsion, this would significantly undermine the effectiveness of the coercive powers under the Crime and Corruption Act and the commission's objective of combating and reducing the incidence of major crime and corruption in Queensland. As a result, this is an important clarifying amendment that reflects the existing law and practices employed by the commission.

Following a review of the disclosure provisions in the Crime and Corruption Act, in line with recommendation 21 of PCCC report No. 97, it was identified that the current disclosure regime is a complex mix of provisions which do not facilitate the efficient exchange of information and thereby inhibits the commission from working cooperatively with other entities. As a result, the bill replaces the existing disclosure regime with a single provision based on section 16 of the New South Wales Independent Commission Against Corruption Act 1988. This new provision will provide the commission with a broad power to disclose information to entities the commission considers appropriate, such as a unit of public administration, a law enforcement agency or other Queensland integrity bodies.

The Queensland Police Union of Employees in their submission to the previous committee raised concerns relating to the use of search warrants for the investigation of criminal offences being subsequently used to further complaints of misconduct. The Queensland Police Union of Employees contend that the amendments to section 60 of the Crime and Corruption Act implement recommendation 22 of the Parliamentary Crime and Corruption Committee report No. 97. Recommendation 22 called on the government to amend sections 42 and 44 of the Crime and Corruption Act to ensure the Commissioner of Police or a public official may, subject to claims of privilege, use information regarding alleged corruption provided by the commission for the purpose of dealing with the alleged corruption, including the taking of disciplinary action.

In the government's response to recommendation 22, the government supported the intent of the recommendation, but noted further consideration was required as to the legislative amendments which would best achieve this result. This further work will occur at a later date and include targeted consultation with the commission, the Queensland Police Service, police unions and any other relevant agencies to determine the most appropriate way to achieve this policy intent. The bill before the House in no way implements recommendation 22.

The Crime and Corruption Act does not give public officials power to use evidence seized under the authority of a search warrant issued under the Police Powers and Responsibility Act 2000 or another act in disciplinary proceedings. This is consistent with the Supreme Court's decision in the case of Flori v Commissioner of Police and another 2014 which prohibited the Queensland Police Service from using material it recovered under a criminal search warrant for purposes outside the prosecution of criminal offences. Justice Atkinson in that case concluded—

The material obtained pursuant to the compulsion of a search warrant may only be used for the statutory purpose for which the warrant was granted, that is to obtain evidence of the commission of an offence.

The consolidation of the disclosure provisions in clauses 14, 15 and 16 of the bill in no way seeks to overturn the Flori decision.

Amendments contained in the bill also improve the disclosure regime of another of this state's key integrity bodies, the Queensland Ombudsman. The amendments to the Ombudsman Act 2001 will provide the Ombudsman with greater discretion to disclose information to Queensland and Commonwealth agencies when the Ombudsman considers they have a proper interest for the performance of their functions and liaise with the Commonwealth Ombudsman and state and territory equivalents, when appropriate. These amendments were expressly supported by the Ombudsman who recognised that they would assist his office in performing its role more effectively and in a way which reflects contemporary expectations that oversight bodies will collaborate to maximise their benefits to the community.

Finally, on 29 November 2016, the Parliamentary Crime and Corruption Committee tabled report No. 99 into a complaint by Mr Darren Hall. The bill gives effect to the government's support for recommendation 1 of that report by making it a legislative requirement for the commission to provide procedural fairness to persons who may be adversely affected by a commission report to be tabled in the Legislative Assembly or published to the public under the act. This amendment was expressly supported by the Queensland Law Society and the Queensland Police Union of Employees.

I also want to foreshadow that I will be proposing minor amendments to be moved in consideration in detail. These amendments are wholly a consequence of the recent commencement of the Public Service Regulation 2018 to replace the Public Service Regulation 2008, which was due to automatically expire on 1 September 2018. These amendments ensure the relevant provisions of the 2018 regulation are amended as intended by the bill.

Again, I would like to thank the commission as well as other key stakeholders for their consideration and cooperation during the development of this bill. I will close my contribution as I started, by reference to the Fitzgerald inquiry and the road Queensland has travelled in the last 30 years. The Fitzgerald inquiry and the ensuing accountability reforms, including the bill before the House today, serve as a reminder of the vigilance needed to ensure our public institutions, and those who work within them, serve the interests of all Queenslanders not a select or privileged few. I commend the bill to the House.