

PARLIAMENTARY CRIME AND CORRUPTION COMMITTEE

Report No. 106, 57th Parliament

Review of the *Crime and Corruption Commission's activities*

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

The Crime and Corruption Commission (the Commission) is a statutory body established for the main purposes of combatting and reducing the incidence of major crime and to continuously improve the integrity of, and reduce the incidence of corruption in, the public sector in Queensland. The *Crime and Corruption Act 2001* (CC Act) establishes the Commission and sets out its functions and powers.

On 30 June 2021, the Parliamentary Crime and Corruption Committee (Committee), which is also established under the CC Act, tabled a report (No. 106) on its review of the Commission (the Report).

The Committee has a statutory duty to monitor and review the performance of the Commission. The review was carried out pursuant to section 292 (f) of the CC Act which requires the Committee to review the Commission's activities every five years and table in the Legislative Assembly a report on any action required in relation to the CC Act or the functions, powers and operations of the Commission.

The Committee's review involved consideration of 32 submissions and two public hearings.

In May 2020, the Committee resolved to incorporate into the review its existing Inquiry into the Commission's performance of its functions to assess and report on complaints about corrupt conduct (Inquiry into Corrupt Conduct Complaints) which was initiated on 16 December 2019. This included considering 14 additional submissions received for that inquiry as submissions to the review.

The Report makes 30 recommendations.

The Queensland Government's response to the Report's recommendations is outlined below. The Government notes that a number of the recommendations request consideration of issues or further reviews. In supporting consideration as proposed by these recommendations, the Government's response should not however be viewed as acceptance of the underlying issue or a commitment to implementation or future amendments.

RESPONSE TO RECOMMENDATIONS:

Recommendation 1 -

The Committee recommends that section 225 of the CC Act be amended, to require at least two persons to have a demonstrated interest and ability in community affairs, public administration or organisational leadership, to be qualified as Ordinary Commissioners.

Queensland Government response: Supported.

The Queensland Government notes that, in requiring ordinary commissioners to have the 'qualifications, experience or standing appropriate to perform the function', section 225 of the CC Act already permits persons with a variety of experiences to be qualified for appointment as ordinary commissioners.

The Government supports diversity in the representation of persons within the CCC and is committed to removing barriers to ensure that diversity and inclusion, including cultural and gender diversity, are inherent in all aspects of public life, boards and the public service. In order to make this explicit, the Queensland Government will progress the recommended amendment to the CC Act.

Recommendation 2 -

The Committee recommends the definition of 'bipartisan support' of the parliamentary committee in Schedule 2 of the CC Act be amended so that it provides for:

- support of the members of the parliamentary committee unanimously, or
- support of a majority of the members appointed by the Leader of the House (including a member appointed as a substitute committee member in place of a member nominated by the Leader of the House), and the support of a majority of members appointed by the Leader of the Opposition (including a member appointed as a substitute committee member in place of a member nominated by the Leader of the Opposition).

Queensland Government response: Not supported.

The Queensland Government notes that under the CC Act bipartisan support of the Committee is required for commission appointments and that the term is used elsewhere in the CC Act, for example in section 294 where the Committee may with bipartisan support direct the Commission to undertake a corruption investigation.

The Queensland Government notes the Committee's concern that the current definition does not reflect the plain meaning of the term 'bipartisan support' and original intention of the legislation which denotes support from both parties (i.e. Committee members nominated by the Government and members nominated by the Opposition). However, the Queensland Government considers the recommendation is problematic and, if implemented, is likely to constrain the Committee's decision making capacity by effectively requiring unanimous support.

Recommendation 3 -

The Committee recommends that for the consideration of nominees for appointment as commissioners (including the Chairperson) and Chief Executive Officer of the Commission, that the government give consideration to developing a mechanism to ensure nominees are appropriately considered by the committee, and any delay in progressing consideration of appointments be able to be publicly discussed.

Queensland Government response: Supported in-principle.

The Queensland Government agrees to give further consideration to the processes for the consideration of nominees for appointment by the Committee.

Recommendation 4 -

The Committee recommends consideration be given to amending the CC Act to provide for a single non-renewable appointment for the Chairperson and Ordinary Commissioners of the Commission, not exceeding seven years.

