



Crime and Corruption Amendment Bill 2023

Report No. 6, 57th Parliament
Community Safety and Legal Affairs Committee
April 2024

Community Safety and Legal Affairs Committee¹

Chair	Mr Peter Russo MP, Member for Toohey
Deputy Chair	Mr Mark Boothman MP, Member for Theodore
Members	Mr Stephen Andrew MP, Member for Mirani
	Ms Jonty Bush MP, Member for Cooper
	Mr Jason Hunt MP, Member for Caloundra
	Mr Jon Krause MP, Member for Scenic Rim

Committee Secretariat

Telephone	+61 7 3553 6641
Email	CSLAC@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/CSLAC

Acknowledgements

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All web address references are current at the time of publishing.

¹ The Community Safety and Legal Affairs Committee was established as a portfolio committee of the Legislative Assembly on 13 February 2024, at which time it took on legislative scrutiny responsibilities of the former Legal Affairs and Safety Committee, which was discharged on the same date. The committee is also aided by the fact that 5 of the 6 members of the former committee are also members of the Community Safety and Legal Affairs Committee. The former committee consisted of Mr Peter Russo MP, Member for Toohey and Chair, Ms Laura Gerber MP, Member for Currumbin and Deputy Chair, Mr Stephen Andrew MP, Member for Mirani, Ms Jonty Bush MP, Member for Cooper, Mr Jason Hunt MP, Member for Caloundra and Mr Jon Krause MP, Member for Scenic Rim.

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Chair's foreword

This report presents a summary of the Community Safety and Legal Affairs Committee's examination of the Crime and Corruption Amendment Bill 2023, a private member's bill introduced into the Queensland Parliament by Mr Tim Nicholls MP, Member for Clayfield, on 11 October 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

Since the introduction of the Bill, the Queensland Government has commenced an independent review into the reporting powers of the Crime and Corruption Commission. Accordingly, it would be inappropriate and premature for the committee to make a recommendation to pass legislation in relation to these matters before the outcome of the independent review has been published. The committee therefore recommends the Bill not be passed.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank Mr Nicholls and our Parliamentary Service staff for assisting the committee with its inquiry into the Bill.

I commend this report to the House.



Peter Russo MP

Chair

Recommendations

Recommendation 1

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The committee recommends the Crime and Corruption Amendment Bill 2023 not be passed.

Executive Summary

On 11 October 2023, Mr Tim Nicholls MP, Member for Clayfield, introduced the Crime and Corruption Amendment Bill 2023 (Bill) into the Queensland Parliament.

The main purpose of the Bill is to amend the *Crime and Corruption Act 2001* (CC Act) to:

- remedy a ‘deficiency in the reporting powers’ of the CC Act as found by the High Court in *Crime and Corruption Commission v Carne* [2023] HCA 28 to explicitly allow the Crime and Corruption Commission (CCC) to table and publish reports on its corruption investigations, and
- reverse a 2018 amendment that omitted the Director of Public Prosecutions (DPP) from section 49 of the CC Act.

Stakeholders and subscribers were invited to make written submissions on the Bill and the committee received 3 substantive submissions. A public hearing on the Bill was held in Brisbane on 27 March 2024, followed by a public briefing held with the Member for Clayfield.

The key issues raised during the committee’s examination of the Bill included:

- reporting powers of the CCC
- tabling of reports
- the omission of the DPP from section 49 of the CC Act
- procedural fairness and natural justice
- certain provisions operating retrospectively.

Since the introduction of the Bill, the Queensland Government announced on 15 February 2024 that it had commissioned an independent review to be led by former Queensland Chief Justice Catherine Holmes into the reporting powers of the CCC. It is anticipated that the matters covered in the Bill will also be considered in detail by this independent review. Accordingly, it would be inappropriate and premature for the committee to make a recommendation to pass legislation in relation to these matters before the outcome of the independent review has been published.

Accordingly, the committee recommends that the Bill not be passed.

1 Introduction

1.1 Overview

On 11 October 2023, Mr Tim Nicholls MP, Member for Clayfield, (Private Member) introduced the Crime and Corruption Amendment Bill 2023 (Bill) as a private member's bill into Queensland Parliament.

The Bill proposes to amend the *Crime and Corruption Act 2001* (CC Act). Its policy objectives are to:

- remedy a 'deficiency in the reporting powers' of the CC Act as found by the High Court in *Crime and Corruption Commission v Carne* [2023] HCA 28 to explicitly allow the Crime and Corruption Commission (CCC) to table and publish reports on its corruption investigations²
- reverse a 2018 amendment that omitted the Director of Public Prosecutions (DPP) from section 49 of the CC Act.³

1.1.1 Amendments arising from the High Court judgement in the *Carne* case

The following proposed amendments in the Bill relate to issues arising from the High Court judgement in the *Carne* case:

- amendment of section 35(1) of the CC Act to add that the CCC may perform its corruption functions by reporting to the Legislative Assembly under section 69 regarding complaints about corruption notified to it
- amendment of section 64 of the CC Act by inserting a new provision that provides, to remove any doubt, section 64(1) applies to a commission report about its corruption functions, and includes the ability to report about its investigations whether or not a report has been made under section 49 and whether or not criminal proceedings or disciplinary action have been commenced.
- amendment of section 69 of the CC Act to revert to a process for tabling CCC reports similar to that under the previous *Criminal Justice Act 1988* to report directly to Parliament rather than through the Parliamentary Crime and Corruption Commission (PCCC)
- replacement of section 71A of the CC Act to improve provisions regarding procedural fairness for adverse comments made about individuals in commission reports
- insertion of a new section to ensure that all previously tabled reports have been validly tabled and published
- insertion of provisions to ensure the new provisions apply to any new or ongoing corruption investigations and any unpublished commission reports.

