



Independent CCC Publication Review

Submissions of
Together Queensland

Contents

Contents	1
Introduction.....	2
Summary of submissions.....	3
Allegations and ongoing investigations.....	4
Public reporting of corruption and not employee conduct	5
Balancing competing interests	7
Extraordinary powers.....	7
No corruption or insufficient evidence	8
CCC Overreach.....	9
Logan City Council	9
Taskforce Flaxton.....	10
Harm to people identified in publications.....	11
Content and limitations on reports and statements.....	12
Retrospectivity	12

Introduction

1. Together is one of the largest public sector unions in Queensland, representing over 28,000 workers from across the public sector in health, education, public service departments and statutory authorities, as well as workers in the private sector. Together has consistently advocated for a fairer industrial relations system in the state, and our members have been at the forefront of improving the conditions of Queensland public sector workers and the services they deliver.
2. Together Queensland:
 - a. is an Industrial Organisation of Employees under the *Industrial Relations Act 2016* (Qld).
 - b. is a counterpart of the Australian Municipal, Administrative, Clerical and Services Union, Queensland Together Branch (Queensland Together Branch of the ASU). The ASU is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth).
3. Together welcomes the independent review into the Crime and Corruption Commission's ability to make public statements and report on its corruption functions and particularly individual corruption matters.
4. The Union acknowledges this is a complex area of law and policy and seeks in this submission to raise areas of concern to Union members in relation to the matters in scope of the Review Terms of Reference for consideration by the Review rather than to comprehensively cover the legal and other issues or propose definitive solutions.
5. Together looks forward to engaging further with the Review and/or with the Department of Justice and the Attorney General about responses to and implementation of its recommendations.

Summary of submissions

6. Together Queensland supports the public reporting of serious and systemic corruption matters as part of the CCC mandate and its corruption functions, subject to a robust framework for decision-making and the consideration and balancing of competing public interests and individual rights and freedoms. However, the Union contends that the CCC should not publicly report or make statements about matters that are more accurately described as employee conduct and discipline matters rather than corruption.
7. The CCC has extraordinary powers and the obligations on public sector employees and officials are onerous and interfere with the exercise of fundamental rights and freedoms and human rights. This is only justified to the extent required to give effect to the anti-corruption mandate of the CCC. The case for publicly reporting adverse findings or information identifying individuals when there is not sufficient evidence that corruption has occurred for any formal action to be taken is lacking.
8. The Union has significant concerns about the CCC making public statements that identify and/or make adverse inferences about public servants and public sector employees in circumstances where any alleged or actual wrongdoing does not genuinely amount to corruption (noting the overbroad definition in s15 of the CC Act).
9. Where the CCC strays outside of its mandate to curb serious corruption, the use of its extreme powers to name and shame public servants is not justified.
10. There have also been reported concerns over many years about the risks of public statements about complaints and ongoing investigations including the risks of politization of the CCC.
11. Any reporting of concluded investigations which identify individuals should be subject to safeguards such as but not limited to:
 - a. a genuine public interest test with a threshold
 - b. human rights consideration and proportionality
 - c. protections for complainants and witnesses
 - d. redaction of personal and private information including names and identifying information that is not required in the public interest
 - e. provision of natural justice
 - f. consideration of psychosocial hazard and other risk of harm to people named or identified in published material
12. Any provisions allowing for the publication should not be retrospective.

Allegations and ongoing investigations

13. Public reporting or public statements by the CCC in relation to complaints or ongoing investigations, particularly during elections, creates a significant risk of the politicisation or the perceived politicisation of the CCC and its corruption investigation functions.
14. There is a long history of concerns or allegations about the potential for the CCC complaint process to be used as a political weapon in Queensland¹ and in the United States, decisions to announce investigations into Presidential election candidates has become a matter of significant public debate².
15. Several reviews have dealt with proposed limitations on publication of complaints with legislative offences proposed but not, ultimately, legislated³.
16. In 2013, an Independent Advisory Panel recommended that it should be “an offence for any person (including an officer of the CMC) to disclose that a complaint has been made to the CMC, the nature or substance or the subject of a complaint, or the act of any investigation by the CMC” with suitable penalties.
17. The only exceptions were proposed to be:
 - a. in the case of a public investigation;
 - b. if authorised by the Supreme Court (based on a compelling public interest);
 - c. where the matter is not proceeding or a person is “cleared” (with the persons consent);
 - d. or if otherwise required by law, such as by Court processes or Court order.
18. In 2016⁴ the CCC undertook a public examination of the public interest in publicising allegations and recommended restrictions on publishing allegations during local government elections which were later expanded to include State elections⁵. In 2020 a Bill was tabled in parliament but withdrawn and in 2021 the Parliamentary Crime and Corruption Committee rejected the CCC Recommendations.
19. The Union notes that the 2013 review undertook a significant discussion of the practices of the CCC and its media policy and the risks to rights and reputations of individuals and competing interests of transparency.

