



Crime and Corruption and Other Legislation Amendment Bill 2017

**Report No. 54, 55th Parliament
Legal Affairs and Community Safety
Committee
May 2017**

Legal Affairs and Community Safety Committee

Chair	Mr Duncan Pegg MP, Member for Stretton
Deputy Chair	Mr Michael Crandon MP, Member for Coomera
Members	Mr Jon Krause MP, Member for Beaudesert
	Mrs Jann Stuckey MP, Member for Currumbin
	Mr Don Brown MP, Member for Capalaba
	Ms Nikki Boyd MP, Member for Pine Rivers

Committee contact details

Address	Legal Affairs and Community Safety Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3553 6641
Fax	+61 7 3553 6699
Email	lacsc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/lacsc

Acknowledgements

The committee acknowledges the assistance provided by the Department of Justice and Attorney-General.

Contents

Abbreviations	ii
Chair’s foreword	iii
Recommendations	iv
1 Introduction	1
1.1 Role of the committee	1
1.2 Referral and inquiry process	1
1.3 Policy objectives of the Bill	1
1.4 Background to the Bill	2
1.4.1 The Commission	2
1.4.2 Review of the definition of corrupt conduct	2
1.4.3 Review of the Commission	2
1.4.4 Complaint by Mr Darren Hall	2
1.5 Consultation on the Bill	3
1.6 Outcome of committee consideration	3
2 Examination of the Bill	4
2.1 Review of the definition of corrupt conduct	4
2.1.1 Definition of corrupt conduct	4
2.1.2 Commission’s functions regarding corrupt conduct	7
2.2 Review of the Commission – PCCC report recommendations	8
2.2.1 Chairperson of the Crime Reference Committee	8
2.2.2 Derivative use of compelled evidence	8
2.2.3 Providing investigation reports to the Office of the Director of Public Prosecutions	9
2.2.4 Recording a decision not to notify the Commission of alleged corrupt conduct	10
2.2.5 Timeframe to apply to Queensland Civil and Administrative Tribunal for a review	11
2.2.6 Disclosure of information	12
2.2.7 Post-separation disciplinary actions	14
2.2.8 Sharing disciplinary information	15
2.2.9 Commencing disciplinary proceedings in QCAT	16
2.2.10 Protection from civil liability	17
2.3 Complaint by Mr Darren Hall – PCCC report recommendations	18
2.3.1 Procedural fairness for persons adversely affected by a report	18
3 Compliance with the <i>Legislative Standards Act 1992</i>	19
3.1 Fundamental legislative principles	19
3.1.1 Rights and liberties of individuals	19
3.2 Explanatory notes	23
Appendix A – List of submissions	24
Appendix B – Witnesses at public briefing and public hearing	25
Appendix C – Recommendations from PCCC report no. 97	26
Appendix D – Recommendations from PCCC report no. 99	29
Non-Government Members’ Statement of Reservation	30

Abbreviations

the Bill	Crime and Corruption and Other Legislation Amendment Bill 2017
CC Act	<i>Crime and Corruption Act 2001</i>
the Commission	Crime and Corruption Commission
the committee	Legal Affairs and Community Safety Committee
CRC	Crime Reference Committee
the department	Department of Justice and Attorney-General
FLPs	fundamental legislative principles
LGAQ	Local Government Association of Queensland
LS Act	<i>Legislative Standards Act 1992</i>
ODPP	Office of the Director of Public Prosecutions
PCCC	Parliamentary Crime and Corruption Committee
PCCC report no. 97	<i>Review of the Crime and Corruption Commission</i>
PCCC report no. 99	<i>Report on a complaint by Mr Darren Hall</i>
PS Act	<i>Public Service Act 2008</i>
PS Regulation	<i>Public Service Regulation 2008</i>
Ombudsman Act	<i>Ombudsman Act 2001</i>
QCAT	Queensland Civil and Administrative Tribunal
QCAT Act	<i>Queensland Civil and Administrative Tribunal Act 2009</i>
QLS	Queensland Law Society
QPS	Queensland Police Service
QPUE	Queensland Police Union of Employees
QUT	Queensland University of Technology
UPA	Unit of Public Administration

Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Crime and Corruption and Other Legislation Amendment Bill 2017.

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.

This report summarises the committee's examination of the Bill, including the views expressed in submissions and by witnesses at the committee's public hearing, and information provided by the Department of Justice and Attorney-General. After considering the submitted evidence and information, the committee has recommended that the Bill be passed.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions on the Bill or appeared before the committee.

I thank all members of the committee for their work on the inquiry. Additionally, I wish to express my appreciation to the Department of Justice and Attorney-General and the committee's staff for the support they have provided.

I commend this report to the House.

A handwritten signature in blue ink, appearing to read 'D. Pegg'.

Duncan Pegg MP
Chair

Recommendations

Recommendation 1

3

The committee recommends the Crime and Corruption and Other Legislation Amendment Bill 2017 be passed.

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.¹ The committee's primary areas of responsibility include:

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

The committee is responsible for examining each Bill in its portfolio areas to consider the policy to be given effect by the legislation and the application of fundamental legislative principles (FLPs).²

1.2 Referral and inquiry process

The Crime and Corruption and Other Legislation Amendment Bill 2017 (the Bill) was introduced into the Legislative Assembly on 23 March 2017 by the Attorney-General and Minister for Justice and Minister for Training and Skills, the Hon Yvette D'Ath MP. In accordance with the Standing Orders of the Legislative Assembly, the Bill was referred to the committee for detailed consideration. The committee was required to report to the Legislative Assembly by 15 May 2017.

On 29 March 2017, the committee wrote to the Department of Justice and Attorney-General (the department) seeking advice on the Bill, and invited submissions from the public and identified stakeholders. The department provided a written briefing on the Bill on 12 April 2017.

The committee received seven submissions on the Bill (see **Appendix A**), and received written advice from the department in response to matters raised in submissions on 21 April 2017.

On 18 April 2017, the committee held a public briefing with the department and a public hearing (see **Appendix B**).

1.3 Policy objectives of the Bill

The objectives of the Bill, as set out in the explanatory notes, are to:

- amend the definition of corrupt conduct to remove the requirement that conduct be engaged in for the purpose of providing a benefit or causing a detriment, and widen the definition to include types of conduct that impair, or could impair, confidence in public administration
- extend the jurisdiction of the Crime and Corruption Commission (the Commission) to include investigating conduct connected with corruption or liable to allow, encourage or cause corrupt conduct, and to investigate whether such conduct may have happened, be happening or happen in the future
- implement recommendations of the Parliamentary Crime and Corruption Committee (PCCC) in report no. 97, *Review of the Crime and Corruption Commission* (PCCC report no. 97), including lengthening the timeframe to seek a review, streamlining disciplinary proceedings, widening information sharing provisions, and expressly authorising the derivative use of compelled evidence, and
- give effect to the recommendation of the PCCC in report no. 99, *Report on a complaint by Mr Darren Hall* (PCCC report no. 99), to require the Commission to provide procedural fairness to persons who may be adversely affected by the public release of a Commission report.³

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

² *Parliament of Queensland Act 2001*, section 93.

³ Explanatory notes, pp 1-3.

1.4 Background to the Bill

1.4.1 The Commission

The Commission is a statutory body established to combat and reduce the incidence of major crime and corruption in the public sector. The functions of the Commission include investigating organised crime, terrorist activity and other serious crime referred to it for investigation, receiving and investigating allegations of serious or systemic corrupt conduct, exercising a statutory function for crime and corruption prevention, assisting with the recovery of the proceeds of crime, providing the witness protection service for Queensland, and conducting research on crime, policing or other relevant matters.⁴

1.4.2 Review of the definition of corrupt conduct

On 25 February 2016 the government released an issues paper *'Corrupt conduct' under the CC Act (Crime and Corruption Act 2001)* to canvass stakeholder views regarding the appropriateness of the definition of corrupt conduct and the Commission's jurisdiction in relation to corrupt conduct.

Stakeholders were generally supportive of the definition of corrupt conduct, however some, including the Commission, suggested the definition be changed. On this basis the Bill proposes to amend the definition of corrupt conduct and to expand the Commission's investigative jurisdiction in relation to corrupt conduct.⁵

1.4.3 Review of the Commission

Under the *Crime and Corruption Act 2001* (CC Act) the PCCC was required to review the activities of the Commission by 30 June 2016, and every five years thereafter, and report on any required actions regarding the CC Act, or the functions, powers and operations of the Commission. The report must be tabled in the Legislative Assembly.⁶

In accordance with this obligation, the PCCC commenced a review of the Commission in June 2015 and tabled the report, PCCC report no. 97, on 30 June 2016. The report made 29 recommendations (see **Appendix C**). The government's response supported the 23 recommendations addressed to the government (the remaining six recommendations were addressed to the PCCC or the Commission), and the Bill gives effect to 10 of the 23 recommendations.⁷

1.4.4 Complaint by Mr Darren Hall

On 22 July 2009 the then Crime and Misconduct Commission tabled the report *Dangerous Liaisons – A report arising from a CMC investigation into allegations of police misconduct (Operation Capri)* in the Legislative Assembly. This report made reference to Mr Hall, a former Queensland Police Service (QPS) officer, who subsequently complained to the PCCC that he had not been provided with an opportunity to address the allegations made against him in the report, thereby denying him natural justice or procedural fairness.⁸

⁴ Crime and Corruption Commission Queensland, *Role of the CCC*, www.ccc.qld.gov.au/about-the-ccc, last accessed 5 April 2017.

⁵ Explanatory notes, p 2.

⁶ *Crime and Corruption Act 2001*, s 292.

⁷ Queensland Government, *Queensland Government Response to the Parliamentary Crime and Corruption Committee report no. 97 Review of the Crime and Corruption Commission*, December 2016; Explanatory notes, p 2.

⁸ Parliamentary Crime and Corruption Committee, *Report on a complaint by Mr Darren Hall*, report no. 99, November 2016.