The provisions in section 71A regarding adverse comments in reports are stated to not apply to a commission report about a corruption investigation that has not been published at the commencement of the new provisions, including (a) the commission report relating to the former Public Trustee, Mr Carne, and (b) the commission report relating to Jackie Trad and her involvement in the appointment of Frankie Carroll as Under-Treasurer.⁴

1.1.2 Amendments to reverse the 2018 amendment to section 49 of the CC Act

The Bill also proposes to reverse a 2018 amendment that omitted the DPP from section 49 of the CC Act (section 12 of the *Crime and Corruption and Other Legislation Amendment Act 2018*). The reversal

² Explanatory notes, p 1.

³ Explanatory notes, p 1.

⁴ Explanatory notes, p 2.

of the 2018 amendment was recommended by both the PCCC⁵ and the Commission of Inquiry relating to the Crime and Corruption Commission led by the Honourable Gerald Edward (Tony) Fitzgerald AC KC (COI).⁶

1.2 Background information concerning the *Carne* case

In 2018, an anonymous complaint received by the CCC alleged that the then Public Trustee of Queensland, Mr Peter Carne, had engaged in corrupt conduct. The CCC investigated the allegations, referring some of them to the Attorney-General, and providing evidence to the DPP. The CCC determined that no criminal prosecution would be pursued.⁷

In October 2020, the CCC provided a report on its investigation to the PCCC. The report outlined the evidence and provided recommendations, but did not contain any findings of corrupt conduct against Mr Carne.⁸

The CCC requested the PCCC to direct, under section 69(1)(b) of the CC Act, that the report be given to the Speaker of the Legislative Assembly to be tabled.⁹ Section 69(1)(b) provides that ‘a research report or other report that the parliamentary committee directs be given to the Speaker’ can be tabled.¹⁰

Mr Carne applied to the Supreme Court, seeking to prevent publication of the report.¹¹ He argued that the report was not a report for the purposes of section 69(1), and should therefore not be tabled.¹²

The Supreme Court dismissed Mr Carne’s application, finding the report was:

- authorised by section 64 of the CC Act
- protected by parliamentary privilege.¹³

Mr Carne then appealed to the Queensland Court of Appeal, challenging the conclusions of the Supreme Court judgement.¹⁴

⁵ Parliamentary Crime and Corruption Committee Report No. 108, 57th Parliament, *Inquiry into the Crime and Corruption Commission’s investigation of former councillors of Logan City Council*; and related matters, December 2021.

⁶ Commission of Inquiry relating to the Crime and Corruption Commission led by the Honourable Gerald Edward (Tony) Fitzgerald AC KC, August 2022.

⁷ High Court of Australia, Short particulars of cases: appeals – *Crime and Corruption Commission v Carne* (B66/2022), https://www.hcourt.gov.au/assets/registry/case-summaries/2023/SP_June_2023.pdf.

⁸ High Court of Australia, Short particulars of cases: appeals – *Crime and Corruption Commission v Carne* (B66/2022), https://www.hcourt.gov.au/assets/registry/case-summaries/2023/SP_June_2023.pdf.

⁹ High Court of Australia, Short particulars of cases: appeals – *Crime and Corruption Commission v Carne* (B66/2022), https://www.hcourt.gov.au/assets/registry/case-summaries/2023/SP_June_2023.pdf.

¹⁰ Crime and Corruption Act, s 69. This section does not apply to the commission’s annual report, or a report under section 49 or 65, or a report to which section 66 applies.

¹¹ Opposition Office, correspondence, 27 November 2023, p 6.

¹² N Laurie, ‘Removing the Watchdog’s bark: Crime and Corruption Commission v Carne’, *AusPubLaw*, 23 October 2023, p 2.

¹³ Crime and Corruption Act, s 64. Section 64 provides that ‘the commission may report in performing its functions’. N Laurie, ‘Removing the Watchdog’s bark: Crime and Corruption Commission v Carne’, *AusPubLaw*, 23 October 2023, p 3.

¹⁴ <https://www.queenslandjudgments.com.au/caselaw/qca/2022/141> [13]; https://www.hcourt.gov.au/assets/cases/02-Brisbane/b66-2022/CCC-Carne_App.pdf [19].

The Court of Appeal upheld Mr Carne’s appeal and found that the report was not made by the CCC in the performance of any of its statutory functions, as per section 64 of the CC Act, and was therefore:

- not a report for the purposes of section 69(1)
- not subject to parliamentary privilege.¹⁵

The CCC then appealed to the High Court, arguing that the report was:

- a report for the purposes of section 69(1)
- a proceeding of parliament, and therefore could not be ‘impeached or questioned’ in any court.¹⁶

The High Court dismissed the CCC’s appeal, finding that:

- the report was not a report for the purposes of section 69(1)
- parliamentary privilege did not apply.¹⁷

The High Court further noted that ‘no provision of the CC Act authorised the production of the [r]eport’.¹⁸

According to the Opposition Office briefing note, these court proceedings identified ‘deficiencies in the CC Act’ relating to ‘fundamental issues of openness and parliamentary privilege’ that can only be addressed by means of legislative amendment.¹⁹

1.3 Legislative compliance

The committee’s deliberations included assessing whether or not the Bill complies with the Parliament’s requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

1.3.1 Legislative Standards Act 1992



Fundamental legislative principles require that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.²⁰

The committee’s assessment of the Bill’s consistency with the LSA considered potential issues relating to the fundamental legislative principles (FLPs) raised by the Bill, specifically whether the legislation has sufficient regard to the rights and liberties of individuals, or imposes obligations, retrospectively and whether the legislation is consistent with the principles of natural justice.²¹

¹⁵ N Laurie, ‘Removing the Watchdog’s bark: Crime and Corruption Commission v Carne, *AusPubLaw*, 23 October 2023, p 3., Correspondence to the committee from David Crisafulli, MP, Leader of the Opposition dated 27 November 2023, p 3; <https://www.hcourt.gov.au/assets/publications/judgment-summaries/2023/hca-28-2023-09-13.pdf>; <https://www.queenslandjudgments.com.au/caselaw/qca/2022/141> [15].