Queensland Government response: Supported.

The Queensland Government accepts that reducing the maximum term of appointment of the Chairperson and Ordinary Commissioners from ten to seven years will help to address the potential for a Commissioner to, or perceived to, be impacted by the imperative for re-appointment and will give consideration to amending the CC Act to reduce the term of appointments.

Recommendation 5 -

The Committee recommends that section 257 of the CC Act be amended, to enable the Commission to issue directions for the performance of duties by commission officers who are employed by the Commission under section 256 of the CC Act.

Queensland Government response: Supported in-principle.

The Queensland Government accepts the policy intent of the recommendation and will progress the necessary amendments to the CC Act to enable the Commission to issue directions for the performance of duties by persons engaged to provide it with services, information or advice under section 256 of the CC Act.

Recommendation 6 -

The Committee recommends that the Commission and the Queensland Police Service (QPS) update their practices and procedures in regards to public reporting associated with the charging, or investigating, of police officers, to ensure that the outcome is also subject to public reporting, in circumstances where the police officer is cleared of the publicly reported allegations.

Queensland Government response: Noted.

The Queensland Government notes this recommendation is addressed to the Commission as well as the QPS.

The Queensland Government notes the Committee's concerns about instances where public reporting by the Commission and/or the QPS in relation to the charging, or investigating, of subsequently cleared police officers, has not been followed by public reporting of that outcome. The Queensland Government acknowledges the need for a complaints management process to operate fairly and transparently for all participants.

The QPS has amended its Media Guidelines and going forward the QPS will only issue media releases for matters where a member of the QPS has been charged with a criminal offence. De-identified information about a member who has been stood down or suspended will no longer be proactively released.

Recommendation 7 –

The Committee recommends the secretariat functions for the Commissioners for Police Service Review (CPSR) are transferred from the Commission to another appropriate entity, separate from the QPS.

Queensland Government response: Supported in-principle.

The Queensland Government notes the Commission's concerns that it should not continue to be responsible for the provision of secretariat support to the CPSR on the basis that this may create a perception that decisions of the CPSR have the imprimatur of the Commission or may have some overlap with the Commission's functions and activities.

This issue requires further consideration and consultation will determine whether there is another appropriate entity, separate from the QPS, to perform this function.

Recommendation 8 -

The Committee recommends the security vetting practices of the Commission officers continue to be monitored and considered as part of the next five year statutory review of the Commission's activities.

Queensland Government response: Noted.

This recommendation is addressed to the Committee and its successors.

The Queensland Government notes that the provisions of the CC Act already provide for a criminal history check before a proposed appointment and that a previous serious disciplinary action may also be required to be disclosed. The Queensland Government agrees that any further legislated security vetting framework may have the potential to imbed a minimum standard and hence inhibit the ability to respond to developments in best practice in this area. The Queensland Government supports ongoing monitoring of this issue.

Recommendation 9 -

The Committee recommends the government consider legislative amendments to enable Commission officers to make lawful disclosures and be afforded the same protections as those engaged in a unit of public administration under the Public Interest Disclosure framework.

Queensland Government response: Supported in-principle.

The Queensland Government agrees with the Committee that Commission officers should be able to make lawful disclosures and be afforded the same protections as those persons engaged in a unit of public administration under the Public Interest Disclosure framework.

The Government notes that, due to the definition of "corrupt conduct" in the CC Act, there is a gap in protection for Commission officers because the Commission is not a unit of public administration (UPA).

This issue requires ongoing consideration and consultation will be undertaken on the most appropriate form of amendments to address the underlying policy intent of this recommendation.

Recommendation 10 -

The Committee recommends the definition of 'money laundering' in the *Criminal Proceeds Confiscation Act 2002* (CPCA) be reviewed.

Queensland Government response: Supported.

The Queensland Government will progress a review of the definition of 'money laundering' in the CPCA to ensure it remains fit for purpose and relevant to achieving the objects of the CPCA. The Queensland Government notes the Committee's expectation that any review of the definition would allow for public consultation and commits to conducting consultation with key stakeholders as part of the review of section 250 of the CPCA.

