



Crime and Corruption Amendment Bill 2015

Report No. 21, 55th Parliament
Legal Affairs and Community Safety Committee
March 2016

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Abbreviations

AIA	<i>Acts Interpretation Act 1954</i>
Attorney-General	The Honourable Yvette D’Ath MP, Attorney-General and Minister for Justice and Minister for Training and Skills
Bill	Crime and Corruption Amendment Bill 2015
Callinan-Aroney Report	The 2013 Review of the <i>Crime and Misconduct Act</i> undertaken by the Hon Ian Callinan AC and Professor Nicholas Aroney
Committee	Legal Affairs and Community Safety Committee
Department	Department of Justice and Attorney-General
CCA	<i>Crime and Corruption Act 2001</i>
CCC	Crime and Corruption Commission
CEO	Chief Executive Officer
FAA	<i>Financial Accountability Act 2009</i>
FLPs	Fundamental legislative principles
LACSC	Legal Affairs and Community Safety Committee
LGAQ	Local Government Association of Queensland
PCCC	Parliamentary Crime and Corruption Committee
PCCC Review	A review by the PCCC of the CCC’s operations
Parliamentary Commissioner	Parliamentary Crime and Corruption Commissioner
QCCL	Queensland Council for Civil Liberties
QLS	Queensland Law Society
QPUE	Queensland Police Union of Employees
UPA	Unit of Public Administration
2014 Amendments	<i>Crime and Misconduct and Other Legislation Amendment Act 2014</i>

Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Crime and Corruption Amendment Bill 2015.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank the Department of Justice and Attorney-General and Parliamentary Service staff for their assistance.

I commend this Report to the House.

A handwritten signature in blue ink that reads "M. Furner".

Mark Furner MP

Chair

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (the committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Police Service
- Fire and Emergency Services
- Training and Skills.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- for subordinate legislation – its lawfulness.

1.2 Inquiry process

On 1 December 2015, the Hon Yvette D'Ath, Attorney-General and Minister for Justice and Minister for Training and Skills (Attorney-General), introduced the Crime and Corruption Amendment Bill 2015 (the Bill) into the House. In accordance with Standing Order 131 of the Standing Rules and Orders of the Legislative Assembly, the Bill was referred to the committee for detailed consideration. By motion of the Legislative Assembly, the committee was required to report to the Parliament by 1 March 2016.

The committee invited written submissions from the public, and from identified stakeholders, to be received by Friday 22nd January 2016.

The committee received written briefing material from the department and received seven submissions by the closing date (see Appendix A for a list of submitters). The committee also received written advice from the department in respect of matters raised in submissions. This documentation is all published on the committee's Inquiry webpage.

The committee received a second and oral briefing on the Bill from the Department of Justice and Attorney-General (the department) and heard from witnesses invited to give evidence and respond to questions on the Bill at a public hearing on 17th February 2016 at Parliament House in Brisbane.

In addition to the submissions made to this Inquiry, the committee has had the benefit of considering relevant submissions made to the statutory review of the CCC currently being undertaken by the PCCC, another committee of the Queensland Parliament.

See Appendix B for details of the public hearing, briefings and private meetings undertaken as part of the inquiry process.

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

1.3 Policy objectives of the Crime and Corruption Amendment Bill 2015

The objectives of the Bill are to:

1. Provide that the Crime and Corruption Commission (CCC) chief executive officer (CEO) is not a CCC commissioner
2. Retain a five member commission and three part time commissioners, two of whom are ordinary commissioners
3. Require bipartisan support of the Parliamentary Crime and Corruption Committee (PCCC) for the CEO appointment
4. Limit temporary appointments for the CCC chair, commissioners and CEO to three months, unless there is bipartisan PCCC support
5. Reinststate the CCC's corruption prevention function as well as the CCC's independence when undertaking its research function
6. Allow complaints to be made anonymously to the CCC
7. Restore gender neutral language to the title of the CCC chair positions
8. Support efficient performance of the CCC's day to day financial management by removing the current prohibition on the CEO sub-delegating the financial accountability functions under the *Financial Accountability Act 2009*.

In achieving its objectives, the Bill amends the following legislation:

- *Crime and Corruption Act 2001*
- *Child Protection (Offender Reporting) Act 2004*
- *Criminal Code*
- *Criminal Proceeds Confiscation Act 2002*
- *Evidence Act 1977*
- *Judges (Pension and Long Leave) Act 1957*
- *Police Powers and Responsibilities Act 2000*
- *Police Service Administration Act 1990*
- *Prostitution Act 1999*
- *Public Interest Disclosure Act 2010*
- *Telecommunications Interception Act 2009*
- *Witness Protection Act 2000*
- *Police Service Administration Act 1990*
- *Right to Information Act 2009*.²

1.4 Background

By way of background to the Bill, the department advises:

² All apart from the first Act relate to amendments for chair references or other consequential amendments.

Election commitments

Prior to the 2015 State election, the government made several election commitments in relation to the CCC. The government has already implemented some of these commitments, for example, providing in the *Electoral and Other Legislation Amendment Act 2015* for a pension for the CCC chair; and also the appointment of a permanent CCC chair who commenced duties on 1 September 2015.

The government made other commitments in respect of the CCC, including:

- a) restoring bipartisan support of the PCCC into the appointment process for the CEO
- b) limiting temporary appointments for the CCC chair, commissioners and CEO to three months, unless there is bipartisan support
- c) ensuring the CEO is not a CCC commissioner
- d) reinstating the CCC's corruption prevention function, as well as the CCC's independence when undertaking its research function
- e) allowing complaints to be made anonymously to the CCC
- f) widening the definition of 'corrupt conduct'.

