




Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 15 February 2024

CRIME AND CORRUPTION AND OTHER LEGISLATION AMENDMENT BILL

Introduction

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence) (12.07 pm): I present a bill for an act to amend the Crime and Corruption Act 2001, the Public Interest Disclosure Act 2010, the Public Sector Act 2022, the Right to Information Act 2009 and the Telecommunications Interception Act 2009 for particular purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Community Safety and Legal Affairs Committee to consider the bill.

Tabled paper: Crime and Corruption and Other Legislation Amendment Bill 2024 [202](#).

Tabled paper: Crime and Corruption and Other Legislation Amendment Bill 2024, explanatory notes [203](#).

Tabled paper: Crime and Corruption and Other Legislation Amendment Bill 2024, statement of compatibility with human rights [204](#).

Today I am pleased to introduce the Crime and Corruption and Other Legislation Amendment Bill 2024 containing a package of reforms to improve the operation of the Crime and Corruption Commission through amendments to the Crime and Corruption Act 2001 and related legislation. The CCC plays a critical role in Queensland's anti-corruption and integrity landscape and has various other important functions in combatting and reducing major crime, witness protection and civil confiscations.

The United Nations Convention against Corruption recognises the importance of remaining ever vigilant against corruption. The UN notes that the diversion of scarce resources by corrupt parties affects a government's ability to provide basic services to its citizens and encourage sustainable economic, social and political development. Moreover, it can jeopardise the health and safety of citizens, thereby impacting on the most vulnerable people in our community. The UN convention highlights that, most fundamentally, corruption undermines the prospects for economic investment and that widespread public suspicion that systems are corrupt and that criminal offences are committed by elites in both private and public spheres undercuts government legitimacy and undermines the rule of law. The ramifications for civil society if serious and organised crime is left unchecked are equally detrimental. The Hon. Tony Fitzgerald AC, KC in his report on the commission of inquiry into official corruption in Queensland observed that—

Civil liberties are of limited worth if society is so altered by crime that they cannot be properly exercised or enjoyed.

The majority of the bill's amendments respond to various recommendations across three Parliamentary Crime and Corruption Committee reports relating to the activities of the CCC. It also responds to a recommendation of the commission of inquiry relating to the Crime and Corruption Commission established by this government and undertaken by Tony Fitzgerald and Alan Wilson. The commission of inquiry found that, while the form and function of the CCC has changed over the past three decades, the organisation still has a central role in Queensland's integrity landscape as envisaged

in the 1989 Fitzgerald report and remains fundamental to combatting major crime and corruption in the state. For that reason, the commission of inquiry noted it is imperative the CCC must remain an independent, fair and impartial body trusted by the public to achieve its important statutory functions.

One of the key reforms in this bill is to provide enhanced oversight of decision-making in corruption investigations by requiring that the advice of the Director of Public Prosecutions be sought about a decision to bring charges arising from a corruption investigation. The commission of inquiry highlighted the complexity of cases investigated by the CCC and the harm that can eventuate if after a prosecution has been commenced criminal charges are subsequently withdrawn. Sound charging decisions are essential to the reputation and continued good standing of the CCC, and the commission of inquiry concluded that external oversight of decisions to charge in respect of matters arising out of a corruption investigation is essential to ensure the decision is made without reference to impermissible considerations.

While various options were considered, the commission of inquiry was firmly of the view that, exceptional circumstances aside, the DPP's advice should be required before a charge arising from a corruption investigation is laid. The DPP ultimately holds the discretion about whether a charge proceeds or not and can provide genuine independent advice. The commission of inquiry considered that the DPP is best placed to identify gaps in evidence, have the CCC follow up on evidentiary issues, assess the sufficiency of evidence and scrutinise potential defences that are open on the material to hand. The commission of inquiry highlighted, however, that the feasibility of this approach required the DPP to receive adequate funding. The government has delivered on this commitment and announced additional funding relating to the commission of inquiry in last year's state budget.