¹⁶ According to s 8(1) of the *Parliament of Queensland Act*.

¹⁷ N Laurie, ‘Removing the Watchdog’s bark: Crime and Corruption Commission v Carne, *AusPubLaw*, 23 October 2023, p 3.

¹⁸ <https://www.hcourt.gov.au/assets/publications/judgment-summaries/2023/hca-28-2023-09-13.pdf>.

¹⁹ Correspondence to the committee from David Crisafulli, MP, Leader of the Opposition dated 27 November 2023, p 1.

²⁰ LSA, s 4(2).

²¹ LSA, s 4(3)(b) and(g).

These issues arising under the LSA are discussed in more detail in section 3 of this report below.

1.3.2 *Human Rights Act 2019*



A law is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable.²²

The committee's assessment of the Bill's compatibility with the HRA considered the potential issues and limitations relating to the following human rights raised by the Bill:

- right to not have a person's reputation unlawfully attacked (HRA, section 25)
- right to a fair hearing (HRA, section 31)
- retrospective criminal laws (HRA, section 35).²³

These issues arising under the HRA and the committee's consideration of the statement of compatibility are discussed in more detail in section 3 of this report below.

1.4 **Should the Bill be passed?**

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Crime and Corruption Amendment Bill 2023 not be passed.

²² HRA, s 8.

²³ Statement of compatibility, pp 1-2.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Proposed amendments

The Bill proposes amendments to the CC Act relating broadly to:

- reporting on corruption
- tabling of reports
- procedural fairness.

The Bill's proposed amendments are summarised below.

2.1.1 Clause 3 amending section 35: how the commission performs its corruption functions

Section 35(1) of the CC Act lists the ways in which the CCC performs its corruption functions.²⁴

Clause 3 of the Bill amends section 35(1) by adding to the list of how the CCC performs its corruption functions by including 'reporting to the Legislative Assembly under section 69 about complaints about, or involving, corruption made or notified to it'.²⁵

2.1.2 Clause 4 amending section 49: reports about complaints dealt with by the commission

Section 49 of the CC Act provides for reports about complaints dealt with by the commission.

Clause 4 of the Bill inserts a new subsection providing that 'if the CCC makes a report under s49(1) and (2) it does not preclude the CCC also making a report under s64'.²⁶

Current section 49(5) explicitly excludes the DPP from the definition of 'prosecuting authority' for the purposes of that section.

Clause 4 of the Bill would remove the exclusion of the DPP as a prosecuting authority to which the CCC can report on a complaint about corruption.

The explanatory notes state that the Bill proposes to:

Amend s49 of the CC Act to ensure that the Director of Public Prosecutions is a prosecuting authority within the terms of the section and includes a new subsection that provides that if the CCC makes a report under s49(1) and (2) it does not preclude the CCC also making a report under s64.²⁷

According to correspondence from the Opposition Office, this change serves to 'reverse a 2018 amendment that omitted the Director of Public Prosecutions from section 49 of the Crime and Corruption Act', as recommended by the COI led by Tony Fitzgerald.²⁸ However, this amendment would not implement the entirety of the recommendation, which also recommended amending

²⁴ Crime and Corruption Act, s 35.

²⁵ Bill, cl 3; Explanatory notes, p 2.

²⁶ Explanatory notes, p 2. Section 64 of the CC Act provides that the CCC may report in performing its functions.

²⁷ Explanatory notes, p 2.

²⁸ Correspondence to the committee from David Crisafulli, MP, Leader of the Opposition dated 27 November 2023, p 5.

section 49 of the CC Act to provide that DPP oversight must be sought by the CCC before any decision is made to bring charges arising from a corruption investigation.²⁹

2.1.3 Clause 5 amending section 64: Commission's reports – general

Section 64 provides that the CCC may report in performing its functions. Clause 5 of the Bill proposes to amend section 64, inserting a new provision that explicitly includes 'corruption functions' as part of its functions the CCC may report on. The amendment adds that the CCC may report on, under section 64(1), an investigation of a complaint about, or information or matter involving, corruption regardless of whether:

- the commission has reported on the investigation under section 49; or
- prosecution proceedings have, or disciplinary action has, commenced arising from the investigation.³⁰

The purpose of this amendment is to:

... remove any doubt, s64(1) applies to a commission report about its corruption functions, and includes the ability to report about its investigations whether or not a report has been made under s.49 and whether or not criminal or disciplinary proceedings have been commenced.³¹

2.1.4 Clause 6 amending section 69: Commission reports to be tabled

Section 69 sets out the process for tabling CCC reports. Section 69(1) provides that the section applies to the following reports:

- a report on a public hearing
- a research report or other report that the parliamentary committee directs be given to the Speaker.

Section 69(2) provides that section 69 does not apply to the CCC's annual report, or a report under section 49 or 65, or a report to which section 66 applies.³²

Clause 6 of the Bill proposes to amend section 69 by removing the restrictions on the type of commission reports to which section 69 applies.

According to the explanatory notes, the purpose of clause 6 is to:

... revert to a process for tabling CCC reports similar to the previous *Criminal Justice Act 1988* and which applied to the former Criminal Justice Commission (CJC) and Crime and Misconduct Committee (CMC) to report directly to parliament, rather than through the PCCC.³³

The Opposition Office briefing note noted that the amendment of section 69 'free[s] the CCC in its reports'.³⁴ This is achieved by removing the:

- implied restriction to reporting only on issues where there have been public hearings

²⁹ Commission of Inquiry relating to the Crime and Corruption Commission, Report, 2022, p 7, https://www.cccinquiry.qld.gov.au/__data/assets/pdf_file/0004/726619/report-commission-of-inquiry-relating-to-the-ccc.pdf.