The Bill seeks to implement commitments (a)-(e). In relation to election commitment (f), the Attorney-General indicated in her Introductory Speech on 1 December 2015, that in 2016, the government will be releasing for public consultation an Issues Paper on the definition of corrupt conduct.³

Current PCCC review

The Bill has been introduced at a time when there is a simultaneous, wider, statutory review of CCC operations by the PCCC. The PCCC review will cover all aspects of the CCC's operations and the report on the review is due by 30 June 2016 (PCCC Review). The Attorney-General stated that:

...There may be ways to further improve the CCC's governance. However, before making any further changes the government wants to carefully consider recommendations that may arise from the Parliamentary Crime and Corruption Committee's current review of the CCC...⁴

1.5 Consultation on the Bill

The explanatory notes advise that the following were engaged by the government through an invitation to comment on a consultation draft as part of the development of the Bill:

The Queensland Law Society; the Bar Association of Queensland; the Queensland Council for Civil Liberties; the Centre for Governance and Public Policy Griffith University; the Institute for Ethics, Government and Law Griffith University; the Accountability Round Table; the Law and Justice Institute (Qld) Inc; the Queensland Police Commissioned Officers' Union of Employees; the Queensland Police Union of Employees; the PCCC; the Parliamentary Crime and Corruption Commissioner (parliamentary commissioner), the CCC and the Queensland Ombudsman.

In relation to the advice received from those stakeholders, the explanatory notes stated:

The majority of stakeholders were supportive of the Bill. A number raised other issues, for example, relating to corporate governance; the powers of commissioners, chair, CEO and parliamentary commissioner; and whether the CCC's functions in relation to crime and corruption should be carried out by separate entities. These issues may be considered as part of the Parliamentary Crime and Corruption Committee's (PCCC) current review of the CCC

³ Department written briefing, 17 December 2015, p 3.

⁴ Hansard transcript (Introductory speech) 1 December 2015, p 2969.

(which is due to report by 30 June 2016). The Queensland Police Union of Employees (QPUE) considers that the Bill is premature given the PCCC review and opposed particular aspects of the Bill.⁵

1.6 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed.

In this instance, the committee was not able to reach a majority decision on a motion to recommend that the Bill be passed and therefore in accordance with section 91C(7) of the *Parliament of Queensland Act 2001*, the question on the motion failed.

⁵ Explanatory notes, p 3.

2. Examination of the Crime and Corruption Amendment Bill 2015

This section examines the key amendments proposed in the Bill.

2.1 CEO - not a commissioner

Current law

Currently, section 223 of the CCA which relates to the membership of the commission, provides for the CEO to be a full time commissioner.⁶ Consequently, the five member commission is inclusive of the CEO position.

The position of CEO as distinct from the chairman was created in the 2014 amendments to the CCA.⁷ Prior to 2014 the functions of the chairman and CEO were the responsibility of one commissioner. These amendments formed part of the government response to a 2013 review of the *Crime and Misconduct Act* undertaken by the Hon Ian Callinan AC and Professor Nicholas Aroney (the Callinan-Aroney report).⁸

Proposal under the Bill

Clause 18 of the Bill seeks to amend section 223, retaining the CEO position but providing that the CEO will not be a commissioner.⁹ This is considered to be in line with best practice governance arrangements, ensuring the CEO position is accountable to the five member commission.¹⁰

The CEO will continue to be a Governor-in-Council appointment with existing requirements for advertising of the position, termination (by Governor-in-Council), resignation, leave of absence, disclosure of interest and duration and terms of appointment continuing to apply.¹¹

The Bill would make consequential amendments to maintain the status quo, despite the CEO no longer being a commissioner. This is to ensure consistency with the Attorney-General's Introductory Speech which indicated the government would wait for any recommendations from the current PCCC Review of the CCC before making further changes to the CCC's governance.¹²

For example, clause 41 of the Bill would maintain the requirement for the CCC chair to notify the parliamentary commissioner about the CEO's improper conduct, even though the CEO will no longer be a commissioner. The current requirement for the CEO to notify the parliamentary commissioner of improper conduct by other CCC officers, will similarly be maintained.¹³

The Bill would retain the current requirements for the parliamentary commissioner to make recommendations and report to the minister (here, the Attorney-General) or the PCCC about an investigation into the CEO's conduct (even though the CEO will no longer be a commissioner).¹⁴

It is noted that the department plans to consider changes to notification and reporting requirements in the context of any relevant recommendations arising from the current PCCC Review.¹⁵

⁶ *Crime and Corruption Act 2001*, s 223(c).

⁷ *Crime and Misconduct and Other Legislation Amendment Act 2014*, s 34.

⁸ <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T2447.pdf>

⁹ Crime and Corruption Amendment Bill 2015, clause 18.

¹⁰ Hansard transcript, 1 December 2015 (Introductory speech), p 2969.

¹¹ Crime and Corruption Amendment Bill 2015, clauses 19-29.

¹² Record of Proceedings (Hansard), 1 December 2015, p 2969.

¹³ Crime and Corruption Amendment Bill 2015, clause 41.

¹⁴ Crime and Corruption Amendment Bill 2015, clauses 39 and 40.

¹⁵ Department written briefing, 17 December 2015, p 8.

Discussion

None of the submissions to the committee's Inquiry raised any issues with the proposal that the CEO not be a commissioner.