The bill provides that the CCC must seek the written advice of the DPP on whether a person should be prosecuted arising from a corruption investigation before a charge is laid by a prosecuting authority, including a police officer seconded to the CCC. The CCC must provide a report to the DPP on its investigation with all relevant information known to the CCC. The bill clarifies that the report can include compelled materials and is not limited to material that would necessarily be admissible in a prosecution. As reinforced by the commission of inquiry, it is critical that the DPP has access to all relevant information to ensure it can make an informed decision about the decision to charge in accordance with the director's guidelines. However, I am assured the DPP has strong and effective processes and procedures in place to ensure this does not compromise a person's right to a fair trial.

I note that commencement of a prosecution before seeking the DPP's advice will be allowed in exceptional circumstances. To ensure flexibility, 'exceptional circumstances' is not defined but, as noted by the commission of inquiry, may include where arrest is necessary to ensure the person's appearance before a court—for example, where an alert notifies investigators that a target is at the airport with a one-way ticket to a non-extradition country. Exceptional circumstances must be determined having regard to the particular facts and circumstances of the individual matter. Where exceptional circumstances exist, the CCC must still seek the DPP's written advice as soon as reasonably practicable. Where the DPP provides written advice to the CCC that a prosecution should be commenced and the prosecuting authority declines to commence the prosecution, the CCC must inform the PCCC and Parliamentary Crime and Corruption Commissioner.

The amendments make it clear that legal professional privilege will attach to the DPP's written advice and confidential communications between the CCC and DPP. The CCC and DPP must enter a memorandum of understanding to facilitate the operation of the new process for the prosecution of corruption offences, and the amendments set out the types of matters which must be included in that MOU. The CCC must provide advice to the minister as soon as practicable after the MOU is entered into and then report regularly to the minister, PCCC and parliamentary commissioner on the effectiveness and utility of the MOU. To ensure transparency and accountability, the MOU must be published on the CCC's website.

While on the topic of the commission of inquiry, I am pleased to note that the CCC's implementation of other recommendations in the commission of inquiry report are also well underway. The chairperson provides regular progress reports on the implementation and delivery of these recommendations to government, as well as the PCCC and parliamentary commissioner. Quarterly progress reports are also published on the CCC's website.

Turning to other provisions in the bill, a longstanding, significant and highly complex piece of work has culminated in amendments contained in the bill relating to recommendation 6 of PCCC report No. 97. This recommendation was for a review of chapters 3 and 4 of the Crime and Corruption Act to develop uniform provisions for CCC powers with generic application to the CCC functions where appropriate and to clarify what specific privileges are abrogated or unaffected by the provisions of the Crime and Corruption Act.

The CCC has extraordinary powers which are not normally available to law enforcement bodies. This allows it to effectively perform its functions. The coercive powers in the Crime and Corruption Act broadly fall into two categories: first, allowing the CCC to require various forms of information to be provided upon the giving of a notice; and, second, certain powers allowing the CCC to compel the giving of information during a hearing. Currently under the CC Act, different enforcement processes apply depending on the particular function being exercised by the CCC. This has led to significant complexity and potential confusion. The bill contains amendments designed to: provide single processes outside a hearing for the discovery of information and production of documents and things across all relevant functions; ensure consistency across functions for attendance and consideration of matters at a hearing; and streamline related offence provisions for failure to comply with the exercise of enforcement powers. These amendments are not intended to provide additional powers to the CCC. Rather, they are designed to reduce confusion and augment comprehension of the application of the powers and privileges. However, to achieve uniformity some changes to the current provisions were inevitable. In these circumstances, regard has been had to the need to appropriately balance giving the CCC necessary powers to do its important work against safeguarding individual human rights. The amendments are also not designed to substantively change the existing powers and processes provided for under the CC Act in relation to confiscation investigations.