³⁰ Bill, cl 5.

³¹ Explanatory notes, p 2.

³² Section 49 reports relate to complaints, s 65 relates to commission reports on court procedures, s 66 relates to maintaining the confidentiality of information.

³³ Explanatory notes, p 2.

³⁴ Correspondence to the committee from David Crisafulli, MP, Leader of the Opposition dated 27 November 2023, p 6.

- requirement to seek approval of the PCCC.³⁵

2.1.5 Clause 7 amending section 71A: report containing adverse comment

Section 71A of the CC Act provides that if the CCC proposes to make an adverse comment about a person in a report to be tabled or published, the CCC must:

- give the person an opportunity to make submissions about the proposed adverse comment
- ensure the person's submissions are fairly stated in the report.

Clause 7 of the Bill proposes to amend section 71A to 'strengthen the procedural fairness and ensure sufficient protections are in place'.³⁶ The amendments propose to include:

- the commission must provide the person with procedural fairness in relation to the adverse comment
- additional detail regarding the rights of a person subject to an adverse comment.³⁷

2.1.6 Clause 8 inserting new pt 20 relating to the tabling of particular reports

Clause 8 of the Bill proposes to insert a new chapter 8, part 20 in the CC Act.³⁸ The explanatory notes state that the purpose of the clause is to:

[e]nsure that all previously tabled reports have been validly tabled and that reports finalised, but not yet tabled, or reports started prior to commencement will be able to be tabled.³⁹

The proposed new section 460 also provides that section 71A does not apply to 'a corruption investigation that, at the commencement, has not been published', including the following reports:

- the report entitled 'An investigation into allegations relating to the former Public Trustee of Queensland: Investigation Report' (Carne report), and
- a report arising from the commission's investigation of allegations of corrupt conduct in relation to Jackie Trad and her involvement in the appointment of Frankie Carroll as Under-Treasurer (Trad report).

2.2 Stakeholder comments and the Private Member's response

2.2.1 Amendments arising from the High Court judgement in the *Carne* case

In relation to the amendments arising from the High Court judgement in the *Carne* case, of the three substantive submissions received by the committee in relation the Bill, one submission opposed the Bill⁴⁰ and two submissions supported the Bill.⁴¹

The two submissions supportive of the Bill were from Mr Caisey Keehn (submission 2) and the CCC (submission 4).

³⁵ Correspondence to the committee from David Crisafulli, MP, Leader of the Opposition dated 27 November 2023, p 6. See also: N Laurie, 'Removing the Watchdog's bark: Crime and Corruption Commission v Carne', *AusPubLaw*, 23 October 2023, p 3; Correspondence to the committee from David Crisafulli, MP, Leader of the Opposition dated 27 November 2023, p 6.

³⁶ Correspondence to the committee from David Crisafulli, MP, Leader of the Opposition dated 27 November 2023, p 6.

³⁷ Bill, cl 8.

³⁸ Bill, cl 8; Explanatory notes, p 2. Note that this amendment is incorrectly given as Ch 9, Pt 20 the explanatory notes.

³⁹ Explanatory notes, p 2.

⁴⁰ Submission 1.

⁴¹ Submissions 2 and 4.

Mr Caisey Keehn supported the Bill as legislation providing for the publication of CCC reports relating to alleged corruption, regardless of whether charges are brought. Mr Keehn stated that the proposed legislation will enable openness and transparency. Mr Keehn submitted that there should be no need to challenge the publication of a CCC report alleging corruption if the report finds no evidence of corrupt conduct. Mr Keehn also submitted that publishing CCC reports where no evidence of corrupt conduct is found will serve an educative purpose for government.⁴² These comments by Mr Keehn in his submission were noted by the Private Member in his response to submission.⁴³

The CCC submitted that it:

... supports the introduction of amending legislation to restore the long-held consensus understanding that the CCC is, and its predecessors were, authorised to report on corruption investigations under the general reporting power in section 64(1) of the Act in performance of the commission's corruption and prevention functions.⁴⁴

The CCC stated that at present it does not have statutory power to report publicly on its corruption investigations based on the High Court's finding in the *Carne* case.⁴⁵ The CCC submitted that this 'sets Queensland apart from its federal and interstate counterpart agencies which each have a statutory power to publicly report'.⁴⁶ The CCC also stated that the power to report is also supported by the United Nations Convention Against Corruption.⁴⁷ The CCC submitted there is a need for urgent legislative amendment to address this to avoid corruption risks which may follow. The CCC also submitted that it 'considers the proposed provisions would effectively provide the CCC with appropriate public reporting powers'.⁴⁸ The CCC also supports:

- the replacement of section 71A to more clearly articulate the detailed process to provide procedural fairness as it is 'generally consistent' with the process traditionally taken by the CCC, and
- clause 6 of the Bill providing that CCC reports must be given to the Speaker rather than the PCCC, and the Speaker must table the report as soon as practicable, as this would be consistent with interstate agencies that currently have this ability.⁴⁹

The CCC also submitted that:

... there is an imperative to introducing curative legislation following the decision in *Carne* which validates public reports which have previously been prepared by the CCC (and its predecessors) and tabled in the Legislative Assembly.⁵⁰

At the public hearing, the CCC reiterated the need for clarification with regard to their reporting powers:

I see the capacity to publicly report on our corruption investigations being fundamental to our mission. It is absolutely inherent to the public interest and confidence of the public in the work that we do. It would, without remedy, not permit us to report to elected representatives so that they know exactly what is happening in the commission and what work we are doing. To my mind, it is absolutely

⁴² Submission 2, pp 1-2.

⁴³ Mr Tim Nicholls MP, Member for Clayfield, correspondence, 7 March 2024, p 2.

⁴⁴ Submission 4, p 1.

⁴⁵ Submission 4, p 1.

⁴⁶ Submission 4, p 1. The CCC set out a summary of the enabling provisions in each jurisdiction in Attachment A of its submission.