The CCC advised the committee at its public hearing that it supported the proposal.¹⁶

2.2 Corporate governance

2.2.1 Retain five member commission

Current law

Currently, under the CCA, the commission consists of five commissioners: chair (full time), deputy chair (part time), chief executive officer (CEO) (full time) and two ordinary commissioners (part time).¹⁷

Proposal under the Bill

Clause 18 of the Bill would retain a five member commission by providing for the commission to have an additional ordinary commissioner in place of the position the Act currently specifies is held by the CEO, who would no longer be a commissioner.¹⁸

Discussion

The department states in its written briefing that the maintenance of a five member CCC ensures a broad range of expertise within the commission, derived from the additional ordinary commissioner that would be appointed (in place of the CEO) ¹⁹

No submissions to the committee's Inquiry specifically addressed this amendment.

2.2.2 Corporate governance issues raised – out of scope

Submissions to the inquiry raised several important corporate governance issues that are out of scope for this inquiry. They will be stated briefly here along with the department's response.

The CCC submitted in relation to corporate governance:

- That the CCC chair be subject to the direction of the commission.
- That the minister be required to consult with the CCC chair before nominating a person for appointment as a commissioner to identify the skill sets and experience of the current commissioners and the additional skills the commission needs to meet its statutory obligations.
- That the commissioners other than the chair and deputy chair be referred to as part time commissioners rather than ordinary commissioners.
- That delegation powers (former section 269(1)) existing prior to the 2014 amendments be reinstated as there is uncertainty currently about whether the functions and powers which are statutorily delegated can also be exercised by the commission and whether the commission can delegate its functions and powers to commission officers generally.²⁰

¹⁶ Submission No. 5, p 2.

¹⁷ *Crime and Corruption Act 2001*, s 223.

¹⁸ Crime and Corruption Amendment Bill 2015, clause 18.

¹⁹ Department written briefing, 7 December 2015, p 8.

²⁰ Submission No. 5, pp 2-5.

In response to these issues, the department stated that the Bill is about the implementation of the government's election commitments in respect of the CCC. DJAG notes the PCCC's review of the CCC includes an examination of the CCC's corporate governance. DJAG recommends the CCC's proposed amendments be assessed in the context of any recommendations to corporate governance that arise from the PCCC's review of the CCC.²¹

Specifically, in relation to the last point raised by the CCC, the department also recommended that to avoid uncertainty about the application of delegation powers, the CCC should seek its own legal advice.²²

2.3 Bipartisan PCCC support (including temporary appointments)

Current law

The CCA currently provides the ability for the PCCC to veto the CEO appointment nomination.²³ This was one of the 2014 amendments, along with the establishment of the CEO position. This is distinguished from the requirement for bipartisan PCCC support for the appointment of the other commissioners, including the chairman, which was retained in the current Act.

Proposal under the Bill

Clause 23 of the Bill amends section 228 of the CCA to remove the current ability for the PCCC to veto the CEO appointment nomination; and provides that the appointment nomination can only proceed with bipartisan PCCC support.²⁴ This is consistent with the provisions in respect of appointing commissioners.

This triggers the definition in the CCA for bipartisan support, which is unchanged since the Act's inception in 2001:

***Bipartisan support**, of the parliamentary committee, means—*

(a) support of the members of the parliamentary committee unanimously; or

(b) support of a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Legislative Assembly.²⁵

In effect, this means that an appointment nomination may proceed with the support of a majority consisting of government members and any non-government member (e.g. a cross bench member).

The Bill also seeks to amend the appointment arrangements for temporary acting commissioners. Clause 28 of the Bill inserts a new section 237 which provides that a person may not be appointed to act in the office of CCC chair, deputy chair, ordinary commissioner or the CEO for:

- a continuous period of more than three months, or
- a period that, with the periods of other appointments of the person to act in the office, forms a continuous period of more than three months

unless the Minister recommends the person for appointment with bipartisan PCCC support.²⁶

²¹ Department response, 9 February 2016, pp 5, 7-8.

²² Department response, 9 February 2016, pp 5, 7-8.

²³ *Crime and Corruption Act 2001*, s 228.

²⁴ Crime and Corruption Amendment Bill 2015, clause 23.

²⁵ *Crime and Corruption Act 2001*, sch 2.

²⁶ Crime and Corruption Amendment Bill 2015, clause 28.

Discussion

The requirement for bipartisan support, rather than a right of veto, for the appointment of the CEO has been advocated from many sources.

In its written submission to this Inquiry, the CCC supported the amendment.²⁷

In his submission to the PCCC Review former CCC commissioner Mr Philip Nase suggests the principle of independence is breached by factors including the lack of necessary bipartisan support for this position:

The independence principle is breached by:

- (i) *the fact executive government retains the power to appoint the CEO without bipartisan agreement. The CEO is the second most powerful figure in the CCC and appoints the most senior officers of the CCC. The CEO has the power to give directions to investigators which may determine what investigations proceed and what investigations do not proceed;*

...

An endorsement for bipartisan support for commissioners also came from Professor Charles Sampford in his submission to this Inquiry:

...requiring bipartisan support for commissioners is an excellent risk management strategy. One does not have to suspect, let alone accuse, a government of harbouring such intentions. One does not even have to suspect that a particular government is likely to give in to that temptation. The question is whether it is wise to create a temptation where none has been present for a quarter of a century.²⁸

2.4 Corruption prevention function

Current law

The 2014 amendments removed the CCC's responsibility for the prevention of corruption in Units of Public Administration (UPAs), including the responsibility to raise the standards of integrity and conduct within a UPA.²⁹ The function was transferred to the Public Service Commission, in line with recommendations of the Callinan-Aroney report. That review indicated that promoting due diligence in the public sector was more properly a function of the Public Service Commission, and emphasised the role of management within the public sector in respect of corruption prevention. The current law thus does not provide for the CCC to have a corruption prevention function in this sphere.

