

J 15/2/24

## Terms of Reference

### Public reporting on corruption matters

#### Background

The Crime and Corruption Commission (CCC) is established under the *Crime and Corruption Act 2001* (CC Act). The origins of the CCC date back to the Fitzgerald Inquiry Report in 1989 and it has been subject to various reforms, including in 2001 when the then Criminal Justice Commission and Queensland Crime Commission were merged into the Crime and Misconduct Commission.

One of the main purposes of the CC Act, as set out in section 4, is to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector. Section 5 provides that the CC Act's purposes are to be achieved primarily by establishing the CCC, which is to have investigative powers, not ordinarily available to the police service, that will enable it to effectively investigate major crime and criminal organisations and their participants and also that the CCC is to:

- (a) investigate cases of corrupt conduct, particularly more serious cases of corrupt conduct; and
- (b) help units of public administration to deal effectively and appropriately with corruption by increasing their capacity to do so.

Since its inception the CCC has, from time to time, prepared and published reports relating to individual corruption matters.

Until recently, the CCC's authority to prepare and publish these reports, and make other relevant public statements, had not been challenged or tested before a court.

However, in *Crime and Corruption Commission v Carne* [2023] HCA 28 (the High Court decision), the High Court found that, while the CCC could report generally in relation to the performance of its corruption functions, it does not have (and never has had) the ability to publicly report on individual corruption matters through section 69(1)(b) or any other provision of the CC Act.

Following the High Court decision, the CCC Chairperson issued a statement acknowledging the decision and stating that the CCC would seek urgent legislative amendments. The CCC is of the view that having the ability to report on corruption matters is vital so that the public, the public sector and elected officials can understand the reasons for and outcomes of the CCC's activities.

The Government acknowledges the need to legislate new reporting powers for the CCC, while also recognising that the publishing of reports relating to individual corruption matters raises complex legal, ethical and human rights issues.

Accordingly, the Government has initiated this review to ensure that any legislative amendments strike a proper balance between the rights of the individual and the broader public interest.

## Terms of Reference

1. I, YVETTE MAREE D'ATH, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence (Attorney-General), appoint the Honourable Catherine Holmes AC SC (the reviewer) to review and consider issues relating to public reporting by the CCC on corruption matters.

## Scope

2. The reviewer is asked to examine the issue of the ability of the CCC to publicly report and make public statements in performing its corruption functions, particularly in relation to the investigation, assessment, consideration or disposition of individual corruption matters (whether ongoing or concluded).
3. Arising from their examination of these matters, the reviewer is to make recommendations on appropriate legislative amendments to enable the CCC to publicly report and make statements in performing its corruption functions.
4. In making their recommendations, the reviewer is asked to consider:
  - (a) how and when such reports or statements should be published;
  - (b) the content of such reports or statements, including the desirability of requiring or limiting the inclusion of certain information in the reports or statements;
  - (c) whether the legislative amendments should be made to operate retrospectively; and
  - (d) any other matters relevant to (a),(b) or (c).
5. The review is not asked to examine:
  - (a) reporting in relation to the procedures and operations of State courts or the procedures and practices of the registry or administration offices of State courts;
  - (b) public reporting in respect of any of the CCC's other functions (e.g., its crime functions);
  - (c) any prohibition on the publicising of allegations and complaints of corrupt conduct by third parties;
  - (d) the issues of parliamentary privilege explored in the High Court decision; or
  - (e) other issues relating to the operation of the CC Act or its powers and functions relating to corruption investigations, including for example provisions relating to the holding of hearings.
6. In undertaking this review, the reviewer should have regard to:
  - (a) the High Court decision and other relevant case law;
  - (b) relevant provisions of the CC Act and legislative history of provisions relating to public reporting;
  - (c) the need for accountability, transparency, openness, public trust and community confidence in government, public administration and integrity bodies in Queensland;
  - (d) principles of procedural fairness, the rule of law and the right of a person to a fair trial, the right to privacy and reputation and need to ensure

- prosecutions, legal proceedings and other actions arising out of a corruption investigation are not improperly or unduly compromised or prejudiced;
- (e) the need to ensure Queensland's laws reflect contemporary community standards;
  - (f) the findings and recommendations of relevant reviews and inquiries relating to the CCC, including the Commission of Inquiry relating to the Crime and Corruption Commission undertaken by the Commissioners, the Honourable Gerald Edward (Tony) Fitzgerald AC QC and the Honourable Alan Wilson QC and PCCC Report No. 106, *Review of the Crime and Corruption Commission's activities* (June 2021);
  - (g) the views of the CCC and other relevant experts, including those with specialist expertise in corruption investigations and corruption prevention and human rights;
  - (h) the legislation, operation, practices and procedures in other jurisdictions within Australia and overseas relating to public reporting on corruption;
  - (i) recent developments, reform, and other research in other Australian and international jurisdictions relevant to public reporting on corruption and related human rights;
  - (j) the compatibility of the recommendations with the *Human Rights Act 2019*; and
  - (k) any other matters that the reviewer considers relevant.

### **Consultation**

The reviewer shall consult with any person or entity in or outside Queensland considered relevant having regard to the issues relating to the review, including but not limited to:

- (a) the CCC Chairperson, Director of Public Prosecutions and Queensland Police Commissioner; heads of government departments and agencies; and
- (b) the Queensland Human Rights Commissioner.

### **Timeframe**

The reviewer is to provide a final report to the Attorney General by 20 May 2024, unless otherwise extended, and may provide the final report at an earlier date if possible.

Dated 15 February 2024

**YVETTE D'ATH MP**

Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence

**Queensland Legislative Assembly**

Number: 5724T199



15 FEB 2024

Tabled

By Leave

MP: Hon D'Almeida

Clerk's Signature: [Signature]