⁴⁷ Submission 4, p 1.

⁴⁸ Submission 4, p 5.

⁴⁹ Submission 4, p 5.

⁵⁰ Submission 4, p 6.

fundamental. Importantly, it is also clearly set out in the provisions of every other anti-corruption agency across the country and the new national body. Were this not to be remedied it would make Queensland an outlier, and it would mean that we would have quite literally legislation that was, in my view, not fit for purpose and not consistent with the best principles of public administration.⁵¹

Regarding the High Court decision and proposed amendments, the CCC noted that:

it is just that the statutory construction point that the High Court relied on is a very simple, very straightforward point and is contrary to decades of experience and understanding across parliament, the parliamentary committee, the oversight committee and the CCC. Remedying that does not have to be a difficult exercise, but if we are going to look at it more holistically then obviously there is an opportunity to improve other areas to make it much clearer.⁵²

When asked whether the purported issue should be remedied through the Bill or in response to the independent review announced by the Queensland Government, the CCC stated:

Firstly, can I say that I just want the problem fixed. If that is this bill or if it is as a consequence of the review, I am very happy with either outcome. It is true to say that the terms of reference of the review provide the capacity to look at issues more broadly, I think, than what is presently before the committee in terms of this bill. However, in saying that, the bill does remedy the problem that has been identified by the High Court and, with those additions that I have mentioned that might be able to be looked at in the context of this review, it would certainly serve to fix the immediate problem. I suspect that the benefit of the review is that, in looking at things a little bit more holistically, it can look more broadly at a range of factors that sit around public reporting, so things like the making of public statements, the timing of reporting, what might go into the reports and so forth which is not specifically addressed in this bill.⁵³

With regard to the independent review, the Private Member stated that ‘I think the review is a delaying tactic and that it is the responsibility of executive government that has known about the potential for this to occur for many years ...’⁵⁴

The CCC also recommended a number of further amendments in its submissions relating to reporting powers.⁵⁵ The Private Member accepted these recommendations in his response.⁵⁶

The submission opposing the Bill was from the Honourable Glen Milliner, a former member of the Queensland Legislative Assembly. Mr Milliner submitted that he opposed legislation enabling the publication of CCC reports on individuals alleging corruption when an investigation by the CCC did not lead to charges being laid. He also submitted that certain amendments in the Bill proposed to operate retrospectively and that, in his view, that retrospective legislation should only be considered in extreme circumstances, and that this is not one of those circumstances. Accordingly, he urged the committee to reject the sections of the Bill that would overturn restrictions on parliamentary privilege in the current CC Act, which provide ‘important protection to Queenslanders found to be innocent of any act of corruption’.⁵⁷

In his response to this submission, the Private Member noted Mr Milliner’s comments and stated:

It is critical our central integrity body to have the power to publish reports of their investigations, regardless of their findings. ...

⁵¹ CCC, public hearing transcript, 27 March 2024, p 7.

⁵² CCC, public hearing transcript, 27 March 2024, p 9.

⁵³ CCC, public hearing transcript, 27 March 2024, p 8.

⁵⁴ Mr Tim Nicholls MP, Member for Clayfield, public briefing transcript, p 5.

⁵⁵ Submission 4, p 6.

⁵⁶ Mr Tim Nicholls MP, Member for Clayfield, correspondence, 7 March 2024, p 2.

⁵⁷ Submission 1, pp 1-2.

Each report provides more awareness of any weaknesses or failures in the system which could allow for or facilitate corruption.

Publishing these reports raises the standard of integrity in this State and is in line with other jurisdictions.⁵⁸

At the public briefing, the Private Member further stated:

I regret to say that Mr Milliner was wrong in a number of the things he said [at the public hearing]. The original Fitzgerald report of 1989 actually recommended the statutory power to report on these matters.

...

With respect to Mr Milliner, his understanding is not supported by any law of statutory interpretation, or indeed the original provisions of the Criminal Justice Act or indeed any of the debates at that time. The only way you can interpret statutes and bills is by looking at the words as they are printed in black and white on the paper—that is the only way—so Mr Milliner is quite wrong when he says there is some intention ‘that no harm could be done’. The intention is determined by looking at the words of the legislation. Legislative intention ‘is not an objective collective mental state. Such a state is a fiction which serves no useful purpose.’ That is a decision of the High Court in a case called *Lacey v Attorney-General of Queensland* of 2011. The intention of the parliament in relation to public reporting is as set out in the legislation.

In terms of the other comments Mr Milliner made, his complaint is about the media reporting. His complaint is not about the CCC act, the CMC act or the CJC act ...⁵⁹

2.2.2 Amendments to reverse the 2018 amendments to section 49 of the CC Act

In the public hearing, the issue was raised that the amendments to section 49 of the CC Act contained in the Bill did not implement a requirement for the CCC to seek the advice of the DPP prior to bringing charges arising from corruption investigations.⁶⁰ The CCC stated:

... we note what is contained in the explanatory memoranda in relation to section 49 and the amendments. That does not appear to have actually been taken up and put into the bill itself, so there does not appear to be any correlation between that and what is actually directly in the bill. However, in relation to that issue, the committee had and has before it the Crime and Corruption and Other Legislation Amendment Bill that details very specifically amendments which go to the heart of the relationship with the DPP and the requirement for the CCC to seek advice of the DPP prior to the implementation of any charging. So those issues, effectively, have been taken up in that other legislation in any event.⁶¹

In the public briefing, the Private Member acknowledged the comments made by the CCC and agreed that issues in relation to section 49 of the CC Act are adequately addressed by the Crime and Corruption and Other Legislation Amendment Bill currently before the House.⁶²

⁵⁸ Mr Tim Nicholls MP, Member for Clayfield, correspondence, 7 March 2024, p 2.

⁵⁹ Mr Tim Nicholls MP, Member for Clayfield, public briefing transcript, 27 March 2024, p 6.

