

Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025

Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, Deb Frecklington, Attorney-General and Minister for Justice and Minister for Integrity, make this statement of compatibility with respect to the Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Queensland Government is committed to ensuring that the Crime and Corruption Commission (CCC) has the powers it needs to shed light on corruption in Queensland.

Corruption poses a serious threat to the stability and security of societies. It can undermine the institutions and values of democracy, ethics and justice, and it can jeopardise sustainable development of the rule of law.¹ The CCC has primary responsibility in Queensland for continuously improving the integrity of, and reducing the incidence of corruption in, the public sector.² One way it does this is by investigating complaints, information or matters involving corruption.³

The CCC and its predecessors also operated on the basis that it had a general power to report publicly when performing its corruption functions. This understanding aligns with the principles shared between other anti-corruption commissions, who consider that one of the key ways in which anti-corruption commissions can give insight into their operations is through reporting on investigations and making public statements.⁴

However, in 2023, the High Court held that the *Crime and Corruption Act 2001* (CC Act) did not empower the CCC to make a public report about a particular corruption investigation or complaint.⁵ This was because the general power to make a report in section 64 is to be read as subject to the specific power in section 49 to make a report to an appropriate person about considering prosecution proceedings or disciplinary action. This was contrary to the common

¹ *United Nations Convention Against Corruption*, opened for signature 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005), preamble.

² *Crime and Corruption Act 2001* (Qld) sections 4(1)(b), 7.

³ CC Act sections 33, 35, 45(1).

⁴ See, e.g., Crime and Corruption Commission, *Fundamental Principles of Australian Anti-Corruption Commissions* (31 July 2024), principles 7 and 8 <<https://www.ccc.qld.gov.au/about-corruption/12-fundamental-principles>>.

⁵ *Crime and Corruption Commission v Carne* (2023) 412 ALR 380 (the High Court decision).

understanding that section 64 empowered the public reporting about particular corruption investigations.

The main objective of the Bill is to restore the power to report publicly about particular corruption investigations as it was considered to exist before the High Court decision. The Bill also creates an express power for the CCC to make public statements about corruption investigations.

In doing so, the Bill creates a new safeguard by requiring the CCC to consider a range of factors when making a decision about reporting on, or making a public statement about, a corruption matter or including information in a report or statement.

Other amendments in the Bill will:

- expand the procedural fairness provision to have a broader effect by ensuring that a person who is the subject of adverse comment can access the evidence or material upon which the comment is based and providing for extensions of time;
- provide an express power for the CCC to afford procedural fairness at its discretion to people who may be identified in a report or statement but about whom no adverse comment is made;
- expand the criminal offence for unauthorised publication of commission reports to apply to documents given to a person when the CCC is affording them procedural fairness;
- retrospectively validate the preparation and publication of past commission reports about corruption complaints or corruption investigations that were tabled in the Legislative Assembly;
- retrospectively validate the preparation and making of past public statements about corruption complaints or corruption investigations;
- enable the CCC to engage people to provide services on an occasional or infrequent, but not ongoing, basis;
- streamline the requirements to serve particular notices on persons, other than individuals, by email; and
- make minor drafting changes in line with modern drafting practice.

Human Rights Issues

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

The amendments in the Bill engage a range of rights protected by the HR Act, namely:

- freedom of expression (section 21);
- taking part in public life (section 23);
- property rights (section 24);
- privacy and reputation (section 25);
- right to liberty and security of the person (section 29);
- fair hearing (section 31); and
- rights in criminal proceedings (section 32).

Human rights promoted

Reports and public statements about corruption matters

The *right to freedom of expression* under section 21 of the HR Act protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas, including verbal and non-verbal communication. This right is one of the essential pillars of a democratic system of government, because it enables citizens to freely and effectively participate in the political, social, economic and other affairs of their community.

The right includes the right to receive information about corruption.⁶ Indeed, freedom of expression takes on particular importance in a democracy where it promotes transparency regarding corruption in the public service and in public office. Corruption by its very nature is insidious, and for this reason ensuring effective public access and awareness of information relating to corruption provides a strong protection against its destructive effects. The public has a significant interest in ensuring corruption is properly investigated and that there is transparency and accountability in public administration.

The Bill amends the CC Act to provide clear powers for the CCC to make public reports and public statements about corruption matters, which promotes the right to freedom of expression in relation to corruption.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Reports and public statements about corruption matters

The Bill amends the CC Act to allow the CCC to make public reports and public statements about corruption matters at any time.

The matters to be included in a public report will align with existing section 64 of the CC Act. This will allow the CCC to continue to include recommendations with an objective summary of all matters that support, oppose or are otherwise relevant to its recommendations (including any comments it may have on these matters).