Proposal under the Bill

The Bill seeks to amend section 23 of the Act to provide that the CCC has a function to help prevent corruption. Clause 7 amends section 24 which outlines how the CCC is to perform its prevention function, and clause 9 replaces sections 33 and 34, which set out the CCC's corruption prevention function and principles for performing that function.³⁰

²⁷ Submission No. 5, pp 3-4; Crime and Corruption Amendment Bill 2015, clause 28.

²⁸ Submission No. 6, p 14.

²⁹ *Crime and Misconduct and Other Legislation Amendment Act 2014*.

³⁰ Crime and Corruption Amendment Bill 2015, clauses 6, 7 and 9.

Discussion

There is widespread support for the Bill's provision that the CCC regain a corruption prevention function, including in submissions to the PCCC Review. In its submission to the PCCC Review, the QLS stated its concerns with the current law:

Fundamentally, the Society considers it critically important to ensure that the CCC remains an independent, apolitical corruption watchdog. The principal concerns of the Society are:

- *The CCC's purpose should be equally focused on dealing with organised crime and corruption;*
- *The effect, and unintended consequences, that removing the CCC's preventative function in relation to corruption might result in.³¹*

The CCC in its submissions to the PCCC Review and to this Inquiry, indicated that there is a continuing role for the CCC in corruption prevention within the public sector and that it should be reinstated.³² The CCC also took its support one step further with a suggestion for enhancing its corruption prevention capabilities:

The CCC welcomes the reinstatement of this function but recommends that it be supported by express legislative powers to enable public sector agencies to release to the CCC information and intelligence, including systems data.³³

The department, in its response to the CCC's suggestion regarding the release of systems data to assist its corruption prevention function, reiterated that the Bill was focused on implementing specific election commitments. It also noted the PCCC Review of the CCC includes an examination of the CCC's powers and advised that *[a]ny additional changes to the CCC's powers of the CCC require careful consideration and should ideally await the PCCC's review of the CCC.³⁴*

One submission to this Inquiry queried the effectiveness of the past official misconduct prevention function of the then CMC and considers that *the expectation that departments will investigate their own corruption and 'build their own capacity' to prevent their own corruption in unrealistic and 'facilitates corruption'.³⁵*

The department noted that all corruption entities in Australia have a function to prevent corruption. In terms of the degree to which public sector entities should be responsible for addressing corruption in their own organisations, DJAG notes the PCCC current review of the CCC which: *specifically examines the application by the CCC of the devolution of responsibility for corruption matters to the Queensland Police Service and public sector agencies.³⁶*

2.5 Independent research function

Current law

Under the current law as amended in 2014, the CCC is required, as soon as practicable at the end of each financial year, to submit to the minister a research plan for approval.³⁷ The minister may approve research into an emergent issue as it arises, as long as the issue is relevant to one of the organisation's

³¹ Submission No. 25 to PCCC Review, p 17.

³² Submission No. 14 to PCCC Review, p 68.

³³ Submission No. 5, p 2.

³⁴ Department response, 9 February 2016, p 4.

³⁵ Submission No. 4, p 2.

³⁶ Department response, 9 February 2016, p 4.

³⁷ *Crime and Corruption Act 2001*, ss 52(1), 52(2).

functions.³⁸ Before approving a research plan or an amendment the minister must consult with the parliamentary committee.³⁹

Proposal under the Bill

The Bill provides that the CCC's research function would become that which existed prior to the 2014 amendments.⁴⁰ This would remove the requirement for ministerial approval of the CCC's research plan, and give a broader scope to the CCC's research functions than exists at present.

Discussion

Support has been expressed for the CCC to have an independent research function. The QLS in its submission to the PCCC Review listed the restriction of the research function of the CCC as one of its principal concerns and suggested that the restriction (particularly the requirement of ministerial approval for research undertakings) may reduce the independence of the institution.⁴¹

The QLS further states in support of the CCC research function:

*The research and education component of the CCC's previous role is also significant. It is one of the few organisations not being a higher education institution conducting significant research in regard to the area of the criminal justice system.*⁴²

The QCCL highlighted the importance of the CCC research function:

*One of the most valuable functions formerly performed by the Commission was independent research. The Commission's capacity to make independent decisions to undertake research into the criminal justice system should be restored.*⁴³

The CCC voiced its concerns about its current research function in a submission to the PCCC Review:

*The requirement for the CCC's research program to be approved by the Minister undermines the independence of the CCC and its research. While requiring that the Minister consults with the parliamentary committee was envisaged to prevent a partisan position being taken on the CCC's agenda, arguably, the CCC's research should be determined by it alone.*⁴⁴

The practical implications of the current law were drawn out at the public hearing. In response to a committee question about the CCC research function, the CCC stated:

*To deviate from that [the approved research plan] lawfully we have to get the Attorney's further consent. For reasons that are not the Attorney's fault, that can take some time. Our whole process of needing to be adaptive, flexible and responsive to trends as they change and develop is impeded by having to go back to the Attorney each time to seek consent to deviate from our approved plan. Logistically, it is a difficult thing that should not impede the work of an independent integrity agency like ourselves.*⁴⁵

At the public briefing for this Inquiry, the scope of the CCC's proposed research function was queried in relation to police. In response to a committee question asking whether the CCC proposed research

³⁸ *Crime and Corruption Act 2001*, s 52(4).