Recommendation 11 -

The Committee recommends the Commission produce easily accessible material to assist in the education of persons (and their legal representatives) participating in coercive hearings.

Queensland Government response: Noted.

This recommendation is addressed to the Commission.

The Queensland Government recognises that for the coercive hearings process to operate as fairly as possible, it is essential that all of the parties involved in a matter understand the process and how it applies. The Queensland Government supports any tools that can be made available to achieve this and notes that the Commission is presently developing a manual for presiding officers, which includes introductory remarks delivered to witnesses which incorporate an explanation as to possible uses which may be made of their evidence and is considering what further material may be prepared to assist witnesses who may be called to hearings.

The Government also notes that under section 205 of the CC Act there is capacity for certain persons to apply to the Attorney-General for financial help to enable the person to obtain legal services in connection with a hearing or appeal.

Recommendation 12 -

The Committee recommends consideration be given to amending section 197 of the CC Act, to ensure clarity in regards to its interpretation and intent.

Queensland Government response: Supported.

The crime of perjury is serious and goes to the heart of the justice system. The Queensland Government supports giving consideration to amending section 197 of the CC Act to ensure clarity regarding its interpretation and intent.

The Queensland Government will consider an amendment to section 197 of the CC Act to ensure that the section displaces the presumption of inadmissibility in respect of all answers given at the hearing and notes the Committee's comment that any proposed amendment should be considered only after proper consultation on the issue with a broad range of stakeholders.

Recommendation 13 -

The Committee recommends that consideration be given to amending the intelligence operations provisions in the CC Act, to enable the Commission's Crime Reference Committee to approve special investigations and special intelligence operations other than in respect of a 'criminal organisation', as defined in the *Penalties and Sentences Act 1992*.

Queensland Government response: Supported.

The Queensland Government notes the current powers to conduct specific intelligence operations and immediate response powers are contained in sections 55A and 55D of the CC Act and application of these provisions are limited to a criminal organisation or participant of a criminal organisation as defined in section 161O of *the Penalties and Sentences Act 1992*.

The Government acknowledges the Commission's concerns about criminal professional facilitators and 'lone wolf scenarios' in this context. However, the Government is concerned the Committee's recommendation may represent a significant expansion of the Commission's current remit and expertise beyond matters concerning major crime, criminal organisations and corruption.

Any expansion to the Commission's immediate response powers for the purpose of responding to threats of terrorism may also be inconsistent with the Government's commitment to achieving a nationally consistent response to terrorism, which includes ensuring that all states and territories and the Commonwealth adopt nationally consistent investigative powers and procedures.

The Queensland Government will review the provisions in the CC Act relating to intelligence operations in consultation with stakeholders in order to determine whether legislative amendment to address the concerns of the Commission in this area are necessary.

Recommendation 14 -

The Committee recommends that no changes be made to sections 53, 73 and 75 of the CC Act, pursuant to Recommendations 14 and 20 of the 2016 Review Report.

Queensland Government response: Supported.

The Queensland Government accepts that the Committee, having considered concerns raised by stakeholders, no longer considers sections 53, 73 and 75 of the CC Act should be extended to the monitoring and corruption prevention functions on the basis that existing powers are adequate and agrees not to continue to implement these recommendations from its previous report.

Recommendation 15 -

The Committee recommends that the government review the uncertainty and potential conflict caused between section 255(5) of the CC Act (and its example) and section 325(4) of the *Police Powers and Responsibilities Act 2000* (PPRA); and whether a senior Commission officer, or senior police officer, should be able to obtain surveillance device warrants for both the Crime and Corruption Commission's major crime and corruption function.

Queensland Government response: Supported.

The Queensland Government acknowledges that there is some uncertainty and potential conflict between section 255(5) of the CC Act (and its example) and section 325(4) of the PPRA which has resulted from amendments made to section 255 of the CC Act in 2006 by the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*.