¹ [CMC asks candidates not to misuse complaints process | CCC - Crime and Corruption Commission Queensland; Spin check: CMC a 'political weapon' \(brisbanetimes.com.au\);](#)

² [The Justice Department’s dilemma over prosecuting politicians before an election \(theconversation.com\)](#)

³ [Publicising allegations of corrupt conduct: Is it in the public interest? - Final report \(ccc.qld.gov.au\)](#) [61] to [69].

⁴ [Publicising allegations of corrupt conduct: Is it in the public interest? - Final report \(ccc.qld.gov.au\).](#)

⁵ “An investigation into allegations relating to the appointment of a school principal”, July 2020.

Public reporting of corruption and not employee conduct

20. Together Queensland supports the public reporting of serious and systemic corruption identified by concluded investigations as part of the CCC mandate and its corruption functions, subject to a robust framework for decision-making and consideration and balancing of competing public interests and individual rights and freedoms.
21. However, the Union contends that the CCC should not publicly report or make statements about matters that are more accurately described as employee conduct and discipline matters rather than corruption.
22. The Queensland Law Society, Queensland Human Rights Commission, Together Queensland and others have, in various reviews of the CCC and its functions drawn attention to the very broad definition of corrupt conduct in the *Crime and Corruption Act 2001* (CC Act) which appears to include almost any grievance involving a public official or public employee⁶. The CCC's corruption mandate, however, is to combat and reduce the incidence of major corruption in the public sector in Queensland⁷ and the CCC model is to focus on serious and systemic corruption⁸ and refer or devolve the majority of allegations back to the employing entity.
23. Together is concerned that the CCC has expanded its corruption remit well beyond the scope intended and now engages (at its total discretion) in matters that are properly the remit of performance management and discipline under the *Public Sector Act 2022*. This results in unfair treatment of employees and significant unnecessary expenditure of public moneys.
24. Further, even where matters are investigated and managed solely by the employer they are categorised as "corrupt conduct" matters which exempts the entity from the requirements for timely resolution of the matter and sometimes unnecessarily "raises the stakes" for what are more appropriately classified as workplace conduct matters. Often these matters do not result in serious disciplinary action.
25. The CCC's expansion of its remit beyond corrupt conduct is also evidenced by the commentary of the High Court in *Carne v CCC*⁹:

It is evident that the Commission has a wider view of its charter, by which it would seek to uphold other standards of conduct and performance by public servants and officials.
26. The Union concerns are set out in more detail in the Together Queensland Submission to the CCC Commission of Enquiry and attached to this submission.

⁶ See for example [QLS submission to PCCC, 2020](#); [QHRC submission to CCC Commission of Enquiry](#).

⁷ Ibid.

⁸ *Crime and Corruption Act 2001*, s 35(3).

⁹ *Carne v Crime and Corruption Commission* [2022] QCA 141 (5 August 2022) at [58].