In relation to claims of reasonable excuse, including privilege, the bill contains a new chapter 4A to: simplify the definition of privilege across all CCC functions; clarify the abrogation of privilege for specific functions; provide uniform processes applying across all relevant functions for the determination of claims of reasonable excuse, including privilege; and provide uniform provisions for the safekeeping of documents or things where a claim of reasonable excuse, including privilege, is raised.

Under the current act, claims of reasonable excuse and privilege are generally dealt with in two separate ways. For corruption matters and confiscation related investigations, claims are dealt with by the Supreme Court after initial consideration by the commission officer. For crime investigation matters, intelligence function and the witness protection function, claims are considered by the presiding officer at a hearing with a right to seek the leave of the Supreme Court to appeal the decision of the presiding officer. The new process in the bill continues to provide for claims to be considered by the CCC but distinguishes claims made outside of hearings and claims made in hearings.

Consolidated provisions for CCC consideration of claims will apply across all functions, with the exception of confiscations. Preliminary consideration by the CCC, whether in or outside a hearing, is intended to provide an option for the consideration and acceptance of claims by a suitably qualified and experienced CCC officer, thereby saving persons the expense and inconvenience of having the claim dealt with by a court in every instance. If a claim is not accepted by the CCC, a person retains the right for consideration by the Supreme Court.

As part of the chapters 3 and 4 review, the government gave consideration to the application of journalist shield laws to the CCC. The bill delivers on our commitment to establish a statutory framework under the CC Act to protect the journalist-informant relationship, known as shield laws, by creating a qualified journalist privilege applying in CCC investigations and hearings consistent with the approach in the Evidence Act 1977. Consideration of claims of journalist privilege are incorporated into the new procedures for dealing with claims of privilege in new chapter 4A of the Crime and Corruption Act and will apply across all CCC functions, including confiscation matters.

The bill also contains amendments to provide the CCC with the ability to give notices by email and allow the appearance of a person via audio or audiovisual link at CCC hearings. These provisions are designed to ensure that the CCC has sufficient flexibility to continue to perform its functions in the public interest. A range of safeguards are included to ensure that these provisions are only used in appropriate circumstances.

As members would be aware, the CCC is headed by a five-member group comprised of a full-time commissioner who is the chairperson, a part-time commissioner who is the deputy chairperson, and three part-time ordinary commissioners. To support increased diversity and inclusion in the CCC and ensure its leadership is not dominated by lawyers, the bill implements recommendation 1 of PCCC report No. 106 by amending section 225 of the Crime and Corruption Act to insert a revised provision dealing with the composition of experience of ordinary commissioners.

Under the new provision, at least two persons are to have a demonstrated interest and ability in community affairs, public administration or organisational leadership to be qualified for appointment as ordinary commissioners. Section 228 of the Crime and Corruption Act provides for the PCCC's involvement in the nomination of a person for appointment as the chairperson, deputy chairperson, ordinary commissioner or chief executive officer.

In recommendation 3 of report No. 106, the PCCC recommended that, for the consideration of nominees for appointment as commissioners, including the chairperson and CEO, the government give consideration to developing a mechanism to ensure nominees are appropriately considered by the PCCC and any delay in progressing consideration of appointments be able to be publicly discussed. The government supported this recommendation in principle.

Under the Crime and Corruption Act there are currently no explicit provisions relating to the time frames for bipartisan support of the PCCC for appointments or specifically enabling publication of related information. The bill will introduce a 30-day time frame, with possible two-week extension, within which the PCCC must notify the minister whether an appointment has bipartisan support and provide for the PCCC to publish, as part of its annual report, information about the PCCC's participation in the appointment process.

The bill will also introduce a seven-year fixed non-renewable term for the chairperson, deputy chairperson and ordinary commissioners consistent with recommendation 4 of the PCCC report No. 106. No change is made to the current requirement for appointment of the CEO as the current 10-year cap applying to the position is considered an appropriate balance between the retention of corporate knowledge and the need for renewal.