The CCC must give signed commission reports to the Speaker, the Parliamentary Crime and Corruption Committee and the Minister for the purposes of the Speaker tabling the report in the Legislative Assembly.

Public statements may be made to the public about a corruption matter in a form that the CCC considers appropriate. This may be by way of a media release, verbal statement at a press conference or by publishing information on the commission's website.

(a) the nature of the right

The *right to taking part in public life* under section 23(2)(b) of the HR Act provides a right of equal access to the public service and public office. This aspect of the right may be limited

⁶ *United Nations Convention Against Corruption*, opened for signature 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005).

where the publication of a report or public statement results in a person being dismissed from the public service or losing their position in public office.

The *right to privacy* under section 25(a) of the HR Act provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with, while the *right to reputation* under section 25(b) of the HR Act provides that a person has the right not to have their reputation unlawfully attacked.

The proposed amendments will limit these rights as the publication of reports is likely to include personal information about particular persons who are the subject of the reports and, depending on the content of the reports, may impact a person's social and professional reputation. The publication of the reports may also impact the subject's mental integrity. However, impacts on privacy and reputation will be compatible with human rights if the impact is lawful and proportionate⁷ to a legitimate end, such as ensuring transparency and reducing corruption.

The *right to fair hearing* under section 31 of the HR Act provides that a 'person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing'. *Rights in criminal proceedings* under section 32 of the HR Act provide that a 'person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law'.

These rights would be limited by a report or public statement that includes information that results in prejudice to pending litigation.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Publishing reports and public statements:

- provides transparency about how the CCC undertakes its work;
- gives assurance to the public and the public sector that corruption allegations are appropriately dealt with; and
- assists to improve the integrity of, and reduce the incidence of corruption in, the public sector, including by illustrating corruption risks and acting as a general deterrence.

Ultimately, the purpose of these amendments is to promote the right to freedom of expression under section 21 of the HR Act (as described above) in relation to corruption.

This is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

⁷ Arbitrariness in the context of the right to privacy represents a different, lower standard to the concept of proportionality under section 13 of the HR Act. Therefore, if the interference with privacy is considered proportionate it will not be arbitrary.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

There is a strong rational connection between the provision of clear powers to make public statements and reports about corruption matters and achieving the purpose of promoting the right to freedom of expression in relation to corruption by giving the public access to information in those reports.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

An alternative approach is to maintain the current position that the CCC has no power to report publicly on corruption investigations.⁸ This would mean that the public and units of public administration would not be able to receive information about how the CCC performs its corruption functions in respect of corruption matters. This would not achieve the purpose of the Bill as it would limit, not promote, the right to freedom of expression, though it would protect the other relevant rights in respect of particular individuals.

Another alternative approach would be to subject the CCC's ability to make reports or statements to strict conditions. This may be more compatible with human rights if, for example, the CCC could only release a public report or statement where a person had been convicted of a criminal offence arising from a corruption investigation. However, this kind of approach imposes rigid limitations in a way that is considered unnecessary and may prevent important information about corruption from being publicly released.

Giving the CCC the flexibility to make reports and statements in a way that it determines is appropriate and necessary is preferable. This flexibility must be considered in the context of the safeguards that apply as discussed below, particularly the obligation for a decision-maker to consider compatibility with human rights. Consequently, although a more prescriptive approach may be less restrictive, it does not achieve the purpose of the Bill.

The power to report and make public statements is subject to a number of safeguards. These will support decision-making and ensure that any limitations on rights are appropriate and as narrow as possible to achieve the purpose.

When deciding whether to make a report or statement, or to prepare or include content in a report or statement, the Bill requires the decision-maker to have regard to a range of prescribed matters. The prescribed matters are designed to protect a range of rights (including the right to take part in public life, property rights, the right to privacy and reputation, the right to liberty and security of the person, the right to fair hearing and the rights in criminal proceedings) and will guide a decision-maker to consider these rights where they have the highest need for protection.⁹ For example, the CCC must consider:

- whether it has finalised its assessment of the corruption matter, and any action taken in relation to the corruption matter, under section 46 of the CC Act, which goes to the

⁸ *Crime and Corruption Commission v Carne* (2023) 412 ALR 380, 386 [26], 393 [58], 394 [69], 400 [97], 402 [104].

⁹ The criteria were developed having regard to the consideration of human rights in the context of public reporting by anti-corruption bodies contained in the *Independent review into the Crime and Corruption Commission's reporting on the performance of its corruption functions* (20 May 2024) by the Honourable Catherine Holmes AC SC.

stage of the investigation and the amount of information the CCC has in relation to the corruption matter;

- whether the report or statement may prejudice any proceeding in relation to the corruption matter or an investigation by a law enforcement agency, which goes to protecting the right to fair hearing and rights in criminal proceedings;
- whether the standing and status of an identifiable person warrants greater public scrutiny reflecting that while it may be reasonable and appropriate for the conduct of senior appointees or elected officials to be subject to increased transparency, identifying a junior public servant would only be justified if there are other compelling factors;
- whether the report or statement may unreasonably damage the person's health, safety or wellbeing, which goes to protecting the right to privacy; and
- whether the report or statement may unreasonably interfere with the person's privacy or reputation, which goes to protecting the right to privacy and reputation.