27. Many of these concerns were shared by the 2013 Independent review¹⁰.
28. Misconduct in the public sector has been considered by the Queensland Industrial Commission which held that it involves a much higher threshold than an employee performing '... the employee's duties carelessly, incompetently or inefficiently' which is a separate ground for discipline and "contemplates a deliberate departure from accepted standards, serious negligence to the point of indifference, or an abuse of the privilege and confidence enjoyed by a public service employee¹¹".
29. Many allegations and investigations captured by the expansive definition of corrupt conduct in s 15 of the CC Act would, in our view, be more accurately described as employee conduct matters that do not reach the threshold for official misconduct under the *Public Sector Act 2022* (PS Act) or its predecessor (*Public Service Act 2008*) and are not what would generally be considered "corruption".
30. However, if not excluded, these matters would or could be considered corruption matters for the purpose of reporting and public comment by the CCC.
31. Union members have significant concerns about having allegations or details of lower level "conduct" investigations published by the CCC. The Union contends that the balance between any public interest in investigations into what are in essence employee conduct matters, and the rights of individuals in terms of their privacy, reputation and other human and employment rights is distinctly different and should be treated differently. The balance that might be struck between competing public interest and individual rights in respect of serious corruption investigations of political appointees, senior public officials or those exercising significant special powers is of a potentially different character.
32. The Union continues to seek the amendment of the definition of corrupt conduct to ensure that the CCC focusses on its mandate relating to serious corruption so that public sector conduct matters can be dealt with locally and expeditiously but submits that this Review should also exclude public reporting and comment by the CCC in relation to matters that do not meet a threshold for serious corruption or official misconduct.

¹⁰ See also [Callinan, Ian; Aroney, Nicholas --- "Review of the Crime and Misconduct Act and Related Matters: report of the Independent Advisory Panel" \[2013\] UQLRS 5](#), Chapter 7, p 114 to 120.

¹¹ *Coleman v State of Queensland (Department of Education)* [2020] QIRC 032 at [57] to [62]

Balancing competing interests

33. The Union acknowledges that there is a potential public interest in reporting in relation to concluded investigations of serious corruption matters, particularly of elected or statutorily appointed officials, but contends there needs to be balancing of public interest with individual rights and freedoms and protections from CCC overreach. There are a range of contextual factors which weigh against providing the CCC with publication powers or significantly limiting them.

Extraordinary powers

34. Generally, employees are not required to disclose their own wrongdoing, or that of other employees to their employer¹². Public sector employees, however, are required to report misconduct and can be compelled to answer questions truthfully, including in relation to their own alleged misconduct.

35. In an employment investigation this information is subject to privacy legislation and is not disclosed publicly. Even complainants are currently not given access to information gathered through disciplinary investigations, and are only provided with the outcome in terms of whether allegations have or have not been substantiated. Even access by the subject officer of the investigation to investigation material is limited on privacy grounds where deemed not to be necessary for the provision of natural justice.

36. Complainants, witnesses and those about whom allegations are made are routinely given an employment direction not to discuss matters with any person other than their legal or industrial representative, and can be disciplined for disclosing information including the details of their own complaint. It would be an absurd and unjust outcome for an employee to be restrained from discussing matters where they have been publicly named by the CCC.

37. The CCC's corruption investigation powers include search, surveillance and seizure powers, and the power to conduct hearings that compel people to attend and give evidence and produce documents and other material. There are criminal sanctions that may apply. These powers are said to be in the public interest because of the CCC mandate in regard to serious corruption but as indicated earlier can be exercised in a range of employee conduct matters which are not truly corruption.

38. Any powers for the CCC to make public statements or reports should be considered in light of the extraordinary powers of the CCC, and to a lesser extent employing entities, to compel testimony and documents, and the significant impingement on employees' rights and freedoms.

¹² [Hodgson v Amcor Ltd \[2012\] VSC 94](#), [1572-1577] citing [Sybron Corporation v Rochem Ltd](#).

No corruption or insufficient evidence

39. This Review has been triggered in part by legal action against the CCC publishing adverse or potentially adverse information about individuals in circumstances where allegations of corruption have not been substantiated and/or no prosecution or formal action has been taken.
40. While the potential public interest in reporting of corruption, particularly serious or systemic corruption and corruption by elected or statutorily appointed officials is reasonably apparent, the case for publicly reporting adverse information identifying individuals when there is not sufficient evidence that corruption has occurred to proceed with prosecution or termination or any other formal action is much less clear.
41. The Union contends that public reporting of conduct that is not corruption is not consistent with the CCC's objective and mandate in eliminating corruption and focussing on serious corruption. In these circumstances any public interest would appear to be, *prima facie*, outweighed by the interests, rights and freedoms of individuals just as it is where these matters are dealt with by other agencies who are bound by privacy legislation, human rights considerations and other prohibitions on public comment. This raises the question of why the CCC should have a special role in reporting on matters that are not corruption?
42. Indeed in its decision in *Carne v CCC*¹³ the High Court of Australia noted (original emphasis) that the CCC "prevention function is concerned with the prevention of *major crime and corruption*" and is not "a broader function of helping to prevent conduct by senior public servants and public officials which might be considered to fall short of a standard to be expected of them, but where that conduct does not constitute major crime or corruption".
43. The Union has significant concerns about the CCC making public statements that identify and/or make adverse inferences about public servants and public sector employees in circumstances where any alleged or actual wrongdoing does not genuinely amount to corruption (noting the overbroad definition in s15 of the CC Act).