³⁹ *Crime and Corruption Act 2001*, s 52(5).

⁴⁰ *Crime and Corruption Amendment Bill 2015*, clause 14.

⁴¹ Submission No. 25 to PCCC Review, p 17.

⁴² Submission No. 25 to PCCC Review, p 14.

⁴³ Submission No. 26 to PCCC Review, p 2.

⁴⁴ Submission No. 14 to PCCC Review, p 26.

⁴⁵ Hansard transcript, public hearing, 17 February 2016, p 2.

function would provide an express responsibility to undertake research into police, the department stated:

With regard to new section 52(2) that is being inserted by the bill, without limiting the opening section which is proposed section 52(1) of the bill relating to the research function to support the performance of the CCC's functions, the CCC can undertake research into Police Service methods of operations, police powers and the use of police powers, law enforcement by police and the continuous improvement of the Police Service, and that is really as the provision was prior to those 2014 amendments.⁴⁶

2.6 Anonymous complaints

Current law

Currently, there is a requirement for complaints to the CCC to be made by way of statutory declaration, unless exceptional circumstances exist.

Exceptional circumstances include where the person making the complaint—

- *fears retaliation for making the complaint in relation to the person's employment, property, personal safety or well being*
- *is illiterate, or not literate in English*
- *has a disability or impairment that affects the person's ability to make the complaint by statutory declaration*
- *has a personal or physical disadvantage that makes it difficult or impossible for the person to make the complaint by statutory declaration*
- *is a child.⁴⁷*

Prior to the 2014 amendments, complaints could be anonymous.

The rationale for the 2014 amendment was to reduce frivolous and vexatious complaints.

Proposal under the Bill

The Bill proposes to remove the requirement for complaints about corruption to be made by statutory declaration. This would mean that people could make anonymous complaints to the CCC regardless of whether exceptional circumstances exist.⁴⁸ The rationale for this amendment is to '*foster a culture that encourages complaints about corruption to be made*'.⁴⁹

Discussion

No other Australian jurisdiction requires complaints to anti-corruption bodies to be made by statutory declaration.⁵⁰

Professor Sampford, at the public hearing for this Inquiry, emphasised the significance of confidentiality when initially making a genuine complaint to the CCC. He states its importance for the integrity of the political process, to increase the chance the corrupt conduct will be caught and reduce the chance of mischief such as evidence being destroyed:

⁴⁶ Hansard transcript, public briefing, 17 February 2016, p 3.

⁴⁷ *Crime and Corruption Act 2001*, s 36(3).

⁴⁸ Crime and Corruption Amendment Bill 2015, clause 13.

⁴⁹ Hansard transcript, 1 December 2015 (Introductory speech), p 2970.

⁵⁰ Department written briefing, 17 December 2015, p 6.

The other thing, as I said, is that if the person who is accused possibly is corrupt the last thing you want to do is alert them to it. This also comes back to the first point. Somebody who makes a public allegation like that has an incentive to besmirch his or her opponents. Also, if he is genuine about wanting to find corruption, in that case he should not be doing it publicly. Just like when you make a report to the police this does not mean the police or the CCC might not put out a public statement and seek more evidence, but that is as part of their process and they make that judgement, not the complainant. I think it is very important both for the integrity of our political process and so that the corrupt are likely to be caught, because the last thing you want to do is give them advance notice so they can destroy evidence and think up alibis and so forth.

How do we achieve this? I think confidentiality should be required and it is hardly as if the CCC can say, 'Because confidentiality has been breached, we cannot investigate it.' I think the thing is the potential criminal penalties for basically revealing information about a corruption inquiry or a potential corruption inquiry. That is why I think that criminalisation is possible. There should be exceptions of course. If somebody has a complaint that it has not been handled six months later, then they can go to the PCCC. I am not saying this is permanent but I think that you want to have quite strong sanctions against those who, in my view, are abusing the process.⁵¹

While support was expressed to the committee for providing the ability for a person to make an anonymous complaint, there were some submitters who raised issues with the proposed amendment.

The LGAQ opposes the proposed amendment and argues that in removing the requirement for a complaint to be made by statutory declaration, the number of frivolous and vexatious complaints will increase, particularly around politically sensitive times such as the lead up to a council election. The LGAQ considers the exceptional circumstances provisions contain appropriate protections and safeguards.⁵²

Ms Cosser submitted that based on personal experience, she believed a statutory declaration would make it more difficult for: a principal of a school to make a false claim that a parent or child had made a disclosure concerning a teacher; and a CCC officer to falsify the records of a disclosure.⁵³

In response, the department states that the changes are made in accordance with the government's election commitment and notes that no other Australian jurisdiction requires complaints to corruption entities to be made by statutory declaration.⁵⁴

Councillor Heit in her submission to this Inquiry also opposed the proposed amendment citing concerns about anonymous complaints potentially breaching natural justice.⁵⁵ A similar question was raised by the committee at the public hearing and responded to by the CCC:

Essentially not much time has passed since those amendments came in, but there was a reduction in complaints. It is essentially impossible to say that it was due to the requirement to furnish with a stat dec. Whilst we support the notion and the well-intentioned steps that were taken to reduce the making of frivolous and false complaints—that is a very worthwhile exercise and one we would support entirely—the problem with that is, we think—and it is only anecdotal evidence—some people, as you have said I think correctly, will not come forward at all with genuine complaints if they have to make a stat dec that accompanies it. It might be for reasons of literacy, fear of authority, fear of having to put your name to a piece

⁵¹ Hansard transcript, public hearing, 17 February 2016, p 6.