Conversely, the criteria will also guide a decision-maker to consider how a report or statement may promote other rights for a broader group of people. For example, the right to freedom of expression will be promoted by the requirement for the CCC to consider:

- the need for accountability and transparency in government and the public sector;
- whether the report will be for the public benefit;
- the seriousness of the corruption matter or the seriousness of the conduct of an identifiable person; and
- whether the standing and status of an identifiable person warrants greater public scrutiny.

Further, the Bill expressly provides that the obligation of the decision-maker to consider human rights under section 58 of the HR Act is not limited by the requirement to consider the criteria.

The Bill also clarifies the existing position that the CCC is an investigative body that gathers evidence about corruption matters but does not act on it, other than to refer the evidence to separate entities to determine whether prosecution or disciplinary action should be taken or to make an application to the Queensland Civil and Administrative Tribunal for a finding of corrupt conduct. It does so by creating an express prohibition on making a finding or statement that it considers a person has or has not engaged in, or is or is not engaging in or about to engage in, corruption. Further, the Bill includes an express prohibition on making any finding, recommendation or statement that a person should be prosecuted for a criminal offence or be the subject of disciplinary action.

The Bill also adopts and enhances the current requirement under the CC Act to require the CCC to provide procedural fairness to a person who is the subject of adverse comment. This protects the right to privacy as it allows the person to challenge how information about them is presented in a report or statement and requires the CCC to reflect this in the report or statement.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, while there are limitations on human rights, promoting freedom of expression in relation to corruption by ensuring public confidence in how the CCC performs its corruption functions, and the related public confidence and trust in the public service and wider democratic

institutions, is of foundational importance. Given there are significant safeguards in place which ameliorate the extent of the limitations, it is considered that the Bill strikes an appropriate balance in favour of achieving the purpose.

(f) any other relevant factors

Nil.

Unauthorised publication of commission reports and relevant documents

The Bill expands the criminal offence in section 214 for unauthorised publication of commission reports to apply to restricted information given to a person when the CCC is affording them procedural fairness. Restricted information includes both a draft report or statement and any related evidence given to the person.

(a) the nature of the right

The *right to freedom of expression* under section 21 of the HR Act is described above. The expansion of the criminal offence limits this right because it prohibits a person from disclosing the restricted information to anyone else without a reasonable excuse.

The *right to liberty and security of person* under section 29 of the HR Act includes the right to not be arrested or detained except in accordance with the law. The right is directed at all deprivations of liberty (including criminal sanctions) and will be relevant whenever a person is placed at risk of imprisonment.

It is accepted that at times the infringement of an individual's liberty and security is necessary, provided the infringement is not arbitrary or unlawful.

The expansion of the criminal offence limits this right as the offence provision imposes a maximum penalty that includes a term of imprisonment.

Rights in criminal proceedings under section 32 of the HR Act, described above, is relevant to this measure to the extent that the right requires that the prosecution bears the onus of proving the offence and gives the defendant the benefit of the doubt.

The expansion of the criminal offence limits this right by imposing a burden of proof on the defendant to show that they had a reasonable excuse for disclosing the documents.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of expanding the offence is to guard against the new reporting and public statement making powers being undermined by disclosure of restricted information.

The framework underpinning the CCC's new powers provides a particular process which must be followed before a report or statement can be published. This applies several safeguards. First, the CCC must consider the criteria that apply to making the report or statement. Second, the CCC must afford procedural fairness to anyone about whom it makes an adverse comment in the report or statement. After doing so, the CCC may decide to amend the report in response to a person's submission. These amendments may promote rights by taking into account

information that was not previously available to the CCC or arguments about the interpretation of evidence that result in the CCC differently stating its comments in relation to an individual or their conduct. Alternatively, the submission could result in a decision by the CCC not to release the report or statement.

The unauthorised disclosure of a draft report or statement that does not incorporate these changes could risk unjustifiably limiting the rights of a particular individual. Any such limitation could undermine public confidence in the CCC's use of its new powers. For this reason, it is necessary for strict limitations to apply to how restricted information is disclosed.

As outlined above, the CCC's new reporting powers are designed to promote the right to freedom of expression in relation to corruption. Ensuring the CCC's use of the new powers is not adversely impacted by unlawful disclosure of restricted information is therefore a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The expansion of the offence to include unauthorised disclosure of restricted information will assist in ensuring that people who receive restricted information understand the importance that the information should not be disclosed unless there are legitimate reasons for doing so.