A review of the sections has been conducted. It has always been intended that police officers seconded to the Commission retain their powers and responsibilities as police officers under the PPRA. However, this is subject to the express limitation provided by section 325(4) of the PPRA that the special powers in Chapter 13 of the PPRA may only be used by the Commission under its major crime function. The policy rationale for this is that the surveillance device powers are part of the model laws for a national set of powers for cross-border criminal investigations and 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.

Recommendation 16 -

The Committee recommends that the government consider the most appropriate way to address the issue of handwritten amendments and variations on surveillance device warrants, such as amendment of the PPRA.

Queensland Government response: Supported.

The Queensland Government acknowledges the issue raised by the Committee regarding amendments and variations on surveillance device warrants and agrees to review the practices and legislative requirements for surveillance device warrants and undertake appropriate consultation on any proposed changes.

Recommendation 17 -

The Committee recommends that the PPRA be amended to remove the requirement that an application for extension or variation of surveillance device warrants must be made by the officer to whom the original warrant was issued.

Queensland Government response: Supported.

The Queensland Government acknowledges the practical difficulties raised by the Committee regarding extensions and variations of surveillance device warrants and agrees to conduct a review of the practices and legislative requirements for surveillance device warrants in consultation with relevant stakeholders and undertake appropriate consultation on any proposed changes.

Recommendation 18 -

The Committee recommends that the government review the requirement under section 334(3) of the PPRA that a judge or magistrate who revokes a surveillance device warrant, must cause notice of the revocation to be given to the chief executive officer of the law enforcement agency.

Queensland Government response: Supported.

The Queensland Government acknowledges the issues raised by the Committee regarding notification of surveillance device warrant revocations and agrees to conduct a review of the practices and legislative requirements for surveillance device warrants in consultation with relevant stakeholders and undertake appropriate consultation on any proposed changes.

Recommendation 19 -

The Committee recommends that consideration be given to enabling the use of surveillance devices in a lawyer's home or car or other relevant place, in accordance with relevant sections of the PPRA, including section 330 that presently permits the use of surveillance devices in the office of a practising lawyer in limited circumstances.

Queensland Government response: Supported in-principle.

Section 330 of the PPRA sets out the requirements for when a Supreme Court judge or magistrate may issue a surveillance device warrant. Subsection 330(2) sets out the factors that the judge or magistrate must have regard to in deciding whether a surveillance device warrant should be issued, being mindful of the highly intrusive nature of a surveillance device warrant. Subsection 330(3) provides a safeguard in relation to the use of a surveillance device in the office of a practising lawyer by providing that it can only be issued if the application for the warrant relates to the lawyer's involvement in a relevant offence.

The Queensland Government agrees that subsection 330(3) of the PPRA may not reflect modern working practices, noting that lawyers often provide legal advice via the use of mobile telephones.

The Queensland Government notes that the use of surveillance devices impacts on a person's rights and liberties. Any amendments will only be progressed after thorough consideration and consultation with relevant stakeholders.

Recommendation 20 -

The Committee recommends consideration be given to legislating a requirement that the Commission report breaches of telecommunications interception warrant or a surveillance device warrants to the Public Interest Monitor or issuing authority.

Queensland Government response: Supported.

The Queensland Government agrees with the Committee that breaches of a telecommunications interception warrant or a surveillance device warrant should be reported to the Public Interest Monitor or issuing authority and will give consideration to how best to achieve this policy intention in consultation with relevant stakeholders.

Recommendation 21 -

The Committee recommends no change to section 50 of the CC Act, pursuant to Recommendation 16 of the 2016 Review Report.

Queensland Government response: Supported.

The Queensland Government agrees not to pursue any amendments to section 50 of the CC Act at this time.

The Queensland Government notes that the Commission is no longer seeking amendment to the CC Act to enable it to initiate discipline proceedings in QCAT's original jurisdiction in respect of police misconduct. The Queensland Government also notes that the *Police Service Administration (Discipline Reform) and Other Legislation Amendment*

Act 2019 has reformed the police discipline system and provides the CCC with an enhanced oversight role within that system.

Recommendation 22 -

The Committee recommends the CC Act be amended to clarify the distinction between an 'assessment' and an 'investigation'.

Recommendation 24 -

The Committee recommends clarification be provided about whether coercive powers are available during an assessment stage or only an investigation by the Commission.