⁵² Submission No. 2, p 1.

⁵³ Submission No. 4, p 9.

⁵⁴ Department response, 9 February 2016, p 2.

⁵⁵ Submission No. 3, p 1.

of paper. Just the sheer overwhelming nature for some people of that exercise would discourage them from coming forward. We think, on balance, it is a far better outcome that we have to deal with some frivolous, vexatious and false complaints rather than lose out on genuine complaints of corruption that should be brought to public attention.

We agree entirely with the idea of natural justice and a person accused knowing their accuser. Bear in mind that, at the initial stage when an anonymous complaint is made, before it would ever go anywhere of significance it would be assessed and, if it is assessed as being potentially corrupt conduct and to be investigated, at some point if it were serious enough there would be a disclosure of the complainant and potentially the complainant would become a witness in, to take the extreme example, of a criminal trial. Before anything of a significant concern to an accused person occurred, they would have an opportunity to understand the allegations and to respond. That can be taken care of in the process. That is not a concern we do not think.⁵⁶

Other submissions, including some to the PCCC Review, gave support to allowing anonymous complaints.

In its submission to the PCCC Review, the CCC stated:

In our experience, complaints accompanied by a statutory declaration are not of any higher quality or value to the CCC. The assessment process is necessarily stalled in cases where we await receipt of the Statutory Declaration. When it is ultimately received, experience has shown it rarely adds anything further to the complaint received in the first instance, and often simply restates the complaint in a sworn format. The CCC's perception is that the complaints received have no greater probative value nor are they more reliable for the requirement.⁵⁷

At the public hearing in response to a question regarding the number of complaints, the CCC indicated there had been a reduction in number of complaints to the PCCC since the 2014 amendments which required complaints to be made by statutory declaration. Data provided in the CCC's submission to the PCCC Review confirms a reduction in total complaints from 3881 in 2013-14, to 2347 in 2014-15. The figure had declined in 2012-13 as well, from a high of 5305 in 2011-12.⁵⁸ The CCC cautions that it is impossible to attribute the 2014-15 reduction to the statutory declaration provision with any certainty, and noted the pre-existing downward trend.⁵⁹

The issue of CCC complaints being used politically was raised. In addressing these comments, the CCC outlined an education campaign:

Over a number of recent election cycles, including this one currently, we have proactively run campaigns in conjunction with the Local Government Association of Queensland to educate candidates and the public as to what is expected and, in particular, to warn candidates that they should not use the CCC as a political vehicle to gain some advantage for themselves or to cause detriment to their opponents. I issued a video on our website that said just that. We conducted a joint press conference with the LGAQ CEO, Greg Hallam, last week. We conducted a joint press conference and we did individual, separate radio interviews that went out to the regions sending that message. In effect, the message was very straightforward: if you run an anonymous campaign—it pointed out the unfairness and often unnecessary reputational damage from false complaints being made to us with the object of gaining an advantage, how that could backfire on the candidate, how the public would be cynical and entitled to be cynical. We have sent that message as much as we can.

⁵⁶ Hansard transcript, public hearing, 17 February 2016, pp 1-2.

⁵⁷ Submission No. 14 to PCCC Review, p 68.

⁵⁸ Submission No. 14 to PCCC Review, pp 49-54.

⁵⁹ Hansard transcript, public hearing, 17 February 2016, pp 1-2.

Pleasingly, in 2008 there was an 80 per cent spike in allegations in the run-up to the elections and in the 2012 election that had dropped to a 40 per cent spike. Any spike is unsatisfactory, for obvious reasons, but the trend is downwards and we are hoping that that is linked to our campaigns to send the message. As part of our message we have also reminded people that it is a criminal offence to make a false allegation to us, and it is a serious criminal offence. We have just sent the message that if you have a complaint that is genuine, come to us, do it confidentially and it will be assessed. It might not be assessed before election day, but it will be taken seriously, and do not make it public for your own advantage.⁶⁰

On questioning about whether there have been prosecutions for making false allegations to date, the CCC advised:

It has never been used, to my knowledge. There comes a time—and this election may be it—when it will be pursued if there are knowingly false complaints made. The time is rapidly approaching when maybe it is time to prosecute because it is a grossly unfair thing to do if there is nothing in it, if it is baseless.⁶¹

Other submissions to the PCCC Review, including the Bar Association and QLS, gave strong support to provisions reinstating anonymous complaints.

In relation to the current provisions the Bar Association stated in its submission to the PCCC Review:

The Association is of the view (broadly held in the community) that corruption agencies succeed best when the public is encouraged to provide information.....sometimes, it is the pattern that emerges from a number of leads, each one unconfirmed, that leads to an important and effective investigation.⁶²

The QLS stated (also to the PCCC Review) in relation to the current statutory declaration requirement:

It must be acknowledged that such means of complaint making could be construed as intimidating potential informants. It also places whistle blowers in a precarious position whereby they are unable to provide information without having to fear recrimination and retribution. Such fears would be founded.

...

The reality of fighting corruption means that in many instances, people will often not be prepared to come forward and swear to the information they wish to provide.⁶³

2.7 Gender neutral language

Current law & proposal under the Bill

The 2014 amendments changed references in the CCA from ‘chairperson’ to ‘chairman’.⁶⁴ The purpose of the amendments in the Bill are to ensure gender neutral language in the CCA and to reflect contemporary legislative drafting practice.⁶⁵

⁶⁰ Hansard transcript, public hearing, 17 February 2016, p 3.

