

Crime and Corruption Amendment Bill 2023

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Tim Nicholls MP, Shadow Attorney-General make this statement of compatibility with respect to the Crime and Corruption Amendment Bill 2023.

In my opinion, the Crime and Corruption Amendment Bill 2023 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The purpose of the Bill is to remedy the deficiency in the reporting powers of the *Crime and Corruption Act 2001* (CCC Act) found by the High Court in *Crime and Corruption Commission v Carne* [2023] HCA 28.

The Bill will also reverse a 2018 amendment that omitted the Director of Prosecutions from s.49 of the CCC Act (s12 Crime and Corruption and Other Legislation Amendment Act 2018). The reversal of the 2018 amendment was recommended by both the PCCC (Parliamentary Crime and Corruption Committee Report No. 108, 57th Parliament, Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters, December 2021) and the Commission of Inquiry relating to the Crime and Corruption Commission.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The Bill will, remedy the deficiency in the reporting powers of the Crime and Corruption Commission found by the High Court in the matter of *Crime and Corruption Commission v Carne* [2023] HCA 28. This has the potential to conflict with three sections of the *Human Rights Act*.

Section 25 outlines a right to not to have a person's reputation unlawfully attacked. The subject of a Crime and Corruption Commission report may be found to not have committed

an offence, but the investigation may raise issues that raise a deficiency with good governance that needs to be addressed. This may include the contributing actions of an individual which, when made public, could affect that person's reputation.

However, the Crime and Corruption Commission's legislated role to continuously improve the integrity of, and to reduce the incidence of corruption, in the public sector needs to be noted. Any subsequent impact on a person's reputation due to the release of a report created in the due process of the Commission undertaking their legislated function would not be unlawful and is justified.

Section 31 refers to a right to a fair hearing for both criminal offences and civil proceedings and to have the "charge or proceeding decided by a competent, independent and impartial court or tribunal". The passing of this legislation would set aside a decision of the court.

There has been a long-held understanding that the *Crime and Corruption Commission Act 2001* gave the Commission the ability to table reports in Parliament. The decision of the court reflected the inconsistency between the intent of the legislation and the wording of the legislation. This Bill will rectify the legislation to ensure it is consistent with the original intent.

Any inconsistency with either of these sections of the *Human Rights Act 2019* can be justified on the basis of the overriding importance of preventing corruption and ensuring open and transparent government.

Section 35 refers to retrospective criminal laws however this clause specifically refers to criminal offences. As this was a civil proceeding this clause does not apply.

Conclusion

In my opinion, the Crime and Corruption Amendment Bill 2023 is compatible with human rights under the *Human Rights Act 2019* because they limit human rights only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the Act.

TIM NICHOLLS MP
SHADOW ATTORNEY GENERAL
SHADOW MINISTER FOR JUSTICE
SHADOW MINISTER FOR CBD ACTIVATION
MEMBER FOR CLAYFIELD