¹³ *Carne v Crime and Corruption Commission* [2022] QCA 141 (5 August 2022) at [19].

CCC Overreach

44. There have been a number of recent examples where CCC has acted to pursue employees or officials, in circumstances where there has been demonstrably insufficient evidence of wrongdoing to reasonably support those actions. The perception of Union members and others in these circumstances is that the CCC undertook these actions in order to justify the expense of investigation processes or other considerations beyond its mandate to prevent serious corruption. This undermines the perceptions of the integrity of the CCC.
45. The Union is deeply concerned about any proposal which gives the CCC powers to “name and shame” public sector employees, particularly under the protection of privilege, in circumstances where they have not committed corruption or official misconduct or where the CCC does not have grounds to prosecute or to formally take the matter further. Union members fear that this will provide a further opportunity for the CCC to impinge on their human and employment rights without sufficient justification or cause and outside of its corruption mandate.

Logan City Council

46. The PCCC report on the ‘Inquiry into the Crime and Corruption Commission’s investigation of former councillors of Logan City Council; and related matters’ made findings including in relation to flaws in the exercise of discretion to take action against individuals and that the CCC did not act independently and impartially, a serious failing which “reflects poorly on the CCC”¹⁴.
47. Recommendations included to ensure an appropriate balance between the use of information obtained by extraordinary powers to support of corruption functions and the rights of other parties to not be detrimentally impacted by the dissemination of that information¹⁵.
48. The Chair of the Committee noted in the forward to the report:

... Key to this is Queenslanders having confidence in the CCC and its use of the extraordinary powers that have been entrusted to it – in particular, that these powers will be used impartially, independently, fairly and having regard to the public interest, at all times and in all places.

The committee finds that the CCC has exceeded the specific limits on its powers under the Public Interest Disclosure Act 2010 in the Logan City Council matter and the Crime and Corruption Act 2001 ... and further finds that the CCC Chairperson did not ensure the CCC acted independently and impartially.

This inquiry was about that Logan matter. However, the findings and recommendations of the committee should be seen as the starting point to ensuring that events about which the committee makes serious findings are never repeated.”

¹⁴ [Report No. 108, 57th Parliament - Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters](#)

¹⁵ Specifically with respect to s 60 of the CC Act.

Taskforce Flaxton

49. Together provided to the CCC Commission of Enquiry a case study of our concerns in relation to the actions taken by the CCC in relation to Taskforce Flaxton. See Together submission attached from page 5.
50. In summary:
- a. After Taskforce Flaxton had found systemic corruption risks due to prison overcrowding but very little evidence of any actual corrupt conduct, the CCC continued to pursue four individual public sector employees under s92A of the Criminal Code - Misconduct in relation to public office- despite there being insufficient evidence to proceed with the charges which were eventually dropped after taking considerable financial and personal toll on those individuals who were unable to recover their legal costs.
 - b. The CCC also pursued one individual in the Administrative Appeals Tribunal under s50 of the *Crime and Corruption Act 2001*, an action usually confined to discipline of Police Officers. Significantly, the powers available to QCAT under s219(4) are all a subset that are already available to the employer taking Disciplinary Action under s188 of the *Public Service Act 2008* (now the *Public Sector Act 2022*).
51. Together submitted that:
- a. there is a real perception that the course of action taken by the CCC in continuing to pursue these matters is due to a need to achieve a demonstrable result from Taskforce Flaxton, a 'scalp', and in doing so the CCC has acted far in excess of any reasonable disciplinary action that could be justified.
 - b. The same root causes that led to the findings of PCCC in the Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters report as they relate decisions to prosecute, extend to the CCC's role in reducing the incidence of misconduct, official misconduct and corruption in units of public administration.
52. Where there have been identified systemic issues with CCC overreach and actions taken contrary to the CCCs corruption functions, the Union does not think it appropriate to provide the CCC with additional powers to take action against public sector employees in the media, where there are insufficient grounds to prosecute or terminate their employment or other formal action in relation to serious corruption.