Requiring the individual to establish the existence of a reasonable excuse is necessary to ensure meaningful prosecution outcomes. This is because it would be extremely difficult for the prosecution to establish matters that are likely to be peculiarly within the knowledge of the defendant, such as whether, for example, the information was disclosed for the purpose of seeking legal advice. An unworkable offence may ultimately encourage non-compliance and similarly undermine public confidence.

The limitation on the rights identified above is therefore necessary in order to guard against the disclosure of restricted information.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive alternatives to achieve the purpose of the Bill.

The Bill provides discretion to determine what types of disclosure are reasonable under the expanded offence. This is considered appropriately broad to ensure that the rights of a person who receives the restricted information, for example to freedom of expression, are protected as far as possible while still achieving the purpose of the limitation. Further, it protects the right to a fair hearing by clearly ensuring that the person can receive legal advice about the documents should they become relevant to a proceeding.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Any limitation on a person's right to freedom of expression and right to liberty and security is reasonable and demonstrably justified when considering the impact of unauthorised disclosure

on the CCC's effective use of its new powers, including the rights of other individuals who may be impacted by the unlawful disclosure of restricted information. It is important that the sanction is sufficiently high to ensure that the gravity of non-compliance is readily understood, which in turn supports compliance.

On balance, it is considered that the importance of achieving the purposes of the limitations outweighs the harm caused to the identified rights.

(f) any other relevant factors

Nil.

Retrospective validation of past commission reports and public statements

The Bill includes provisions which retrospectively validate:

- the preparation, publication and any action or decisions taken or not taken by the CCC in relation to past commission reports regarding complaints about, or information or matter involving, corruption or corruption investigations that were tabled in the Legislative Assembly or purportedly published under former section 69 of the CC Act; and
- the preparation, making and any action taken by the CCC in relation to past public statements regarding complaints about, or information or matter involving, corruption or corruption investigations.

(a) the nature of the right

Property rights under section 24(2) of the HR Act include the right not to be arbitrarily deprived of one's property. The concept of "property" encompass economic interests.

The validation of past reports and statements may have the effect of removing an entitlement for affected individuals to seek damages and deprive those persons of property in the relevant sense.

The right under section 24(2) is only limited where the deprivation of property is arbitrary. Where a law that deprives a person of property meets the standard of proportionality under section 13 of the HR Act, which is a higher standard, it will not be arbitrary. If this is the case, the right will not be limited.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Although the position with respect to preparing new reports following the High Court decision is clear, the validation provisions avoid any doubt about the status of past reports and statements. These reports were prepared under a common understanding before the High Court decision that the power existed to prepare and publish them.

The CCC has since removed from its public website reports and statements concerning past corruption investigations of the CCC and its predecessors.

The purpose of validating these reports and public statements is to provide legal certainty for the CCC and its officers and enable these past reports and statements to be fully restored to the

public domain. This promotes the right of the public to seek and receive information about corruption matters within the right to freedom of expression.

This is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The measure directly achieves the purpose by ensuring that past reports and statements—which contain important information about corruption—are legally validated.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive or reasonably available alternatives to achieve the purpose of legal certainty and that past reports and statements are publicly available.

An alternative option is to not validate past reports or statements. This option would not achieve the purpose given it is unlikely the CCC would reinstate past reports and statements to its public website (or refer to them in future reports or statements) without assurance that this was lawful. This would result in the dissemination of important information about corruption by the CCC being significantly limited. While it is acknowledged that past reports remain available as tabled parliamentary papers, this is arguably not an information source that is familiar to large sections of the public and public statements are generally not tabled.

A further alternative would be to validate only past reports or statements that would comply with the new framework for reports and public statements established by the Bill. This would not be as effective in achieving the purpose as it does not provide as comprehensive legal protection.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales, the amendments limit property rights by preventing the enforceability of particular rights. This has an impact on individuals because they may no longer have a cause of action available to them.

On the other side of the scales, it must be acknowledged that the extent of the limitation on property rights is small because of the significant challenges any cause of action would face in terms of the operation of statutory immunity and limitation provisions. The fact that the HR Act is not intended to provide a right to compensation¹⁰ is also relevant. Further, re-establishing legal certainty in relation to past reports and statements where the result is that these can once more be readily and publicly accessible outweighs the possibility that individuals may have a cause of action still available to them.

¹⁰ Explanatory Notes, Human Rights Bill 2018 (Qld) 22.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the Crime and Corruption (Restoring Reporting Powers) Amendment Bill 2025 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

The Honourable Deb Frecklington MP
Attorney-General and Minister for Justice
and Minister for Integrity

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