Queensland Government response to Recommendations 22 and 24: Supported in-principle.

The Queensland Government agrees with the concerns raised by the Committee about the distinction between an 'assessment' and an 'investigation' and the need to clarify whether coercive powers are available. However, the recommended amendments raise complex issues that require ongoing and careful consideration to determine the most appropriate approach to this issue, in consultation with relevant stakeholders to ensure there are no unintended consequences and to take into account the need for operational flexibility and efficiency.

Recommendation 23 -

The Committee recommends that the Commission and the Queensland Parliament (through the Speaker of the Legislative Assembly) consider the development and implementation of an information sharing protocol for the dissemination of information held by the Commission that may be relevant to the Parliament in respect of the conduct of Members of Parliament.

Queensland Government response: Noted.

The Queensland Government notes that this recommendation is addressed to the Commission and the Queensland Parliament (through the Speaker of the Legislative Assembly).

Recommendation 25 -

The Committee recommends that further consideration of the Commission's prosecutorial practices and interaction with the Director of Public Prosecutions, be reported on as part of the committee's Inquiry into the Commission's investigation of former councillors of Logan City Council; and related matters.

Queensland Government response: Noted.

The Queensland Government will consider any recommendations made by the Committee in its report on the Inquiry into the Commission's investigation of former councillors of Logan City Council; and related matters, and will respond in due course as required under the *Parliament of Queensland Act 2001*.

Recommendation 26 -

The Committee recommends there be an ongoing dialogue between the Commission and relevant Queensland and Commonwealth authorities to ensure all possible forms of

foreign influence or interference are subject to scrutiny and investigation by relevant agencies.

Queensland Government response: Noted.

The Queensland Government notes this recommendation is addressed to the Commission.

The Queensland Government notes that responses to issues involving foreign actors are matters for the Commonwealth Government under the foreign affairs power in the Australian Constitution.

Recommendation 27 -

The Committee recommends the CC Act be amended to require that the chairperson of the Committee is a member of the Opposition, and also one of the members nominated by the Leader of the Opposition to the Committee.

Queensland Government response: Not supported.

While the Queensland Government acknowledges the concerns raised with the Committee about the fact that the practice of the appointment of a non-government Member as chairperson of the Committee is not enshrined in legislation, it considers that further prescription to entrench the established convention that a non-Government member be appointed as chairperson is not appropriate and is a matter best left to the Parliament. The Queensland Government does not propose to enshrine this practice into legislation which may inappropriately bind future governments.

Recommendation 28 -

The Committee recommends that section 314 of the CC Act be amended, to clarify that the parliamentary commissioner has the function to investigate on his or her own initiative a matter which relates to the conduct of a Commission officer, that would, if the person were an officer in a unit of public administration, be corrupt conduct.

Queensland Government response: Supported.

The Queensland Government notes the Committee's comment that the parliamentary commissioner already has the power to ask the Committee to investigate a matter, and agrees it would be preferable and prudent to clarify the parliamentary commissioner can investigate on their own initiative a matter which relates to a Commission officer in relation to conduct that would be corrupt conduct.

Recommendation 29 -

The Committee recommends the Commission develop and deliver additional training and educational material.

Queensland Government response: Noted.

The Queensland Government notes that this recommendation is directed to the Commission and supports ongoing training and education material to help departments and agencies build capacity and understand best practice and compliance expectations.

The Queensland Government notes advice from the Commission that it is constantly reviewing its suite of publications and training materials with a view to developing education material to build capacity within stakeholder entities.

Recommendation 30 -

The Committee recommends that the Commission engage with the Department of Justice and Attorney-General if issues regarding application of the *Human Rights Act 2019* arise, to ensure the Commission's powers are not inadvertently undermined.

Queensland Government response: Noted.

The Queensland Government notes that this recommendation is directed to the Commission.

While the Government acknowledges that human rights protected under the *Human Rights Act 2019* are not absolute, it notes that the Act forms an important part of a framework to help build a culture across the Queensland public sector, including the Commission, that respects and promotes human rights and to promote a dialogue about the nature, meaning and scope of human rights in Queensland.