⁶⁰ CCC, public hearing transcript, 27 March 2024, p 9.

⁶¹ CCC, public hearing transcript, 27 March 2024, p 9.

⁶² Mr Tim Nicholls MP, Member for Clayfield, public briefing transcript, 27 March 2024, p 4.

3 Legislative compliance

3.1 Consistency with fundamental legislative principles

Potential issues relating to the Bill's consistency with the *Legislative Standards Act 1992* (LSA) were considered with regards to the following fundamental legislative principles (FLPs):

- regarding rights and liberties of individuals:
 - retrospectivity⁶³
 - consistency with the principles of natural justice.⁶⁴

The specific provisions which are relevant to in relation to these FLPS in terms of the rights and liberties of individuals, include those which seek to:

- retrospectively validate the giving, tabling and publishing of particular reports⁶⁵
- amend section 71A of the CC Act to provide broader procedural fairness to individuals the subject of adverse comment in reports.⁶⁶

3.1.1 Retrospectivity

To have sufficient regard to rights and liberties of individuals, legislation should not adversely affect rights and liberties, or impose obligations, retrospectively.⁶⁷ Strong justification is required for retrospective provisions in legislation.⁶⁸

The Bill introduces new provisions⁶⁹ to the CC Act relating to corruption investigations carried out by the CCC and how these investigations are to be reported on. Under the Bill, these new provisions will apply to a corruption investigation carried out by the CCC after the commencement of the Bill, regardless of whether the investigation started *before or after* the commencement.⁷⁰ The new provisions will also apply to a CCC report about a corruption investigation that, at the commencement, had not been published.⁷¹ This may adversely impact the rights and liberties of individuals who are the subject of CCC investigations or reports, in that the amended reporting procedures will apply to their circumstances retrospectively (for example, a report may potentially be made available to the public which may affect the reputation of the individual concerned).

This fundamental legislative principle was not addressed in the explanatory notes to the Bill. In supporting material elsewhere, it can be seen that the intention of the retrospective provisions is to allow 'publication of past reports that the CCC believes ought to be published to educate against corruption risks and otherwise highlight failings in public administration'.⁷²

⁶³ LSA, s 4(3)(g)

⁶⁴ LSA, s 4(3)(b)

⁶⁵ Bill, cl 8 (CC Act, new s 459).

⁶⁶ Bill, cl 7 (CC Act, new s 71A).

⁶⁷ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC Notebook* (Notebook), p 55. LSA, s 4(3)(g).

⁶⁸ OQPC, Notebook, p 55.

⁶⁹ Bill, cls 3 – 7 (*Crime and Corruption Act 2001* (CC Act), amends ss 35, 49, 64, 69, 71A).

⁷⁰ Bill, cl 8 (CC Act, new s 460(1)).

⁷¹ Bill, cl 8 (CC Act, new s 460(2)).

⁷² David Crisafulli MP, Leader of the Opposition, Parliamentary Committee Briefing Note, p 6.

In addition to providing for the general retrospective application of these new provisions, the Bill particularises two reports that are to be captured by the provisions, being the Carne report and the Trad report.⁷³

Stakeholder comments on retrospectivity

As noted above, the CCC, in its submission, supported the retrospective nature of the Bill, specifically noting as follows:

Express provisions for retrospectivity which confirm the authority for the preparation and tabling of previous reports will be an important aspect of any amendment to the reporting powers in the Act.

The proposal for retrospective operation of any amendment should not be controversial, in the CCC's submission. Parliament retains the power to legislate retrospectively and will be justified in doing so where the intent is to be curative or validating. There are multiple examples across the Queensland statute book of laws being amended retrospectively in order to clarify a situation or correct unintended legislative consequences.⁷⁴

In the public hearing, the CCC further stated that:

There are multiple examples of legislation being amended in a way to ensure that those amendments applied retrospectively. It has happened in our own legislation several times and I have noted that in our submission. Clearly, there is a balancing exercise and a weighing exercise when you consider doing something like that. Our view is as indicated in our submission. We believe that is appropriate to ensure the community and parliament have confidence in the fact that what has been undertaken by the commission and its predecessors in the past was legitimate and lawful. It will remove the risk in the future of there being any criticism that there was conduct which was inappropriate and not permitted by the statute.⁷⁵

The Honourable Glen Milliner, a former member of the Queensland Legislative Assembly and former Minister for Justice, submitted as follows in relation to the retrospective nature of the Bill:

... Parliaments are loathe to pass retrospective legislation. This is rarely done and should only be considered in extreme circumstances. This is certainly not an occasion where this should occur.⁷⁶

The Private Member noted the comments by each of the above submitters in their written submissions, but did not specifically respond to the issue of retrospectivity in the Bill.⁷⁷

3.1.2 Natural justice

Legislation should be consistent with the principles of natural justice. This includes the right to be heard, being afforded procedural fairness and having an unbiased decision maker.⁷⁸

As set out above, the Bill proposes a new section 71A which deals with the process to be followed if a report contains adverse comment about a person.⁷⁹ The proposed new section 71A broadens the scope of the former section 71A, referring not only to a process for a person to make a submission but to offering a person procedural fairness generally in relation to the adverse comment. It also articulates the procedure to be followed and relevant timelines.

⁷³ Bill, cl 8 (CC Act, new s 460(3)).

⁷⁴ Submission 4, pp 6-7.

⁷⁵ CCC, public hearing transcript, 27 March 2024, p 10.

⁷⁶ Submission 1, p 2.

⁷⁷ Mr Tim Nicholls MP, Member for Clayfield, correspondence, 7 March 2024.

⁷⁸ LSA, s 4(3)(b). OQPC, Notebook, pp 24-32.

⁷⁹ Bill, cl 7 (CC Act, new s 71A).