Following consideration of the concerns raised by Mr Hall on a number of occasions, the PCCC tabled the report, PCCC report no. 99, on 29 November 2016. The report made three recommendations including that the government consider amending the CC Act to require the Commission provide procedural fairness to persons who may be adversely affected by the publication of a Commission report (see **Appendix D**). The government's final response supported the recommendation addressed to the government (the remaining two recommendations were addressed to the Commission or the Legislative Assembly), and the Bill gives effect to this recommendation.⁹

1.5 Consultation on the Bill

The explanatory notes state consultation on the Bill was undertaken with the Commission, Queensland Ombudsman, Office of the Director of Public Prosecutions (ODPP), Queensland Law Society (QLS), Bar Association of Queensland, Aboriginal and Torres Strait Islander Legal Service (QId), Queensland Police Union of Employees (QPUE), Queensland Police Commissioned Officers' Union of Employees, Together Union and the Local Government Association of Queensland (LGAQ). The explanatory notes also state there was general support for the Bill.¹⁰

1.6 Outcome of committee consideration

Standing Order 132(1) requires the committee to determine whether to recommend the Bill be passed.

After examination of the Bill, including the policy objectives which it will achieve, and consideration of the information provided by the department, submitters and witnesses at its public hearing, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Crime and Corruption and Other Legislation Amendment Bill 2017 be passed.

⁹ Queensland Government, *Queensland Government Response to the Parliamentary Crime and Corruption Committee report no. 99 Report on a complaint by Mr Darren Hall*, February 2017; Explanatory notes, p 3.

¹⁰ Explanatory notes, p 12.

2 Examination of the Bill

2.1 Review of the definition of corrupt conduct

2.1.1 Definition of corrupt conduct

Under section 15 of the CC Act corrupt conduct is defined as conduct that adversely affects the performance or exercise of power of a Unit of Public Administration (UPA)¹¹ or an appointed person in circumstances where the conduct:

- results in performance or exercise of power in a way that is not honest or impartial
- involves a knowing or reckless breach of the trust placed in an appointed person
- involves a misuse of information or material
- is engaged in for the purpose of providing a benefit or causing a detriment to a person, and
- would be a criminal offence or a ground for termination of employment.

Conduct that involves abuse of public office, bribery, extortion, secret commissions, fraud, stealing, forgery, perverting the course of justice, electoral donation offences, loss of State revenue, sedition, homicide, assault, prostitution, illegal drug trafficking and illegal gambling are listed as examples of what could constitute corrupt conduct.

Clause 5 of the Bill proposes to amend the definition of corrupt conduct by removing the requirement that conduct must be engaged in for the purpose of providing a benefit or causing a detriment to a person, as the explanatory notes state this inherently subjective element has ‘caused confusion among public sector agencies’. The examples of what may constitute corrupt conduct are also removed as the explanatory notes advise they have ‘not aided in the interpretation of the definition’.¹²

The Bill also proposes to widen the definition of corrupt conduct to include conduct that impairs, or could impair confidence in public administration in circumstances where the conduct would be a criminal offence or a ground for termination of employment, and involves or could involve:

- collusive tendering
- fraud regarding an application for an authority associated with protecting health or safety, the environment, or the State’s natural, cultural, mining or energy resources
- dishonestly obtaining, or helping someone dishonestly obtain, a benefit from the payment of public funds or the disposition of assets
- evading a tax, levy or duty, or fraudulently causing a loss of revenue, or
- fraudulently obtaining or retaining an appointment.¹³

Stakeholder views and department’s response

Submitters and witnesses presented differing views regarding the proposed changes to the definition of corrupt conduct. For example, The Australia Institute submitted the amendment ‘contradicts the stated aim of the ... bill to widen the definition of corrupt conduct’ and would instead ‘limit the definition’.¹⁴

¹¹ *Crime and Corruption Act 2001*, s 20 defines Units of Public Administration as: the Legislative Assembly and parliamentary service, Executive Council, departments, police service, local government, a corporate entity established by and Act that collects revenues or raises funds under the authority of an Act, a non-corporate entity established or maintained under an Act that is funded with State moneys or financially assisted by the State, a State court and its registry and administrative officers, another entity prescribed by regulation.

¹² Crime and Corruption and Other Legislation Amendment Bill 2017, cl 5; Explanatory notes, pp 3

¹³ Crime and Corruption and Other Legislation Amendment Bill 2017, cl 5; Explanatory notes, pp 3-4, 13-14.

¹⁴ Submission 2, pp 10-11.

The department advised it 'does not agree with the Australia Institute's interpretation of the effect of the changes to the definition of corrupt conduct':

To clarify, the current definition of corrupt conduct in section 15(1) is maintained with some minor changes ... lowering the threshold of conduct captured by the current definition.

The definition is then further enlarged to include specific conduct of a person, regardless of whether the person holds or held an appointment within a unit of public administration (UPA) that impairs or could impair public confidence in public administration...

While section 15(2) of the current definition has been removed it is noted that this subsection merely contains a list of conduct which may constitute corrupt conduct if it satisfies the elements of subsection 15(1) but is not necessarily conclusive of corrupt conduct.¹⁵

Removing the requirement that conduct be to provide a benefit or cause detriment

The Commission supported the proposed removal of the requirement that conduct must be engaged in for the purpose of providing a benefit or causing a detriment to a person, submitting it would 'remove an unnecessary layer of complexity from the definition of corrupt conduct'.¹⁶

However, the LGAQ opposed the removal of this requirement, as it does not believe public officials would have 'discretion in deciding whether an allegation raises a reasonable suspicion of corrupt conduct', and would have 'little choice but to notify the Commission even if, for example, a failure to update a register of interest has occurred inadvertently'.¹⁷

In response to this concern, the department advised:

The assessment of these matters will be decide on a case by case basis. Before notifying the Commission, the public official may have regard to all the documented information available to them in deciding whether an allegation raises a reasonable suspicion of corrupt conduct.

The Commission have advised the department ... that the public official might not have to notify the Commission if the relevant local government records do not provide any grounds to suspect that the local government conducted business that could potentially affect the relevant interest in any way and the councillor has also taken appropriate steps to update the register and accounted for the delay in doing so.¹⁸

Similarly, Queensland University of Technology (QUT) also did not support the removal of the requirement that conduct must be engaged in for the purpose of providing a benefit or causing a detriment to a person, submitting it did 'not see a need for this to be removed' as it had found 'no confusion with this aspect of the definition ... and has, in fact, found its inclusion helpful in considering allegations of corrupt conduct'.¹⁹

The department advised:

This view is not consistent with the views of the majority of public sector agencies or the Commission who advocated for the removal of this limb from the current definition....

...consideration of section 15(1)(c) may delay agencies from expeditiously assessing and dealing with matters involving corrupt conduct.²⁰

¹⁵ Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 2.

¹⁶ Submission 5, p 5.

¹⁷ Submission 3, p 1.

¹⁸ Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, pp 4-5.

¹⁹ Submission 4, p 1.

²⁰ Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 6.

Removing the list of examples of corrupt conduct

The Commission supported the removal of the list of examples of what may constitute corrupt conduct, stating ‘that long list did not really provide any interpretation or limitation on what the current conduct was. It was always a bit of an oddity to have them there.’²¹

Conversely, the Environmental Defenders Office submitted the list of examples should be retained:

*We suggest this list of additional matters ... provides guidance which could appropriately extend the types of activities which can be considered to be corrupt conduct for the purposes of the Act. Without this list, we question whether ‘corrupt conduct’ ... will be defined relatively narrowly compared to an interpretation with reference to this list of examples.*²²

The department advised:

*Feedback on the issues paper indicates that this list has not aided in the interpretation of ‘corrupt conduct’, with some of the specified conduct having no immediate association with general concepts of corruption (i.e. sedition, grievous bodily harm and murder) and added unnecessary complexity to the definition. For these reasons the list has been omitted from the CC Act.*²³

Widening the definition to include conduct that impairs public confidence

The Commission expressed support for the amendment to widen the definition of corrupt conduct to include conduct that impairs confidence in public administration in circumstances where it involves specified behaviour such as collusive tendering, and would be a criminal offence or a grounds for termination of employment,²⁴ noting:

*The problem is that we are already seeing the emergence of greater complexity around increasing commercialisation of the public sector and outsourcing and public-private partnerships redefining the boundaries of government service delivery. These things then fall outside of the jurisdiction.*²⁵

However, the QLS raised concerns with the breadth of the definition and submitted it should be restricted to corrupt conduct ‘that involves or affects a Queensland public official or public authority’, that is ‘deliberate or intentional’, and that is ‘a criminal offence, or a disciplinary offence, or constitute reasonable grounds for dismissing or otherwise terminating the services of a public official’.²⁶ The QLS reiterated its concerns at the public hearing, stating:

The issue here is that it is an offence provision; it criminalises conduct. As a matter of drafting and as a matter of policy, the Law Society’s position is that offence provisions should be, as much as possible, specific and clear about the conduct it proposes to criminalise.

*We are concerned that this current provision contemplates a level of broadness that could create a flow-on effect of serious, unintended consequences. I note the proposed section 15(2)(a) is not tied to a person holding public office; it includes private citizens, which was an explicit intention of the legislation. The proposed new section 15(2)(a) refers to conduct that ‘could impair’ and (b) refers to conduct that ‘could involve’, and then a series of circumstances are set out. The proposed section 15(2)(b)(v) refers to ‘fraudulently obtaining or retaining an appointment’. That could include a private citizen fudging a CV for a government appointment.*²⁷

²¹ Public hearing transcript, Brisbane, 18 April 2017, p 4.

²² Submission 7, p 2.

²³ Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 14.

²⁴ Submission 5, p 5.

²⁵ Public hearing transcript, Brisbane, 18 April 2017, p 4.

²⁶ Submission 6, p 2.

²⁷ Public hearing transcript, Brisbane, 18 April 2017, p 9.

In response to these concerns the department advised that ‘section 15 of the CC Act is not an offence provision’²⁸ and:

...the Commission is already empowered to investigate the conduct of private citizens which adversely affects, or could adversely affect, directly or indirectly, the performance of function or the exercise of powers of a UPA or a person holding an appointment under the current definition of corrupt conduct...