⁶¹ Hansard transcript, public hearing, 17 February 2016, p 3.

⁶² Submission No. 28 to PCCC Review, p 3.

⁶³ Submission No. 25 to PCCC Review, p 10.

⁶⁴ See generally *Crime and Corruption Act 2001*.

⁶⁵ Crime and Corruption Amendment Bill 2015, clause 45.

Discussion

There is strong support for the use of gender neutral language in the CCA. The Bar Association articulated its views on gender neutral language in its submission to the PCCC Review:

The use of the terms “chairman” and “deputy chairman” are outdated terms. More significantly the amendment to instate their use is an unnecessary provocation to the very many in the community who think so and an unfortunate use in turn of legislation given that could be its only purpose.

The use of gender stereotyping language in legislation should be avoided to reduce the prospect of gender stereotyping in the community.

In his submission to the Bill inquiry, Mr Willis raised several issues relating to gender neutral language. Firstly, he pointed out that following the 2014 amendments, sections 34A and 34B of the *Acts Interpretation Act 1954* (AIA) were amended to allow chairs and deputy chairs of an office to choose their own preferred position title (e.g. chairman or chairwoman). Mr Willis also queried whether the Bill would reinstate gender neutral language for the deputy chair as well as the chair.

The department addressed these issues in both their written response to submissions as well as at the public hearing. The department stated the amendments are not intended to exclude people from relying on them to refer to themselves as chairman or chairwomen, rather to prevent gendered terms in the legislation itself. The department also confirmed the gender neutral language provisions of the Bill will apply for the deputy chair as well as the chair of the CCC.⁶⁶

2.8 Financial management

Current law

Currently, under section 269(4)(c) of the CCA, the CEO is prohibited from sub-delegating the financial accountability functions under the *Financial Accountability Act 2009* (FAA).⁶⁷

Proposal under the Bill

The Bill seeks to remove section 269(4)(c), which will ensure the CEO can delegate this responsibility. Accordingly, the CEO's delegation powers will be consistent with the delegation powers departmental accountable officers have under the FAA.

Discussion

The explanatory notes state that the amendment is to support the efficient performance of the CCC's day to day financial management by removing the current prohibition on the CEO sub-delegating the financial accountability functions.⁶⁸ There were no issues raised with this amendment in submissions.

2.9 Other issues

Some issues, though out of scope of the Bill, were commented on in the department's response to submissions.

⁶⁶ *Acts Interpretation Act 1954*, ss 34A & 34B; Department response to submissions, p 3; Hansard transcript, public briefing, 17 February 2016, p 1.

⁶⁷ *Crime and Corruption Act 2001*, s 269(4)(c); *Financial Accountability Act 2009*.

⁶⁸ Explanatory notes, p 2.

2.9.1 Vetting

The CCC's Personal Security Policy regulates pre-employment vetting procedures and security clearances for CCC officers including commissioners. Commissioners appointed by the Governor-in-Council undergo a CCC security clearance following appointment. The CCC indicated that although unlikely, it is possible that a commissioner, having been appointed under the Act, may fail to meet the Commission's minimum vetting standards. The CCC suggested that it may be useful to develop a protocol between the CCC and the DJAG which requires CCC security vetting prior to an appointment being recommended to Cabinet.⁶⁹

The department response indicated that it would liaise with appropriate CCC officers to discuss the issue and the proposed protocol.⁷⁰

2.9.2 Electoral and Administrative Review Commission

Professor Sampford's submission is supportive of changes in the Bill. The submission refers to and attaches the *Institute for Ethics Governance and Law Griffith University's* submission to the LACSC on the Crime and Misconduct and Other Legislation Amendment Bill 2014 regarding changes to major integrity institutions that should be considered by a permanent body with similar functions to the Electoral and Administrative Review Commission.⁷¹

The department noted the additional issues raised in the attached submission. The department also stated that these issues should await the PCCC's review of the CCC.⁷²

⁶⁹ Submission No. 5, p 3.

⁷⁰ Department response to submissions, p 6.

⁷¹ See generally, Submission No. 6.

⁷² Department response to submissions, p 9.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill.

3.1 Rights and liberties of individuals

The commission’s financial accountability functions under the *Financial Accountability Act 2009* are delegated to the commission’s chief executive officer (CEO) under section 269(1)(a) of the *Crime and Corruption Act 2001* (the CCA).

Section 269(3) expressly allows the CEO to sub-delegate a function or power of the commission delegated to the CEO under subsection (1) to an appropriately qualified commission officer. This power is curtailed in limited circumstances however, including by section 269(4)(c) which prohibits the CEO from sub-delegating the financial accountability functions.

Clause 36 removes section 269(4)(c) of the CCA thereby removing the prohibition on sub-delegation of financial accountability functions.

Removing a prohibition on sub-delegation is not of itself sufficient to permit sub-delegation, due to the operation of section 27A(12) of the *Acts Interpretation Act 1954* (AIA) which requires that, for a sub-delegation to be valid, there be an express authority to sub-delegate.

The combined effect of the clause 36 removal of the section 269(4)(c) prohibition and the general sub-delegation power in section 269(3) means that the commission’s CEO will (from commencement) be able to sub-delegate the commission’s financial accountability functions to an appropriately qualified commission officer.