In relation to senior officers, the current appointment provisions will be retained apart from relaxing the precondition on extending tenure from 10 to 15 years. The bill also includes a provision allowing tenure limits to be reset after 10 years has elapsed for a person who has permanently left the CCC. The bill provides that the requirement to give notice to the PCCC will arise where a senior officer has been appointed to a further term and that term will result in the senior officer holding office for a period in excess of 10 years. These proposals aim to enhance the independence of the CCC while providing some increased flexibility in senior executive appointments to allow for retention of corporate knowledge and a succession pipeline, particularly having regard to its current and extensive reform and renewal agenda.

The bill also includes amendments to implement recommendations 5, 9 and 28 of report No. 106 and recommendation 27 of report No. 97 by: enabling the CCC to give directions for the performance of duties by CCC officers who are engaged under section 256 of the Crime and Corruption Act to meet temporary circumstances; allowing the parliamentary commissioner to investigate on their own initiative corrupt conduct of a CCC officer; and ensuring CCC officers can make lawful disclosures and be afforded the same protections under the Public Interest Disclosure Act 2010 as those engaged in a unit of public administration.

The Inquiry into the Future Role, Structure, Powers and Operations of the Criminal Justice Commission, known as the Connolly-Ryan inquiry, was established in October 1996 but terminated in August 1997 following the issuing of an injunction by the Supreme Court. The records and data of this inquiry are currently in the custody of the parliamentary commissioner under section 374 of the Crime and Corruption Act. The documents are not regarded as public records under the Public Records Act 2002.

To address ongoing storage issues here at Parliament House, the bill amends the Crime and Corruption Act to enable the Connolly-Ryan inquiry records to be stored at Queensland State Archives. However, access to the records will continue to be governed by the parliamentary commissioner under the current test in the Crime and Corruption Act having regard to the nature of the records. To ensure consideration is given in the future to the reclassification of the records as public records and transfer to a suitable public authority at an appropriate time, the bill includes a review requirement.

The bill contains amendments responding to recommendation 3(b) of the CCC's report, *Culture and corruption risks in local government: lessons from an investigation into Ipswich City Council*, the Windage report, aimed at ensuring council controlled entities are brought within the oversight of the CCC. The bill recognises the broad range of entities controlled by councils and the state and provides non-binding criteria to guide the prescription of entities as a unit of public administration so that they may be subject to additional transparency and oversight, on a case-by-case basis, without instituting a blanket and inflexible approach.

A range of miscellaneous minor and technical amendments are also included in the bill. This includes an amendment to the Telecommunications Interception Act 2009 to ensure the parliamentary commissioner and Public Interest Monitor can report on contraventions of conditions or restrictions in telecommunications interception warrants issued under part 2-5 of the Commonwealth Telecommunications (Interception and Access) Act 1979. The bill also amends the Public Sector Act 2022 to broaden the scope of persons to whom the Premier may delegate a ministerial function.

The majority of the bill's provisions will commence on a date to be set by proclamation to allow necessary implementation activities to occur. In particular, the amendments arising from the review of chapters 3 and 4 of the Crime and Corruption Act will require extensive change and work within the CCC to support commencement.

The reforms contained in this bill address complex issues and have required detailed and proper consideration. The bill has been developed in close consultation with the CCC and the DPP as well as other stakeholders. I would like to acknowledge and thank all organisations and agencies for their feedback and contributions to developing these important reforms.

The measures in this bill deliver a range of critical reforms. However, our work is not over and we know there are a number of important PCCC recommendations still to address. This work will continue in consultation with the CCC and other stakeholders alongside various other reform activities underway to enhance the integrity framework in this state. I commend the bill to the House.

First Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence) (12.26 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Community Safety and Legal Affairs Committee

Madam DEPUTY SPEAKER (Ms Lui): In accordance with standing order 131, the bill is now referred to the Community Safety and Legal Affairs Committee.