The department further advised:

The requirement that the conduct ‘impairs or could impair, public confidence in public administration’ is an appropriate limitation to ensure the Commission’s jurisdiction and coercive powers are enlivened only in appropriate circumstances. This is a significant threshold and the Commission have (sic) advised the department that individual non-systemic instances of fraud or dishonest conduct will generally not be captured by the new definition...

*Finally, section 15(2)(c) requires that the conduct would if proved be a criminal offence; or a disciplinary breach providing reasonable grounds for terminating the person’s services.*²⁹

2.1.2 Commission’s functions regarding corrupt conduct

Under section 33 of the CC Act, the functions of the Commission are to raise the standards of integrity and conduct in UPAs and to ensure complaints, matters or information involving corruption are dealt with in an appropriate way considering the principles of cooperation, capacity building, devolution and the public interest.

The Bill proposes to amend the CC Act to extend the investigative jurisdiction of the Commission. The extension would allow the Commission to investigate conduct connected with corruption or liable to allow, encourage or cause corrupt conduct, and to investigate whether such conduct, or corrupt conduct, may have happened, be happening or happen in the future. In taking action the Commission would be required to specifically consider the public interest including the ‘nature and seriousness of the conduct particularly if there is reason to believe it may be prevalent or systemic’ and whether public confidence would increase if the Commission dealt with the matter directly.³⁰

Stakeholder views

The majority of submitters and witnesses did not specifically address the proposed amendments to extend the Commission’s jurisdiction. The Commission did note its support for the amendments:³¹

*The CCC [the Commission] is of the view that to be an effective anti-corruption agency we should have the ability to examine the corruption risks that, while not the subject of a specific complaint, nonetheless warrant examination. The ability of an integrity agency to examine conduct liable to allow or encourage or cause corrupt conduct or conduct connected with corrupt conduct are much more in keeping with an integrity agency focused on reducing the incidence of corruption in the public sector. The inclusion of these functions would have a significant effect on expanding the circumstances in which the CCC exercises its corruption function in Queensland.*³²

²⁸ Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 9.

²⁹ Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, pp 10-11.

³⁰ Crime and Corruption and Other Legislation Amendment Bill 2017, cl 7; Explanatory notes, pp 4, 8, 14.

³¹ Submission 5, p 6.

³² Public hearing transcript, Brisbane, 18 April 2017, p 3.

2.2 Review of the Commission – PCCC report recommendations

2.2.1 Chairperson of the Crime Reference Committee

The Crime Reference Committee (CRC) is a statutory body established to refer major crime to the Commission for investigation, review matters referred to the Commission, authorise the Commission to undertake intelligence operations, and coordinate investigations into major crime undertaken in cooperation with a police task force or other entity.³³

Section 278 of the CC Act details the membership of the CRC which comprises, the Senior Executive Officer (Crime), the Commission Chairperson, the Police Commissioner, the Principal Commissioner of the Queensland Family and Child Commission, and two community representatives appointed by the Governor-in-Council. The Senior Executive Officer (Corruption) is also a member of the CRC in matters involving suspected corruption. The provision stipulates that the Senior Executive Officer (Crime) is the chairperson of the CRC and the Commission Chairperson is a CRC member.

Clause 35 proposes to amend section 278 to stipulate the Commission Chairperson, as the most senior Commission member, is the chairperson of CRC and the Senior Executive Officer (Crime) is a CRC member. A proposed new section 279A provides that the functions of the CRC chairperson may be delegated to the Senior Executive Officer (Crime).³⁴

This amendment implements recommendation 3 of PCCC report no. 97:

*...the CC Act be amended to provide that the Chairperson of the Commission be the Chair of the CRC, but may delegate this role to the Senior Executive Officer (Crime).*³⁵

2.2.2 Derivative use of compelled evidence

The Commission has power to conduct coercive hearings that compel witnesses to attend and give evidence, and override the right to silence and the privilege against self-incrimination.³⁶

Section 197 of the CC Act provides that if a person claims privilege from self-incrimination prior to answering a question or producing a document or thing but is compelled to provide the evidence, the compelled evidence is not admissible against them in any civil, criminal or administrative proceeding. The prohibition applies only to the direct use of compelled evidence; use of evidence that is subsequently obtained as a result of the compelled evidence being provided, derivative evidence, is not prohibited from admission against the person.³⁷

Clause 18 proposes to amend section 197 to provide express authority for the use of derivative evidence, clarifying that while the compelled evidence is not itself admissible in a civil, criminal or administrative proceeding, derivative evidence is admissible.³⁸

The amendment partially implements recommendation 4 of PCCC report no. 97:

...the Commission review court judgments that could have a bearing on the operation of the Commission and the Queensland Police Service and that relevant departments ... should ensure that any amendments considered necessary are dealt with expeditiously.

³³ *Crime and Corruption Act 2001*, ss 274, 275.

³⁴ Crime and Corruption and Other Legislation Amendment Bill 2017, cls 35, 36; Explanatory notes, pp 6, 21.

³⁵ Parliamentary Crime and Corruption Committee, *Review of the Crime and Corruption Commission*, report no. 97, June 2016, p 26.

³⁶ Crime and Corruption Commission Queensland, *Special Powers*, www.ccc.qld.gov.au/about-the-ccc/powers, last accessed 5 April 2017; *Crime and Corruption Act 2001*, s 190.

³⁷ *Crime and Corruption Act 2001*, s 197; *X v Callanan* [2016] QSC 42.

³⁸ Crime and Corruption and Other Legislation Amendment Bill 2017, cl 18; Explanatory notes, pp 7, 9.

The government response to the *Review of the Crime and Corruption Commission* noted that it will 'continue to monitor jurisprudence in this area, in consultation with the Commission, the QPS and other relevant stakeholders, to determine the need for any further legislative amendments'.³⁹

Stakeholder views and department's response

Submitters and witnesses presented differing views regarding the proposed amendment providing express authority for the use of derivative evidence. Mr Troy Schmidt, representing the QPUE, expressed support for the amendment:

It certainly clears up the law in that area... Obviously the purpose of having a misconduct hearing or a crime hearing or an intelligence hearing is to gain evidence to prosecute people who are effectively the worst of the worst...

*These powers are used in circumstances where ordinary investigation and ordinary police work has hit the wall—for example, old murder inquiries, cold cases—so that further leads can be generated. The safeguards that are attached to [section] 197 are, in my opinion, quite appropriate. There is no point in having the commission conduct an expensive hearing and then locate the murder weapon, for example, and not be able to use it...*⁴⁰

Conversely, the QLS submitted it was 'exceptionally concerned' about the amendment:

*...we consider that the proposed amendment may have unintended and adverse consequences. For example the provision might enable the Commission to provide restrictions on use of privileged answers, documents, things or statements disclosed or produced under compulsion. As such clause 18 would allow other agencies to explore the same matters with a witness and bypass the protections of section 197, to their detriment.*⁴¹

In relation to the concerns of the QLS the Commission advised:

*This does no more than confirm the position under common law that the evidence of a compelled witness cannot be used directly against them in a civil, criminal or administrative proceeding... but may be used indirectly or derivatively against them in relation to any of the above proceedings. This clause is consistent with the historical and continuing practice of investigations under the CC Act which have not been successfully challenged.*⁴²

The department also noted that the proposed change is a clarifying amendment rather than a substantive change, further advising:

*If the Commission were unable to derive evidence from answers provided by individuals under compulsion, this would significantly undermine the effectiveness of the coercive powers under the CC Act and the Commission's objective of combating and reducing the incidence of major crime and corruption in Queensland.*⁴³

2.2.3 Providing investigation reports to the Office of the Director of Public Prosecutions

Section 49 of the CC Act provides that if following an investigation the Commission decides prosecuting a person should be considered, the Commission may provide a report on the investigation to the ODPP, or other prosecuting authority.

However, providing investigation reports to the ODPP can create prosecutorial complexity if during the investigation the person was compelled to answer questions or otherwise provide evidence.

³⁹ Queensland Government, *Queensland Government Response to the Parliamentary Crime and Corruption Committee report no. 97 Review of the Crime and Corruption Commission*, December 2016, p 2.

⁴⁰ Public hearing transcript, Brisbane, 18 April 2017, p 13.

⁴¹ Submission 6, p 3.

⁴² Submission 5, supplementary, p 3 citing *R v McDonnell, ex parte Attorney-General* [1988] 2 Qd R 189.

⁴³ Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, pp 12-13.

This complexity arises following a number of High Court decisions,⁴⁴ which in effect preclude a person from prosecuting a matter if they have seen evidence that was compulsorily obtained during the investigation, even if the evidence is being not relied upon in the prosecution. Consequently, by providing investigatory reports to the ODPP the staff member reviewing the report is exposed to evidence which once seen precludes them from prosecuting the matter. Information barriers must then be created within the ODPP to prevent certain material in the investigation report from being imparted to prosecution staff.⁴⁵

The Bill proposes to amend section 49 to remove the power for the Commission to provide investigation reports to the ODPP. The amendment would allow reports to be provided to other prosecuting authorities such as the QPS, and consequentially to the ODPP in line with standard prosecutorial processes. This would enable information regarding compelled evidence to be excluded from the brief provided to the ODPP.⁴⁶

This amendment implements recommendation 5 of PCCC report no. 97:

*...the government give consideration to amending section 49 of the CC Act to remove the power for the Commission to refer corruption investigation briefs to the ODPP for the purposes of considering prosecution proceedings.*⁴⁷

The Bill also proposes to amend section 13 of the *Director of Public Prosecutions Act 1984* to provide that the ODPP may ask the Commission for assistance in an investigation relating to a criminal proceeding being conducted or under consideration by the ODPP. The Commission would be obligated to comply with the request, as far as possible.⁴⁸

2.2.4 Recording a decision not to notify the Commission of alleged corrupt conduct

Section 38 of the CC Act requires a public official to notify the Commission of any complaint, matter or information they reasonably suspect involves, or could involve, corrupt conduct.