However, in relation to the Carne report and the Trad report, the Bill also explicitly states that section 71A of the CC Act will not apply to these reports.⁸⁰ Section 71A provides the opportunity for a person in a report to make submissions about a proposed adverse comment to be included in the report. This is designed to offer a person procedural fairness.

It is not clear why individuals in the above-named reports will not be given the opportunity to address adverse comments made about them. It may be that these individuals have already been given the opportunity to do so under the current section 71A of the CC Act,⁸¹ but this was not addressed in the explanatory notes. It is also not clear whether other persons in reports that have not been published (if there are any), but could be under the new provisions, will be offered the opportunity to make submissions.

Committee comment

The explanatory notes did not contain a sufficient assessment of the Bill for consistency with FLPs as required by the LSA. It is best practice for explanatory notes to:

- clearly identify each specific issue of fundamental legislative principle that arises and the specific clause giving rise to the issue
- set out the reasons for any inconsistency with the fundamental legislative principles
- provide any justification for that inconsistency.

It is noted that the explanatory notes for the Bill lacked sufficient detail and could have benefited from a more comprehensive explanation of the proposals set out in the Bill.

3.2 Compatibility with human rights

The statement of compatibility notes that the Bill has the potential to conflict with three sections of the HRA:

- right to privacy and reputation (HRA, s 25)
- right to a fair hearing (HRA, s 31)
- retrospective criminal laws (HRA, s 35).⁸²

Of these three human rights issues, the main issue of concern is the right to privacy and reputation which is addressed below.

3.2.1 Right to privacy and reputation

An assessment of the Bill's compatibility with the HRA considered potential issues and limitations on the following human right raised by the Bill:

- right to privacy and reputation.⁸³

The publication of CCC investigative reports that do not contain adverse findings may potentially limit the right to privacy and reputation of individuals. This is because the reports may contain personal

⁸⁰ Bill, cl 8 (CC Act, new s 460(3)).

⁸¹ The current section 71A of the CC Act provides individuals with the opportunity to make submissions against adverse comment, however the proposed replacement section 71A contained in the Bill refers to providing individuals with procedural fairness more broadly (it includes a submission process but notes that procedural fairness is not limited to that submission process).

⁸² Statement of compatibility, pp 1-2.

⁸³ HRA, s 25.

information or correspondence, or are likely to contain information that could negatively affect their reputation, despite the reports not leading to criminal proceedings.

The implied purpose of this limitation within the Bill is to:

- address broader issues of deficiencies in governance and ensure public confidence in Queensland corruption detection and prevention processes; and
- make clear the original legislative intent of the CC Act after the High Court decision in *Carne*.⁸⁴

Ensuring good governance in public institutions and detecting and preventing corruption by public officials are consistent with a free and democratic society. As is amending legislation to reflect the desired policy intent. The publication of CCC investigative reports that do not contain adverse findings is connected to the aim of achieving good governance and preventing corruption in that such publication can serve an educative function. However, it should be noted that the release of a report, even if concerning someone who is a public official, that contains information about allegations of corrupt conduct that have not resulted in any criminal or disciplinary proceedings, has the potential to significantly impact that person's privacy and reputation.

In relation to this potential human rights issues, it is noted that the statement of compatibility concludes that the potential human rights issues can be justified on the basis of the overriding importance of preventing corruption and ensuring open and transparent government.⁸⁵

Committee comment

The committee found certain limitations in the Bill concerning human rights aspects, particularly in relation to an individual's right to privacy and reputation. However, on balance, the committee determined that the Bill is compatible with the *Human Rights Act 2019*.

A statement of compatibility was tabled with the Bill as required by section 38 of the HRA. The statement of compatibility provides a basic level of information to facilitate understanding of the Bill in relation to its compatibility with human rights. While the statement of compatibility could have more comprehensively addressed the Bill's compatibility with human rights, on balance, the statement contained a sufficient level of information to facilitate an understanding of the Bill in relation to its compatibility with the *Human Rights Act 2019*.

⁸⁴ Correspondence to the committee from David Crisafulli, MP, Leader of the Opposition dated 27 November 2023, p 3; Statement of compatibility, pp 1-2.

⁸⁵ Statement of compatibility, p 2.

4 Independent review

On 15 February 2024, the Queensland Government announced an independent review into the CCC's reporting powers in relation to corruption matters following the High Court's decision in the *Carne* matter. The three-month independent review will be led by former Queensland Chief Justice the Honourable Catherine Holmes AC SC. Following last year's High Court decision in the *Carne* matter.⁸⁶

The Queensland Government media statement provides the following additional information:

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

That is why a review has been initiated to ensure that any legislative amendments strike a proper balance between the rights of the individual and the broader public interest. The issue of whether any legislative amendments should be made to operate retrospectively will also be specifically considered.

The review's Terms of Reference have been tabled in Parliament today.

Ms Holmes' recommendations will be delivered to the Attorney-General by May 20 and then considered by Cabinet and released in full.⁸⁷

Committee comment

The committee considered in detail the various issues raised by the Bill. However, the committee notes that since the introduction of the Bill, the Queensland Government has announced an independent review, led by former Queensland Chief Justice Catherine Holmes, into the reporting powers of the CCC. The committee anticipates that the matters covered in the Bill will be considered in detail by this independent review. Accordingly, the committee is of the view that, in the circumstances, it would be inappropriate and premature for the committee to make a recommendation to pass the Bill before the outcome of the independent review has been published. Therefore, the committee recommends that the Bill not be passed.

⁸⁶ Queensland Government, "CCC reporting powers under the microscope in former chief justice-led review", Media Release, 15 February 2024 (see <https://statements.qld.gov.au/statements/99713>).

⁸⁷ Queensland Government, "CCC reporting powers under the microscope in former chief justice-led review", Media Release, 15 February 2024 (see <https://statements.qld.gov.au/statements/99713>).