Harm to people identified in publications

53. The publication of adverse information about a person does harm. This includes but is not limited to damage to reputation, relationships, future employment opportunities, and psychosocial harm. Any publication of that material has the potential for harm but publication by Queensland’s standing anti-corruption watchdog adds to the potential for harm.
54. The publication of this material is contrary to established common law employment principles, aspects of the employment relationship, and the statutory rights and obligations of public employees. There is no general obligation to disclose past wrongdoing to a prospective employer¹⁶ and public sector employees are only required to disclose previous serious disciplinary action. In cases where the CCC has not found corruption or official misconduct to have occurred and serious disciplinary action has not been taken, the publication of adverse reports publicly is a significant detriment beyond existing statutory requirements or the employment relationship.
55. The QHRC contends that the “CCC powers in relation to corrupt conduct, as defined, have the potential to limit human rights, particularly the right to privacy and reputation (s 25 in the HR Act¹⁷”. The publication of adverse information about a person without their consent would also appear to engage, and potentially limit these human rights.
56. The requirements of s 58 of the HR Act are significant and impose both a substantive and procedural obligation on public entities¹⁸. Whether a decision is “compatible with human rights” involves a “two-stage” inquiry:
- a. whether the relevant act or decision placed a limit on the human right: s 8(a)
 - b. if there is a limit, whether the limit is justified under the test of proportionality set out in s 13: s 8(b).
57. This proportionality test will be fundamental to considerations about publishing information in this context.
58. The public interest being relied upon to limit human rights and override other individual rights and freedoms appears to often be “expressed at a high level of abstraction”¹⁹ rather than an identification of any actual and genuine public interests in the specific matters or a framework for a comprehensive and structured review of competing interests.

¹⁶ *Hodgson v Amcor Ltd [2012] VSC 94*, [1572-1577] citing *Sybron Corporation v Rochem Ltd*.

¹⁷ *QHRC submission to CCC Commission of Enquiry*.

¹⁸ *Johnston & Ors v Carroll (Commissioner of the Queensland Police Service) & Anor; Witthahn & Ors v Wakefield (Chief Executive of Hospital and Health Services and Director General of Queensland Health); Sutton & Ors v Carroll (Commissioner of the Queensland Police Service) [2024] QSC 2* at [65].

¹⁹ *Carne v Crime and Corruption Commission [2022] QCA 141* (5 August 2022) at [56].

Content and limitations on reports and statements

59. The Union suggests that any reporting of concluded investigations should be subject to safeguards such as but not limited to:
- a. a genuine public interest test with a threshold
 - b. human rights consideration and proportionality
 - c. protections for complainants and witnesses
 - d. redaction of personal and private information including names and identifying information that is not required in the public interest
 - e. provision of natural justice
 - f. consideration of psychosocial hazard and other risk of harm to people named or identified in published material

Retrospectivity

60. The Union has significant concerns about any legislative changes allowing for publication of reports or public statements being made retrospective. The publication of such material impinges on the rights of people identified in those publications including their human rights, such as rights to privacy and reputation. This may include public sector officials and employees who have been investigated, interviewed or are otherwise named or described in CCC Reports.
61. A key principle of the Rule of Law is that the law must be both readily known and available, and certain and clear. The “the non-retrospectivity of changes in rights or obligations generally” is a fundamental right recognised by the common law²⁰ and retrospective impingement on rights by legislation offends Queensland Parliaments Fundamental Legislative Principles and the Human Rights Act. The Queensland Parliament may impinge on these rights with “unmistakably clear intention” but should only do so when justified.
62. This submission sets out above several considerations which weigh against there being special circumstances that would justify departure from principle of the Rule of Law and Fundamental Legislative Principles in this case.

²⁰ *Momcilovic v The Queen* (2011) 245 CLR 1, [444].