Clause 9 proposes to insert a new section 40A in the CC Act requiring public officials to keep a record of allegations of corruption that are not notified to the Commission. Where a public official decides an allegation does not meet the threshold of a reasonable suspicion of corrupt conduct, and therefore does not need to be notified to the Commission, the official would be required to make a record of the decision outlining the details of the matter, the evidence relied on to make the decision, and any other reasons for the decision.⁴⁹

Stakeholder views and department's response

Some submitters supported the proposed amendment requiring public officials to keep a record of a decision to not notify the Commission of an allegation of corruption. For example the Commission submitted that it:

*...promotes visibility of public administration decision-making that is essential to the effective performance of the CCC's [Commission's] monitoring role and a robust integrity system that serves the people of Queensland.*⁵⁰

⁴⁴ *X7 v Australian Crime Commission* (2013) 248 CLR 93; *Lee v New South Wales Crime Commission* (2013) 248 CLR 196; *Lee v The Queen* (2014) 88 ALJR 656.

⁴⁵ Parliamentary Crime and Corruption Committee, *Review of the Crime and Corruption Commission*, report no. 97, June 2016, p 33.

⁴⁶ Crime and Corruption and Other Legislation Amendment Bill 2017, cl 12; Explanatory notes, pp 6, 15.

⁴⁷ Parliamentary Crime and Corruption Committee, *Review of the Crime and Corruption Commission*, report no. 97, June 2016, p 34.

⁴⁸ Crime and Corruption and Other Legislation Amendment Bill 2017, cl 62; Explanatory notes, p 27.

⁴⁹ Crime and Corruption and Other Legislation Amendment Bill 2017, cl 9; Explanatory notes, p 7.

⁵⁰ Submission 5, p 7.

Similarly, Mr Schmidt, representing the QPUE, noted in relation to the QPS:

*I do not believe personally that that would be a burden to the service to maintain those records. I think they could do that quite effectively under its current policies and reporting structures.*⁵¹

Other submitters raised concerns about the administrative burden the requirement may impose. For example QUT submitted:

*...records relating to internal review of an issue ... would already be captured under our legislative recordkeeping compliance obligations and the creation of an additional document creates an unnecessary administrative burden.*⁵²

In response to this concern, the department advised:

*...the existing records maintained by QUT may be sufficient to meet the requirements ... if they ... include details of the complaint, the evidence on which the public official relied in making the decision, and any other reasons for the decision ... and are capable of being provided to the Commission...*⁵³

This amendment implements recommendation 12 of PCCC report no. 97:

*...the CC Act be amended to require units of public administration to prepare and retain complete and accurate records of any decision not to notify the Commission of an allegation of corrupt conduct, including the reasoning on which that decision is based, the evidence (or lack thereof) considered and any findings in relation thereto.*⁵⁴

2.2.5 Timeframe to apply to Queensland Civil and Administrative Tribunal for a review

A key function of the Queensland Civil and Administrative Tribunal (QCAT) is to review administrative decisions to ensure the accountability, quality and consistency of decision making in the public sector.

Under section 33 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) a person against whom a decision is made may apply to QCAT for the decision to be reviewed. The application must be lodged within 28 days from when the decision was made. In contrast, section 219G of the CC Act provides that an application for a decision to be reviewed by QCAT must be lodged within 14 days of the decision being made.

Clause 21 of the Bill proposes to align the timeframe for making an application to QCAT under the CC Act with the provisions of the QCAT Act. The amendment provides that if the Commission or a person against whom a decision about an allegation of corrupt conduct wishes to apply to QCAT for the decision to be reviewed, the application must be lodged within 28 days of the decision being made.⁵⁵

This amendment implements recommendation 19 of PCCC report no. 97:

*...section 219G of the Crime and Corruption Act 2001 be amended to lengthen the period for making an application to QCAT for review of a reviewable decision to 28 days.*⁵⁶

Stakeholder views

The majority of submitters did not address the proposed amendments to extend the period for lodging a review application to 28 days. The QLS did note its support for the amendment.⁵⁷

⁵¹ Public hearing transcript, Brisbane, 18 April 2017, p 13.

⁵² Submission 4, p 1.

⁵³ Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, p 7.

⁵⁴ Parliamentary Crime and Corruption Committee, *Review of the Crime and Corruption Commission*, report no. 97, June 2016, p 69.

⁵⁵ Crime and Corruption and Other Legislation Amendment Bill 2017, cl 21; Explanatory notes, p 5.

⁵⁶ Parliamentary Crime and Corruption Committee, *Review of the Crime and Corruption Commission*, report no. 97, June 2016, p 80.

⁵⁷ Submission 6, p 3.

2.2.6 Disclosure of information

The CC Act permits the Commission to disclose information to other relevant bodies. Under the information sharing provisions outlined in section 55 ‘Sharing of intelligence information’, and section 60 ‘Commission may give evidence or information to other entities’, the Commission:

- must give intelligence information to entities it considers appropriate⁵⁸
- may give evidence of, or information about, a possible offence to entities or law enforcement agencies it considers appropriate, and
- may give information to UPAs it considers has a proper interest in the information for the performance of their functions.⁵⁹

However, section 62 ‘Restriction on access’, provides that information, documents or things in the Commission’s possession may be used by the Commission in the performance of its function but may only be given to another person with the express written authority of the Commission.⁶⁰

The Bill proposes to consolidate the disclosure provisions into a new section 60, conferring the Commission ‘with a broad power to disclose information to entities the Commission considers appropriate’, and removing the requirement for the Commission to provide express written authority prior to disclosing information.⁶¹ The Bill also moves the authority under section 62 for the Commission to use information, documents or things in the Commission’s possession in the performance of its functions to the new section 60.⁶²

This amendment implements recommendation 21 of PCCC report no. 97:

*...the government must review the disclosure provisions of the Crime and Corruption Act 2001 to ensure that they reflect contemporary principles of inter-agency cooperation, while maintaining adequate protections for the protection of confidential information.*⁶³

Stakeholder views and department’s response

Submitters and witnesses presented differing views regarding the proposed amendments to the disclosure of information provisions.

The QLS noted its support for the removal of the requirement that ‘documents or things in the Commission’s possession must not be given to or made available for inspection by any person without the Commission’s express written approval’.⁶⁴

Conversely, the QPUE raised concerns with the proposed new section 60:

*The union’s position is effectively that the proposal will overturn the Supreme Court’s decision in the case of *Flori v Commissioner of Police & Anor* which prohibited the QPS from using material it recovered under a criminal search warrant for purposes outside the prosecution of criminal offences...*

The concern we have ... is in relation to information which was found under a search warrant. If a search warrant was obtained for a criminal investigation then that information should be properly used only for the criminal investigation... The way that section 60 will now read is that

⁵⁸ *Crime and Corruption Act 2001*, s 55(2).

⁵⁹ *Crime and Corruption Act 2001*, s 60.

⁶⁰ *Crime and Corruption Act 2001*, s 62.

⁶¹ Crime and Corruption and Other Legislation Amendment Bill 2017, cls 14, 15, 16; Explanatory notes, p 16.

⁶² Crime and Corruption and Other Legislation Amendment Bill 2017, cls 15, 16.

⁶³ Parliamentary Crime and Corruption Committee, *Review of the Crime and Corruption Commission*, report no. 97, June 2016, p 82.

⁶⁴ Submission 6, p 2.

*that information can then not only be used for the criminal investigation but it can also be used for a discipline or a civil matter or any other function of the CCC.*⁶⁵

In response to the QPUE's concern the department advised:

*The consolidation of the disclosure provisions in the Crime and Corruption Act 2001 (CC Act) in no way seeks to overturn the Supreme Court's decision in the case of *Flori v Commissioner of Police & Anor* [2014] QSC 284 which prohibited the Queensland Police Service from using material it recovered under a criminal search warrant for purposes outside the prosecution of criminal offences.*

*It is also noted that the ability for the Crime and Corruption Commission (the Commission) to use any information, document or thing which is in the Commission's possession for the purposes of performing the Commission's functions is an existing power provided to the Commission under section 62 of the CC Act. This power is retained under the single disclosure provision in section 60, as proposed by the Bill.*⁶⁶

The Commission also provided advice in relation to the QPUE's concern:

The CC Act does not give public officials power to use evidence seized under the authority of a search warrant issued under the Police Powers and Responsibility (sic) Act 2000 or another Act in disciplinary proceedings...

*The current disclosure provisions under the CC Act and the Bill's proposed amendments do not: alter the law as stated in *Flori*...*⁶⁷

Disclosure of information by the Queensland Ombudsman

As part of the review of the disclosure provisions under the CC Act, and at the request of the Queensland Ombudsman, the Bill also proposes to insert a new section 91A in the *Ombudsman Act 2001* (Ombudsman Act) providing for the disclosure of information to government agencies.

The Ombudsman Act currently permits an officer of the Ombudsman to disclose information:

- as a part of performing a function of the Ombudsman or formulating a report or recommendation related to the performance of a function
- for a proceeding an offence alleged to have been committed in the performance of a function of the Ombudsman
- if it does not disclose the identity of a person, to a government department, local government or public authority for the improvement of its administrative practices and procedures or for the purpose of undertaking research relevant to a function of the Ombudsman, and
- to a government department, local government or public authority, if the Ombudsman considers the agency has a proper interest in the information for the performance of its functions and the disclosure is to protect the health, safety or security of a person or property.⁶⁸

The new section 91A would allow the disclosure of information to Queensland and Commonwealth departments and public authorities, Queensland local governments, the Commonwealth Ombudsman and the ombudsman in another state or territory, if the Queensland Ombudsman considers the agency has a proper interest in the information for the performance of its functions or the disclosure is to protect the health, safety or security of a person or property.⁶⁹

⁶⁵ Mr Troy Schmidt, public hearing transcript, Brisbane, 18 April 2017, p 14.

⁶⁶ Department of Justice and Attorney-General, correspondence dated 21 April 2017, p 1.

⁶⁷ Submission 5, supplementary, p 3.

⁶⁸ *Ombudsman Act 2001*, s 92.

⁶⁹ Crime and Corruption and Other Legislation Amendment Bill 2017, cls 77, 78; Explanatory notes, pp 5, 8, 30.