Appendix A – Submitters

Sub #	Submitter
1	The Honourable Glen Milliner
2	Caisey Keehn
3	Not allocated
4	Crime and Corruption Commission

Appendix B – Public briefing

The following persons attended before the committee at the public briefing:

- Mr Tim Nicholls, MP, Member for Clayfield
- Ms Katie Omrod, Private capacity

Appendix C – Witnesses at public hearing

Hon. Glen Milliner, Private capacity

Crime and Corruption Commission

- Bruce Barbour, Chairperson
- David Caughlin, Executive Director, Legal, Risk and Compliance
- Brigitte Landers, Acting Principal Lawyer, Corporate Legal

Statements of Reservation

Statement of Reservation – Crime and Corruption Amendment Bill 2023

While the need for this Bill has been well ventilated and the position of the Opposition on this matter been made clear, the Opposition Members do not agree with the recommendation of the Committee's report and want to highlight, once again, the opportunity to pass the Bill and remedy the deficiencies of the Crime and Corruption Act highlighted by the High Court decision in *Crime and Corruption Commission v Carne* [2023] HCA 28.

The urgency and necessity of the passage of this Bill was highlighted by the CCC Chairperson's comment in the public hearing, *"I just want the problem fixed"*. The Government had every warning the need for this Bill was coming, yet all we have seen is delay after delay.

The Government was questioned at Estimates about their preparation for this potential change and the Minister said it was too hypothetical at that point. Following the High Court decision we heard they were seeking legal advice, then on 29 December 2023 there was confirmation this advice had been received, with a spokesperson for the Attorney-General stating, *"The Attorney-General has received legal advice, has met with the CCC chair and will continue to give this matter the careful consideration that is required and expected."*

In February, some four months after the introduction of this Private Member's Bill, the Government announced the review to be conducted by the former Chief Justice Catherine Holmes AC SC. In relation to the review, the CCC Chairperson stated, *"To be perfectly frank, I did not see the need for a review. To me the issues are very clear-cut."*

The CCC Chairperson could not be more clear. The review was not necessary and therefore this Bill must be considered.

There is no other Bill before the House to deal with the issues most prominent in this Bill. To say it is premature is simply a way to keep on delaying the release of CCC reports into former Deputy Premier, Jackie Trad and Labor-mate and former Public Trustee Peter Carne, and to chip away at the understanding held by the Queensland community for over 30 years that there is cross-party support for the CCC to publicly report on corruption investigations.

It was made abundantly clear this Bill is necessary and urgent to ensure the CCC can operate to its full potential and mitigate against corruption risks.

It was noted by the Opposition Members the Shadow Attorney General has flagged his agreement with suggested amendments to the Bill by the CCC and appreciate his openness to take on these changes.

The Opposition Members firmly disagree with the recommendation in the report for the Bill to not be passed, and urge all Members to support it at their first opportunity.



Mark Boothman MP
Deputy Chair
Member for Theodore



Jon Krause MP
Member for Scenic Rim



Stephen Andrew MP

State Member for Mirani

Colonial Corner
1-3, 73 Broad Street, Sarina
Soldier's Rooms - 18 Morgan Street, Mt Morgan
PO Box 56 Sarina Qld 4737

Toll Free: 1800 812 340
Sarina: 07 4806 0700
Mt Morgan: 0436 009 181
Mirani@parliament.qld.gov.au

CRIME AND CORRUPTION AND OTHER LEGISLATION AMENDMENT BILL 2023

Statement of Reservation

10 April 2024

For 26 years it was believed that the CCC had the power to report on corruption investigations under the general reporting power provisions in Section 64(1) of the Crime and Corruption Act 2001.

Following last year's High Court ruling on CCC vs. Carne, however, this is no longer the case. According to the High Court, the CCC had misunderstood its power and could not publish reports on matters without an explicit corruption or disciplinary finding.

The finding highlights a deficiency in the Act which urgently needs to be rectified.

Currently, the Act does not allow the public to see or understand the reason for an investigation, or its findings.

This sets the CCC apart from its federal and interstate counterparts, all of which have full statutory powers to publicly report the details of their investigations.

This Bill remedies this deficiency.

It will amend the Act to provide CCC with full statutory powers for reporting publicly on its investigation findings, whether corruption charges are laid or not.

Allegations of corrupt conduct within the public service are of significant public interest to all Queenslanders, regardless of whether charges are ultimately brought by the CCC or not.

Such reports provide insights on possible corruption risks and recommendations for remedial action to be taken in order to mitigate those risks.

Where such critical information is kept from the Public, the Public will be left to wonder whether or not a cover-up has taken place.

There must be no secrets when it comes to possible corruption risks or when it comes to how public monies are being spent.

The bill's amendments are therefore vital for maintaining public confidence and trust in government and the public sector overall.

This Bill strikes the right balance between properly informing the public and providing fairness to those investigated.

It is of vital importance that the CCC's activities be made fully accountable and transparent to the Queensland Public and Members of Parliament.

Queenslanders need to feel confident that they have an effective, impartial and independent watchdog when it comes to public sector corruption.

As the Chair of the CCC Mr Barbour himself said in a media release issued on the day of the High Court decision:

"The CCC and its predecessor agencies have historically reported on significant matters... Reporting has occurred when there has been a strong public interest in doing so and when there are issues uncovered in investigations that the public, public sector agencies and elected officials should be made aware of to raise integrity standards and to reduce corruption risks in Queensland. It has done so on the understanding that it was empowered to report under its governing legislation... Having the ability to report on matters relating to its investigations is vital so the public, the public sector and elected officials can understand the reasons for and outcomes of CCC investigations."

It is the duty of elected representatives in Parliament to ensure the law works as intended and as was commonly understood for the past 26 years.

A failure to pass this bill will continue to leave Queenslanders in the dark when it comes to the governance and administration of this state.

A handwritten signature in blue ink, appearing to read 'S. G. Andrew'.

Stephen Andrew MP