Section 4(3)(c) of the *Legislative Standards Act 1992* provides that legislation should allow the delegation of administrative power in appropriate cases and to appropriate persons. Delegation includes sub-delegation. Powers should only be delegated to appropriately qualified officers or employees. The appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.⁷³

The explanatory notes advise:

The Bill achieves its objective of supporting the efficient performance of the CCC’s day to day financial management by removing the current prohibition on the CEO sub-delegating the financial accountability functions under the Financial Accountability Act 2009 (FAA). This amendment will mean the CEO’s delegation powers are consistent with the delegation powers departmental accountable officers have under the FAA.⁷⁴

⁷³ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 33.

⁷⁴ Explanatory notes, p 2.

Committee comment

The committee considers that, in light of the safeguard that a sub-delegate has to be appropriately qualified and the administrative convenience that will accompany a sub-delegation below the level of CEO for routine financial accountability obligations, the clause 36 changes facilitating sub-delegation are appropriate.

Appendix A – List of Submissions

No	Name
001	Don Willis
002	Local Government Association of Queensland (LGAQ)
003	Councillor Ros Heit
004	Robina Cosser
005	Crime and Corruption Commission
006	Professor Charles Sampford
007	Office of the Parliamentary Crime and Corruption Commissioner

Appendix B – List of Witnesses

In order of appearance before the Committee:

Public Briefing – Brisbane, 17 February 2016 – Department of Justice and Attorney-General

- Mrs Imelda Bradley, Acting Assistant Director-General, Strategic Policy and Legal Services
- Mrs Leanne Robertson, Director, Strategic Policy
- Ms Bronwen McNeill, Acting Principal Legal Officer

Public Hearing – Brisbane, 17 February 2016 – Crime and Corruption Commission

- Mr Alan MacSporran QC, Chairman
- Mr Forbes Smith, Chief Executive Officer
- Mr Rob Hutchings, Director, Legal Services

Academia

- Professor Charles Sampford, Director, Institute for Ethics, Governance and Law,
Griffith University

NON-GOVERNMENT MEMBERS STATEMENT OF RESERVATION

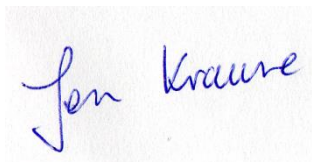
Non-government members of the Committee have concerns about the issues raised by submitters including the LGAQ and Professor Sampford with respect to provisions contained in the Bill that remove the requirement to provide complaints to the CCC by way of statutory declaration (except in exceptional circumstances) and will now provide for anonymous complaints. The LNP opposes these amendments, as set out in the Bill, and further asserts that should the proposed amendments become part of the Crime and Corruption Act 2001 ('CCC Act') the issue of maintaining confidentiality of complaints requires further investigation.

The submission of Professor Sampford that complaints, in relation to crime and corruption, should remain confidential to safeguard the progress of crime and corruption allegations is sensible. His submission supports and reiterates the concerns of the LGAQ and other submitters that CCC complaints may be, and often are, misused for political purposes. The non-government members of the Committee recommend a legal framework, broadly along the lines of that proposed by Professor Sampford, be investigated by the PCCC for implementation as part of its three year review of the CCC. It is disappointing government members of the Committee were unable to agree with this recommendation to prevent the politicisation of the CCC.

Further, non-government members have concerns with the way in which "bipartisan" appointments to the CCC are made with respect to the definition of 'bipartisan support, of the parliamentary committee' as prescribed in the CCC Act. As referred to in the Committee's report, this allows the government to substitute a crossbench MP for a government member of the PCCC with a view to forming a majority, alongside government MPs, on the PCCC in order to satisfy the definition of 'bipartisan support, of the parliamentary committee' per the Act. This possibility has existed since 2001 when the definition of 'bipartisan support, of the parliamentary committee' was inserted into the Act; however, the recent appointment of a CCC Chair with the 'bipartisan support, of the parliamentary committee' as required by the CCC Act but without the support of any members of the Opposition has highlighted that this definition is problematic because it does not reflect what would ordinarily be considered in the community as "bipartisan support". The non-government members contend the ordinary understanding of bipartisan support is support provided by both members of the Government and the Opposition. Concerns were raised in the Committee that the changes made to ensure "bipartisan support" of the PCCC in the appointment of the CEO could be skirted around in the same manner described above by deliberately substituting a crossbench MP for a government member. At present, the Act provides a right of veto to the PCCC (where Government appointed members form a majority) over the appointment of a CEO, making it improbable that the PCCC would veto a government appointee; however it does not require the support of the Opposition for the CEO's appointment. The Bill in question maintains this position and its effect is such that a non-Opposition, non-Government MP (i.e. a crossbencher) – appointed by the Government either permanently or as a replacement to the PCCC – would be able to ensure the Government appointment is provided with 'bipartisan support' without requiring the support of the officially recognised Opposition. The non-government members of the committee would support an amendment to the definition of bipartisan support in the CCC Act, to reflect the true definition of the term, and would consider the model used in Western Australia as something which could be considered as part of this amendment.

The same process applies to the appointment of Commissioners. It is concerning that the prescribed definition of 'bipartisan support, of the parliamentary committee' continues to leave open to the Executive actions which are no longer theoretical and which have been utilised by them previously. The Executive arm of government, via the Leader of the House's nominations, is able to appoint all MPs to the PCCC required to ensure the Executive's nominations for the roles of Commissioner, Chair and CEO are approved.

Non-government members also are of the view that aspects of this Bill should be dealt with as part of the PCCC three year review of the CCC rather than through this separate Bill being brought to Parliament while the three year review is ongoing.



Jon Krause
Member for Beaudesert



Tarnya Smith
Member for Mount Ommaney



Verity Barton
Member for Broadwater