Stakeholder views

The majority of submitters did not address the proposed amendments to the Ombudsman Act. The proposed amendments were expressly supported by the Ombudsman, who stated:

*The amendments to the Ombudsman Act are welcome, and will assist me in performing my role more effectively and in a way which reflects contemporary expectations that oversight bodies will collaborate to maximise their benefit to the community.*⁷⁰

2.2.7 Post-separation disciplinary actions

Under the *Public Service Act 2008* (PS Act) a public service employee may have disciplinary action taken against them in a range of circumstances such as misconduct, careless or incompetent performance, or contravening a direction.⁷¹

If after a disciplinary ground arises an employee changes employment from one department to another, the chief executive of the previous department may still make a disciplinary finding despite the employee having moved to another department. The chief executive of the second department may then agree to take disciplinary action against the employee in relation to the disciplinary finding. Alternatively, the previous chief executive may delegate to the chief executive of the second department the authority to make a disciplinary finding and to take any appropriate disciplinary action.⁷²

Similar provisions apply under the *Ambulance Service Act 1991* and the *Fire and Emergency Services Act 1990*, to apply post-separation disciplinary processes across the public service. However, there are no equivalent provisions in the CC Act enabling these post-separation disciplinary processes to apply to employees moving between the Commission and other public sector entities.⁷³ In an effort to address this anomaly, the Commission was prescribed as a ‘public service office’ under the *Public Service Regulation 2008* (PS Regulation) on 3 February 2017, applying the provisions of the PS Act to the Commission.⁷⁴

The Bill proposes to integrate the Commission into the post-separation disciplinary processes, providing that a disciplinary finding may be transferred and the authority to make a disciplinary finding delegated when an employee moves between the Commission and other public sector entities.⁷⁵

This amendment implements recommendation 24 of PCCC report no. 97:

...the Crime and Corruption Act 2001 and other relevant legislation be amended to:

- *allow a disciplinary finding against a Commission officer who changes employment to another public sector agency to be transferred to the new employing chief executive,*
- *allow the Commission to delegate the authority to make a disciplinary finding about a former Commission officer to the new employing chief executive, and*
- *provide the same reciprocal rights to other public sector agencies whose employees change employment to the Commission.*⁷⁶

⁷⁰ Submission 1, p 2.

⁷¹ *Public Service Act 2008*, s 187.

⁷² *Public Service Act 2008*, s 187A.

⁷³ Explanatory notes, pp 9-10.

⁷⁴ *Public Service Regulation 2008*; Explanatory notes, p 9.

⁷⁵ Crime and Corruption and Other Legislation Amendment Bill 2017, cls 26-31, 48-55, 64-70; Explanatory notes, pp 9-10.

⁷⁶ Parliamentary Crime and Corruption Committee, *Review of the Crime and Corruption Commission*, report no. 97, June 2016, p 92.

2.2.8 Sharing disciplinary information

Under the PS Act a chief executive considering the appointment or continued appointment of a person, or a disciplinary finding, action or declaration, may ask the chief executive of another department for disciplinary information about a person who is or was an employee of that department.⁷⁷

However, these provisions do not allow the sharing of disciplinary information between the Commission and other public sector entities.⁷⁸ To address this anomaly the Commission was prescribed as a 'public service office' under the PS Regulation, extending the information sharing provisions of the PS Act to the Commission.⁷⁹

The Bill proposes to integrate the Commission into the disciplinary information sharing framework by including the Commission in the provisions of the PS Act. The amendments would allow the sharing of disciplinary information about an employee or applicant for employment between the Commission, the chief executive of a department and the Police Commissioner.⁸⁰

This amendment implements recommendation 25 of PCCC report no. 97:

...the CC Act and other relevant legislation be amended to enable the Commission to provide and receive disciplinary information about a current holder of, or an applicant for, an appointment with the Commission (including a secondment) that the Commission, the chief executive of a public sector department or the Commissioner of Police has about that person. The amendments should specify that the information may be requested in the same circumstances as those currently provided for in section 188B(1)(b) of the Public Service Act 2008.

Notification of criminal and disqualifying offence information

A similar disparity exists between departments and the Commission in relation to notifications about employees who have committed indictable criminal offences or disqualifying offences under the *Working with Children (Risk Management and Screening) Act 2000*. The Bill also proposes to address this disparity.

Under the PS Act the Police Commissioner and the Director of Public Prosecutions must advise the chief executive of a department if an employee of that department, charged with an indictable or disqualifying offence, is committed for trial or is convicted, acquitted or the prosecution otherwise ends.⁸¹

Similarly, under the *Police Service Administration Act 1990*, the Director of Public Prosecutions must advise the Police Commissioner if a person engaged by the QPS, charged with an indictable offence, is committed for trial or is convicted, acquitted or the prosecution otherwise ends.⁸²

However, there are no equivalent provisions in the CC Act obliging the Police Commissioner and the Director of Public Prosecutions to advise the Commission if a Commission officer, charged with an indictable or disqualifying offence, is committed for trial or is convicted, acquitted or the prosecution otherwise ends. In an effort to address this anomaly, the Commission was prescribed as a 'public service office' under the PS Regulation to apply the provisions of the PS Act to the Commission.⁸³

⁷⁷ *Public Service Act 2008*, s 188B.

⁷⁸ Explanatory notes, p10.

⁷⁹ *Public Service Regulation 2008*; Explanatory notes, p 9.

⁸⁰ Crime and Corruption and Other Legislation Amendment Bill 2017, cls 32, 56-57, 71-72; Explanatory notes, pp 6, 10.

⁸¹ *Public Service Administration Act 2008*, s 170.

⁸² *Police Service Administration Act 1990*, s 5AA.10.

⁸³ *Public Service Regulation 2008*; Explanatory notes, p 9.

The Bill proposes to insert a new section 273H in the CC Act requiring the Police Commissioner and the Director of Public Prosecutions to advise the Commission if a Commission officer, charged with an indictable or disqualifying offence, is committed for trial or is convicted, acquitted or the prosecution otherwise ends.⁸⁴

2.2.9 Commencing disciplinary proceedings in QCAT

During the review undertaken by the PCCC, the Commission advised that public servants who suspect they may be pursued for corrupt conduct often choose to resign. A resignation does not prevent the Commission or the UPA from making a disciplinary declaration against a former employee if they were a member of QPS or employed under the PS Act.⁸⁵

However, if the alleged corrupt conduct involved a former employee of a local government or a university, or if the Commission had commenced an investigation of alleged corrupt conduct prior to the employee's resignation, a disciplinary declaration may only be made by QCAT. The procedure to make such an application to QCAT for a disciplinary declaration requires the employee's former appointment to be declared by regulation to be a prescribed appointment.⁸⁶

Clause 13 proposes to amend section 50 of the CC Act to remove the requirement that individual appointments must be prescribed by regulation prior to disciplinary proceedings being commenced in QCAT. Section 50 would instead declare that any person who holds an appointment in a UPA is within QCAT's jurisdiction.⁸⁷

This amendment implements recommendation 23 of PCCC report no. 97:

...section 50 of the Crime and Corruption Act 2001 be amended to deem units of public administration and appointments therein to be within the jurisdiction of QCAT for the purpose of making findings of corrupt conduct against former public sector employees.

Stakeholder views and department's response

Submitters and witnesses presented differing views regarding the proposed amendments to the provisions regarding persons within QCAT's jurisdiction.

The Commission welcomed the amendment, submitting that it:

*...will have the legal effect of removing any delay brought about [by] the requirement under the CC Act that a regulation declare that an appointment, or a unit of public administration in which the appointment is or was held, be subject to QCAT's jurisdiction...*⁸⁸

Conversely, QUT submitted:

*The proposed amendment may have unintended consequences for those UPAs which operate in a different industrial context (i.e. not being subject to the industrial provisions applying to public servants), which is the case for all Queensland universities.*⁸⁹

⁸⁴ Crime and Corruption and Other Legislation Amendment Bill 2017, cl 34.

⁸⁵ Parliamentary Crime and Corruption Committee, *Review of the Crime and Corruption Commission*, report no. 97, June 2016, p 90; *Crime and Corruption Act 2001*, s 219IA.

⁸⁶ Parliamentary Crime and Corruption Committee, *Review of the Crime and Corruption Commission*, report no. 97, June 2016, pp 90-91; *Crime and Corruption Act 2001*, ss 50, 219IA.

⁸⁷ Explanatory notes, pp 5, 15.

⁸⁸ Submission 5, p 7.

⁸⁹ Submission 4, p 2.

The department provided the following advice regarding QUT's concern:

*The amendment to section 50 removes an unnecessary administrative process by removing the requirement for appointments to be prescribed by regulation. The Bill in no way changes the disciplinary process that the Commission or QUT will employ in assessing a matter and taking any appropriate action.*⁹⁰

2.2.10 Protection from civil liability

Section 335 of the CC Act provides that the Commission, Commission officers and persons acting at the direction of a Commission officer are not civilly liable for acts done, or omitted to be done, honestly and without negligence under the CC Act. Similarly, under section 9.7 of the *Police Service Administration Act 1990* police service review commissioners, and persons acting at their direction, are not civilly liable for acts done or omitted to be done in good faith and without negligence in the exercise or purported exercise of a relevant function or power.

A more comprehensive protection is provided to public servants under section 26C of the PS Act, which provides that public servants are not civilly liable for engaging, or for the result of engaging, in conduct in an official capacity. Public servants do not incur civil liability when they act in an official capacity, even if their conduct is negligent. Liability attaches to the State, which may recover a contribution from the employee if the conduct was engaged in other than in good faith and with gross negligence.

In an effort to address the disparity in the protections, Commission officers and police service review commissioners were prescribed as state employees under the PS Regulation on 3 February 2017.⁹¹

The Bill proposes to align the civil liability protections for the Commission, Commission officers, police service review commissioners, and persons acting at the direction of Commission officers or police service review commissioners, with the protections for public servants.⁹² In line with public servants these parties would not be civilly liable for engaging, or for the result of engaging, in conduct in an official capacity even if their conduct is negligent. Civil liability would attach to the State, which could recover a contribution from the party if the conduct was engaged in other than in good faith and with gross negligence.⁹³

This amendment implements recommendation 28 of PCCC report no. 97:

*...the relevant legislation be amended to ensure that Commission officers and Police Service Review Commissioners are afforded the same protections against civil liability provided to public servants.*⁹⁴

Stakeholder views

The majority of submitters and witnesses did not address the proposed amendments regarding civil liability protections. Mr Troy Schmidt, representing the QPUE, expressed support:

*We fully support that. We think that is something that should have happened on the last occasion when those civil liability provisions were originally introduced. In our view it is something that was probably an oversight. We think it corrects the situation.*⁹⁵

⁹⁰ Department of Justice and Attorney-General, correspondence dated 21 April 2017, attachment, pp 7-8.

⁹¹ *Public Service Regulation 2008*; Explanatory notes, p 11.

⁹² Crime and Corruption and Other Legislation Amendment Bill 2017, cls 41, 81; Explanatory notes, pp 6, 21-22, 30-31.

⁹³ Crime and Corruption and Other Legislation Amendment Bill 2017, cls 41, 81; Explanatory notes, pp 6, 11.

⁹⁴ Parliamentary Crime and Corruption Committee, *Review of the Crime and Corruption Commission*, report no. 97, June 2016, p 99.

⁹⁵ Public hearing transcript, Brisbane, 18 April 2017, p 13.

2.3 Complaint by Mr Darren Hall – PCCC report recommendations

2.3.1 Procedural fairness for persons adversely affected by a report

While the Commission is subject to an ‘implied general requirement of procedural fairness’⁹⁶ under which procedural fairness ‘is required wherever a statutory authority contemplates a publication which would affect reputation’⁹⁷ there is no legislated requirement obligating the Commission to exercise procedural fairness regarding the publication of reports.

Clause 17 proposes to introduce a new section 71A into the CC Act, prohibiting the Commission from including adverse information about a person in a report to be tabled in the Legislative Assembly or otherwise publicly released, unless the Commission provides the person with an opportunity to make submissions about the adverse information. If, despite the person’s submissions, the Commission proposes to include the adverse information, the submissions must be fairly stated in the report.⁹⁸

This requirement for the Commission to provide procedural fairness would not apply to reports that are not published, such as covert reports prepared for law enforcement agencies or investigation reports provided to a prosecuting authority or the court. The requirement would also not apply to media statements published on the Commission’s website.⁹⁹

This amendment implements recommendation 1 of PCCC report no. 99:

*...the government give consideration to amending the Crime and Corruption Act 2001 to require the Commission to take all reasonable steps to provide procedural fairness to all persons who may be adversely affected by the publication of a Commission report.*¹⁰⁰

Stakeholder views

The majority of submitters and witnesses did not address the proposed amendments regarding procedural fairness for persons adversely affected by a Commission Report. The amendment was expressly supported by the QLS,¹⁰¹ and by Mr Schmidt who stated:

*...that is an exceptionally good piece of legislation that is proposed. The problem that people experience ... is that oftentimes the CCC [Commission] can put forward a report and there is no right of suit in relation to defamation as a consequence of that report being published and a search of their name brings up that report. They may well be of the view that the contents of that report are false. By requiring the CCC to take appropriate steps to make sure that the report is balanced and that ... [the person], effectively, has an opportunity to put forward their side of the story I think is appropriate.*¹⁰²

⁹⁶ Parliamentary Crime and Corruption Committee, *Report on a complaint by Mr Darren Hall*, report no. 99, November 2016, appendix A, p 5 citing *Ainsworth v Criminal Justice Commission* [1992] HCA 10 [17].

⁹⁷ Parliamentary Crime and Corruption Committee, *Report on a complaint by Mr Darren Hall*, report no. 99, November 2016, appendix A, p 5 citing *Ainsworth v Criminal Justice Commission* [1992] HCA 10 [16]-[17].

⁹⁸ Crime and Corruption and Other Legislation Amendment Bill 2017, cl 17; Explanatory notes, p 7.

⁹⁹ Explanatory notes, p 7.

¹⁰⁰ Parliamentary Crime and Corruption Committee, *Report on a complaint by Mr Darren Hall*, report no. 99, November 2016, p 6.

¹⁰¹ Submission, p 2.

¹⁰² Public hearing transcript, Brisbane, 18 April 2017, p 15.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LS Act) states that FLPs 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 FLPs to the Bill, and brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Corrupt conduct and the Commission’s functions – clauses 5 and 7

As outlined in section 2.1 of this report, clause 5 widens the definition of corrupt conduct to include conduct of a person, whether or not they hold a public appointment, that impairs, or could impair confidence in public administration in circumstances where the conduct would be a criminal offence or grounds for termination of employment, and involves or could involve specified conduct such as collusive tendering or fraudulently obtaining an appointment.¹⁰³ Clause 7 correspondingly proposes to allow the Commission to investigate conduct connected with corruption or liable to allow, encourage or cause corrupt conduct, and to investigate whether such conduct, or corrupt conduct, may have happened, be happening or happen in the future.¹⁰⁴

Potential FLP issues

Legislation should have sufficient regard to the rights and liberties of individuals.¹⁰⁵

The proposed widening of the definition of corrupt conduct and the extension of the Commission’s investigatory jurisdiction may adversely affect the rights and liberties of individuals, potentially breaching FLPs.

The explanatory notes acknowledged the amendment to the definition of corrupt conduct may constitute a breach of FLPs, ‘...as it will increase the area of the Commission’s operations which in turn increases the extent to which existing powers impacting on individual rights and liberties may be exercised’.¹⁰⁶ However, the explanatory notes state that the amendment is justified:

*The extension is justified as it responds to the increased outsourcing in the delivery of government services and the potential for private citizens participating in these service delivery arrangements to engage in corrupt conduct. The changes also align with the Commission’s over-riding responsibility to promote public confidence in the integrity of the public sector.*¹⁰⁷

The explanatory notes acknowledged the extension of the Commission’s investigatory jurisdiction may also constitute a breach of FLPs, but similarly indicated the breach is justified ‘as it will enable the Commission to proactively address corruption risks and help better achieve the objectives of the CC Act which is to reduce the incidence of corruption in the public sector’.¹⁰⁸

¹⁰³ Crime and Corruption and Other Legislation Amendment Bill 2017, cl 5; Explanatory notes, pp 3-4, 13-14.

¹⁰⁴ Crime and Corruption and Other Legislation Amendment Bill 2017, cl 7; Explanatory notes, pp 4, 8, 14.

¹⁰⁵ *Legislative Standards Act 1992*, s 4(2).

¹⁰⁶ Explanatory notes, p 8.

¹⁰⁷ Explanatory notes, p 8.

¹⁰⁸ Explanatory notes, p 8.

Disclosure of information – clauses 14, 15, 16, 77 and 78

As outlined in section 2.2.6 of this report, clauses 14, 15 and 16 consolidate the existing disclosure provisions of the CC Act, conferring the Commission ‘with a broad power to disclose information to entities the Commission considers appropriate’.¹⁰⁹ Clauses 77 and 78, similarly broaden the Ombudsman’s power to disclose information, allowing disclosure to Queensland and Commonwealth departments and public authorities, Queensland local governments, the Commonwealth Ombudsman and the ombudsman in another state or territory.¹¹⁰

Potential FLP issues

Legislation should have sufficient regard to the rights and liberties of individuals.¹¹¹ In determining whether legislation has sufficient regard to the rights and liberties of individuals, the right to privacy, and privacy and confidentiality issues, should be considered.¹¹²

The proposed amendments authorising the sharing of information to entities the Commission or Ombudsman considered appropriate clearly impacts upon individuals’ right to privacy, potentially in breach of the FLP requiring legislation have sufficient regard to individuals’ rights and liberties.

The explanatory notes acknowledged that conferring ‘broader discretion on both the Commission and the Ombudsman to disclose information to other entities ... may adversely affect the right and liberties of individuals’ but indicated it was justifiable:

With regards to the Commission changes in the Bill are a practical solution to existing administrative and legislative complexities which inhibit the Commission from efficiently disclosing information. The new disclosure provision is not intended to compromise, or undermine, the confidentiality of any information in the Commission’s possession. Under the new section 60, information may only be disclosed to an entity the Commission considers appropriate.

*In terms of the Ombudsman, the circumstances in which disclosure is authorised is limited by the types of entities to which, and the purposes for which, the information may be given.*¹¹³

Sharing of disciplinary and offence information – clause 32, 34, 56, 57, 71 and 72

As outlined in section 2.2.8 of this report, clauses 32, 56, 57, 71 and 72 integrate the Commission into the public sector disciplinary information sharing framework, allowing disciplinary information about an employee or applicant for employment to be shared between the Commission, the chief executive of a department and the Police Commissioner.¹¹⁴ Additionally, clause 34 inserts a new section 273H in the CC Act requiring the Police Commissioner and the Director of Public Prosecutions to advise the Commission if a Commission officer, charged with an indictable or disqualifying offence, is committed for trial or is convicted, acquitted or the prosecution otherwise ends.¹¹⁵

Potential FLP issues

As noted above, legislation should have sufficient regard to the rights and liberties of individuals,¹¹⁶ including individuals’ right to privacy.¹¹⁷

¹⁰⁹ Crime and Corruption and Other Legislation Amendment Bill 2017, cls 14, 15, 16; Explanatory notes, p 16.

¹¹⁰ Crime and Corruption and Other Legislation Amendment Bill 2017, cls 77, 78; Explanatory notes, pp 5, 8, 30.

¹¹¹ *Legislative Standards Act 1992*, s 4(3).

¹¹² Office of the Queensland Parliamentary Counsel, *Fundamental legislative principles: the OQPC notebook, 2008*, p 113.

¹¹³ Explanatory notes, p 8.

¹¹⁴ Crime and Corruption and Other Legislation Amendment Bill 2017, cls 32, 56-57, 71-72; Explanatory notes, pp 6, 10.

¹¹⁵ Crime and Corruption and Other Legislation Amendment Bill 2017, cl 34.

¹¹⁶ *Legislative Standards Act 1992*, s 4(3).

¹¹⁷ Office of the Queensland Parliamentary Counsel, *Fundamental legislative principles: the OQPC notebook, 2008*, p 113.

The proposed amendments authorising the sharing of disciplinary information between the Commission, the chief executive of a department and the Police Commissioner, and the disclosure of information regarding employees charged with offences, clearly impacts upon individuals' right to privacy, and may have significant implications for their prospective or ongoing employment.

The explanatory notes acknowledged that sharing disciplinary information between public sector entities breach potentially breach FLPs, but indicated it was justifiable:

...it is considered essential that this information be made available to chief executives to maintain public confidence in public administration...

...information need only be provided by a former chief executive where the information is reasonably necessary for the current chief executive to make decisions about the appointment, or continued appointment of the person or the taking of disciplinary action.¹¹⁸

The explanatory notes also acknowledged that disclosing information about offences, may potentially breach FLPs, but similarly indicated it was justifiable:

...this amendment achieves an appropriate balance between the rights of the individual and the public interest in upholding the integrity of the Commission.¹¹⁹

Derivative use of compelled evidence – clause 18

As outlined in section 2.2.2 of this report, clause 18 amends section 197 of the CC Act to provide express authority for the use of derivative evidence, clarifying that while the compelled evidence is not itself admissible in a civil, criminal or administrative proceeding, use of evidence that is obtained as a result of the compelled evidence being provided, is admissible against the person.

Potential FLP issues

Legislation should provide appropriate protection against self-incrimination.¹²⁰ The common law privilege against self-incrimination allows a person to refuse to provide documents or answer questions if the documents or answers may incriminate them or tend to expose them to a penalty. The privilege is 'based upon the deep-seated belief that those who allege the commission of a crime should prove it themselves and should not be able to compel the accused to provide proof against himself'.¹²¹ Legislation that impacts on the common law protection against being compelled to self-incriminate may interfere with the rights and liberties of the individual.¹²²

Excluding the protection afforded against self-incrimination is potentially justifiable if:

- the questions posed, or the information required, concern matters which are peculiarly within the knowledge of the persons to whom they are directed, and which would be difficult or impossible for the Crown to establish by any alternative evidential means
- the Bill prohibits use of the information obtained in prosecutions against the person, and
- in order to secure this restriction on the use of the information obtained, the person should not be required to fulfil any conditions (such as formally claiming a right).¹²³

¹¹⁸ Explanatory notes, p 10.

¹¹⁹ Explanatory notes, p 10.

¹²⁰ *Legislative Standards Act 1992*, s 4(3)(f).

¹²¹ *Environmental Protection Authority v. Caltex Refining Co Pty Limited* (1993) HCA 74, 23.

¹²² Office of Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs – Self-incrimination*, p 3.

¹²³ *Scrutiny of Legislation Committee, Alert Digest*, 2006 No 6, p 21.

The explanatory notes acknowledged that the amendment regarding derivative evidence may potentially breach FLPs, but indicated it was justifiable:

*...the amendment is consistent with the Commission's remit under the CC Act and is merely clarifying and putting beyond doubt the existing position in the CC Act. Also the amendment in no way affects or restricts a court's inherent jurisdiction to supervise and control its own processes and determine the admissibility of evidence in a proceeding.*¹²⁴

Protection from civil liability – clauses 41 and 81

As outlined in section 2.2.10 of this report, clauses 41 and 81 provide that the Commission, Commission officers, police service review commissioners, and persons acting at the direction of Commission officers or police service review commissioners, are not civilly liable for engaging, or for the result of engaging, in conduct in an official capacity. Civil liability would attach to the State, which could recover a contribution from the party if the conduct was engaged in other than in good faith and with gross negligence.¹²⁵

Potential FLP issues

Legislation should not confer immunity from proceeding or prosecution without adequate justification.¹²⁶ In general:

...a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees.

*...the preferred provision provides immunity for actions done honestly and without negligence... if liability is removed... it is usually... to be shifted to the State.*¹²⁷

The proposed amendment protecting the specified parties from civil liability potentially breaches the FLP regarding conferral of immunity.

The explanatory notes acknowledged that the broadening of the civil liability protections confer immunity on the relevant parties but state that 'there is adequate justification for this immunity':

The State should ensure that when these protected entities [Commission, Commission officers, police service review commissioners, and persons acting at the direction of Commission officers or police service review commissioners] are engaging in conduct in an official capacity, they are not exposed to liability and the accompanying financial risk for carrying out their duties.

*The inclusion of a right of action for the State to recover a contribution from the protected entity, where the entity has engaged in conduct other than in good faith, and with gross negligence, ensures an appropriate balance is maintained and that protected entities remain accountable for their actions.*¹²⁸

Transitional arrangements – clauses 43, 59, 74, 82, 92

Commission's corruption functions

Clause 43 inserts transitional provisions including that the Commission may perform its expanded corruption functions under the proposed new section 33(2) of the CC Act in relation to conduct that happened, or that is suspected to have happened, before the commencement.

¹²⁴ Explanatory notes, p 9.

¹²⁵ Crime and Corruption and Other Legislation Amendment Bill 2017, cls 41, 81; Explanatory notes, pp 6, 11.

¹²⁶ *Legislative Standards Act 1992*, s 4(3)(h).

¹²⁷ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 64.

¹²⁸ Explanatory notes, p 11.

Protection from civil liability

As outlined in section 2.2.10 of the Report, the Bill aligns the civil liability protections for the Commission, Commission officers, police service review commissioners, and persons acting at the direction of Commission officers or police service review commissioners, with the protections for public servants.¹²⁹

Clauses 43 and 82 insert transitional provisions specifying that the proposed new protections from civil liability apply if the relevant conduct occurs after commencement even if the behaviour is part of the course of conduct some of which happened before commencement. The provisions would apply as if all of the conduct was engaged in after the commencement.

Post-separation disciplinary processes

As outlined in section 2.2.7 of the Report, the Bill integrates the Commission into the broader public sector post-separation disciplinary processes, providing that a disciplinary finding may be transferred and the authority to make a disciplinary finding delegated when an employee moves between the Commission and other public sector entities.¹³⁰

Clauses 43, 59, 74 and 92 insert transitional provisions specifying that disciplinary processes may be progressed in relation to conduct occurring after commencement, even if the behaviour is part of the course of conduct some of which happened before commencement. The disciplinary provisions would apply as if all of the conduct was engaged in after the commencement.

Potential FLP issues

Legislation should not adversely affect rights and liberties, or impose obligations retrospectively;¹³¹ strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

To the extent that the proposed amendments to the CC Act, PS Act, *Ambulance Service Act 1991*, *Police Service Administration Act 1990*, and the *Fire and Emergency Services Act 1990* would apply to conduct that occurred before commencement of the proposed Act, these provisions would operate retrospectively.

The explanatory notes do not identify this issue of FLP, nor do they provide any express justification in relation to this matter.

3.2 Explanatory notes

Part 4 of the LS Act requires that explanatory notes be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information the explanatory notes should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

¹²⁹ Crime and Corruption and Other Legislation Amendment Bill 2017, cls 41, 81; Explanatory notes, pp 6, 21-22, 30-31.

¹³⁰ Crime and Corruption and Other Legislation Amendment Bill 2017, cls 26-31, 48-55, 64-70; Explanatory notes, pp 9-10.

¹³¹ *Legislative Standards Act 1992*, s 4(3)(g).

Appendix A – List of submissions

Sub #	Submitter
001	Queensland Ombudsman
002	The Australia Institute
003	Local Government Association of Queensland
004	Queensland University of Technology
005	Crime and Corruption Commission
006	Queensland Law Society
007	Environmental Defenders Office Queensland

Appendix B – Witnesses at public briefing and public hearing

Public briefing

18 April 2017

Department of Justice and Attorney-General

- Leanne Robertson, Acting Assistant Director-General, Strategic Policy and Legal Services
- Susan Masotti, Acting Director, Strategic Policy and Legal Services
- Gregory Bourke, Acting Principal Legal Officer, Strategic Policy

Public hearing

18 April 2017

Crime and Corruption Commission

- Dianne McFarlane, Executive Director (Corruption)
- Rob Hutchings, Director, Legal Services

Queensland Law Society

- Christine Smyth, President
- Rebecca Fogerty, Criminal Law Committee Member
- Binari De Saram, Acting Advocacy Manager

Queensland Police Union of Employees

- Troy Schmidt, Barrister-at-Law

Appendix C – Recommendations from PCCC report no. 97

Recommendation 1

The PCCC recommends that it consider the governance framework of the Commission during its periodic review of the structure of the Commission within the next 12 months.

Recommendation 2

The PCCC recommends the government give consideration to the potential implications of the Commission's proposal to replace the system of specific and general referrals with a system of 'referrals only', in particular the consequences of removing the condition expressed in section 28(1)(a) of the CC Act.

Recommendation 3

The PCCC recommends the CC Act be amended to provide that the Chairperson of the Commission be the Chair of the CRC, but may delegate this role to the Senior Executive Officer (Crime).

Recommendation 4

The PCCC recommends the Commission review court judgments that could have a bearing on the operation of the Commission and the Queensland Police Service and that relevant departments should ensure any amendments considered necessary are dealt with expeditiously.

Recommendation 5

The PCCC recommends the government give consideration to amending section 49 of the CC Act to remove the power for the Commission to refer corruption investigation briefs to the ODPP for the purposes of considering prosecution proceedings.

Recommendation 6

The PCCC recommends the government review of Chapters 3 and 4 of the CC Act to develop uniform provisions with generic application to Commission functions where appropriate and clarify what specific privileges are abrogated or unaffected by the provisions of the CC Act.

Recommendation 7

The PCCC recommends the government consider a review of the power provisions in the PPRA and CC Act to ensure consistency between the PPRA and CC Act and between the various functions in the CC Act where appropriate, and consider any new powers necessary for the Commission's operations.

Recommendation 8

The PCCC recommends that it continue to monitor whether the definition of 'corrupt conduct' is inhibiting the Commission from investigating any conduct that ought to be subject to its jurisdiction, and any amendments to section 15 introduced by the government in response to any issues identified in the responses to the department's Issues Paper.

Recommendation 9

The PCCC recommends the Commission give greater prominence to the principle of devolution on its website and public documents, including specifying the kinds of conduct the Commission retains and investigates itself, the proportion of all complaints referred to the unit of public administration in which the conduct complained of occurred, and explaining in plain English the practical effect of the principle of devolution.

Recommendation 10

The PCCC recommends that it monitor the recommendations of the independent review panel, particularly in relation to potential options for resolving the potentially conflicted role of CEOs of local governments in the preliminary assessment and general management of complaints.

Recommendation 11

The PCCC recommends that it monitor and review the operation of the new notification threshold to ensure the Commission continues to be notified of matters that ought to be brought to its attention.

Recommendation 12

The PCCC recommends the CC Act be amended to require units of public administration to prepare and retain complete and accurate records of any decision not to notify the Commission of an allegation of corrupt conduct, including the reasoning on which that decision is based, the evidence (or lack thereof) considered and any findings in relation thereto.

Recommendation 13

The PCCC recommends the *Government Owned Corporations Act 1993* and the *Public Interest Disclosure Act 2010* be amended to provide that where a government owned corporation is required to refer a matter under the *Corporations Act 2001* or any other federal government legislation, that the Commission also be advised so that both Federal and State bodies can liaise on the matter.

Recommendation 14

The PCCC recommends the government give consideration to amending sections 55, 73 and 75 of the CC Act to expressly provide that the powers conferred on the Commission by these provisions apply to the performance of the Commission's monitoring function.

Recommendation 15

The PCCC recommends the definition of 'reviewable decision' in section 219BA of CC Act be amended to specify that the Commission may apply to QCAT for the review of a decision by the QPS not to initiate disciplinary proceedings against an officer for police misconduct.

Recommendation 16

The PCCC recommends section 50 of the CC Act be amended to enable the Commission to initiate disciplinary proceedings in QCAT's original jurisdiction in respect of police misconduct.

Recommendation 17

The PCCC recommends the government give consideration to a comprehensive review of the use of suspended sanctions within the police discipline system – in particular, whether the use of suspended sanctions is appropriate where the sanction is dismissal.

Recommendation 18

The PCCC recommends the government consider amending section 12(2) of the *Police Service (Discipline) Regulations 1990* to ensure a suspended sanction remains on the subject officer's record.

Recommendation 19

The PCCC recommends section 219G of the CC Act be amended to lengthen the period for making an application to QCAT for review of a reviewable decision to 28 days.

Recommendation 20

The PCCC recommends the government give consideration to amending sections 55, 73 and 75 of the CC Act to expressly provide that the powers conferred on the Commission by these provisions apply to the performance of the Commission's corruption prevention function.

Recommendation 21

The PCCC recommends the government review the disclosure provisions of the CC Act to ensure they reflect contemporary principles of inter-agency cooperation, while maintaining adequate protections for the protection of confidential information.

Recommendation 22

The PCCC recommends sections 42 and 44 of the CC Act be amended to ensure the Commissioner of Police or a public official may, subject to claims of privilege, use information regarding alleged corruption provided by the Commission for the purpose of dealing with the alleged corruption, including the taking of disciplinary action.

Recommendation 23

The PCCC recommends section 50 of the CC Act be amended to deem units of public administration and appointments therein to be within the jurisdiction of QCAT for the purpose of making findings of corrupt conduct against former public sector employees.

Recommendation 24

The PCCC recommends the CC Act and other relevant legislation be amended to allow a disciplinary finding against a Commission officer who changes employment to another public sector agency to be transferred to the new employing chief executive, allow the Commission to delegate the authority to make a disciplinary finding about a former Commission officer to the new employing chief executive, and provide the same reciprocal rights to other public sector agencies whose employees change employment to the Commission.

Recommendation 25

The PCCC recommends the CC Act and other relevant legislation be amended to enable the Commission to provide and receive disciplinary information about a current holder of, or an applicant for, an appointment with the Commission (including a secondment) that the Commission, the chief executive of a public sector department or the Commissioner of Police has about that person. The amendments should specify that the information may be requested in the same circumstances as those currently provided for in section 188B(1)(b) of the *Public Service Act 2008*.

Recommendation 26

The PCCC recommends the government give consideration to a single confiscation agency administering the schemes under Chapter 2, 2A and 3 of the *Criminal Proceedings Confiscation Act 2002* and the relevant agency be provided with the appropriate resources to administer the schemes.

Recommendation 27

The PCCC recommends the CC Act be amended to enable Commission officers to make lawful disclosures concerning suspected corrupt conduct and improper conduct (as defined in section 329(4) of the Act). The amendments should also ensure that a Commission officer who makes such a disclosure is entitled to the same protections granted to public sector employees under the *Public Interest Disclosure Act 2010*.

Recommendation 28

The PCCC recommends the relevant legislation be amended to ensure Commission officers and Police Service Review Commissioners are afforded the same protections against civil liability as public servants.

Recommendation 29

The PCCC recommends section 14(h) of the *Telecommunications Interception Act 2009* be amended to require all authorisations under section 66(2) of the *Telecommunications (Interception and Access) Act 1979* (Cth) and all written appointments of authorising officers under section 66(4) be kept in the authority's records.

Appendix D – Recommendations from PCCC report no. 99

Recommendation 1

The PCCC recommends the government give consideration to amending the CC Act to require the Commission to take all reasonable steps to provide procedural fairness to all persons who may be adversely affected by the publication of a Commission report.

Recommendation 2

The PCCC recommends the Commission publish a statement with the report on its website acknowledging that Mr Hall was not given an opportunity to respond to the contents of the report prior to its tabling in Parliament and that he denies any misconduct on his part, as outlined in the Commission's response of 11 November 2016.

Recommendation 3

The PCCC recommends the Legislative Assembly publish the statement outlined in Recommendation 2 with the report tabled in the Legislative Assembly on 22 July 2009.

Non-Government Members' Statement of Reservation

Statement of Reservation – Crime and Corruption and Other Legislation Amendment Bill 2017

We place on record our concerns with certain provisions of the Crime and Corruption and Other Legislation Amendment Bill 2017, with submissions and evidence provided to the Committee throughout our consideration of the Bill.

The Queensland Law Society (QLS) raised concerns with two aspects of the Bill, which we broadly support.

Firstly, they are concerned with the amendment which expands the definition of corrupt conduct. Their submission states the following:

“However, we do not consider that these powers should be open-ended and limitless. The definition as drafted is exceptionally broad and may be open to being construed too broadly. As such, it is our view that the jurisdiction of the Commission should be restricted to corruption that:

- *involves or affects a Queensland public official or public authority*
- *is deliberate or intentional (as opposed to negligence or mistake)*
- *is a criminal offence, or a disciplinary offence, or constitute reasonable grounds for dismissing or otherwise terminating the services of a public official, or in the case of a member of the Queensland Parliament or local government councillor, a substantial breach of an applicable code of conduct.”*

Further to this statement, we have concerns that the Crime and Corruption Commission (CCC) may become overwhelmed with complaints that may be vexatious in nature and well outside the purview of what they should be investigating, however in determining the merit of complaints raised with the CCC, considerable resources may be utilised and effectively wasted in determining what needs to be investigated. In that context, important issues that should be investigated may be delayed or deferred in the administration of the CCC. While we don't cast aspersions with the professionalism of the organisation in any way, the amended definition may cause the CCC to become bogged down in minutiae or issues which don't need to be investigated.

Secondly, the QLS raised concerns with the proposed amendment contained in clause 18 of the Bill, regarding the derivative use of compelled evidence. While we understand the merits of the provision, the QLS stated in their submission that:

“The Society notes that the law relating to derivative use can be exceptionally complicated. As such, we consider that the proposed amendment may have unintended and adverse consequences. For example, the provision might enable the Commission to provide information and bypass the protections offered by section 197 of the Act. Section 197 places restrictions on use of privileged answers, documents, things or statements disclosed or produced under compulsion. As such, clause 18 would allow other agencies to explore the same matters with a witness and bypass the protections of section 197, to their detriment. The Society is exceptionally concerned about this proposal.”

At the very least, we would appreciate clarification from the Attorney-General in her second reading speech on the intent of this provision and the concerns raised by the QLS.

We note that the amendments to clause 18 are raised as a possible breach of fundamental legislative principles, specifically in relation to the adversely impacting the rights and liberties of individuals.

The other issue that we have concerns with, was raised by the Queensland Police Union of Employees (QPUE) in evidence provided to the Committee at the public hearing.

The QPUE raised concerns with the current proposal contained in clause 15 of the Bill, relating to the use of search warrants for the investigation of criminal offences, being subsequently used to further complaints of misconduct. The QPUE believe there could be a misuse of the search warrant powers in the process of the investigation.

Further to the previous point raised by the QLS regarding amendments contained in clause 18 of the bill, we would appreciate clarification of the clause 15 in the Attorney-General's second reading speech and the concerns raised by the QPUE.

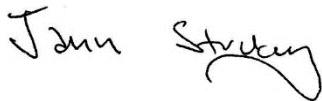
Recommendation 22 of the PCCC report was broad in nature, while subsection 1 of the new provision is very broad in nature, as outlined in the explanatory notes – "the Commission may use any information, document or thing in the Commission's possession in performing the Commission's functions."

The QPUE want limitations on the use of this aspect of the new provision. Specifically, they believe their concerns can be allayed by amending the proposed section in order to allow the CCC to use all information it obtains, regardless of source, only for the purposes of performing its research and advisory functions. This would preserve the protections and safeguards Queensland has long had in place on the use of information obtained under compulsive processes.

We note that the amendments contained in clause 15 of the Bill was raised as a potential breach of fundamental legislative principles, specifically that it may adversely affect the rights and liberties of individuals.



Michael Crandon MP
Member for Coomera



Jann Stuckey MP
Member for Currumbin



Jon Krause MP
Member for Beaudesert

