

Our ref: BNE5411119

4 April 2024

The Hon. Catherine Holmes AC SC  
Reviewer  
Independent CCC Publication Review

Dear Ms Holmes,

### **Consultation on human rights aspects of the CCC reporting powers review**

Thank you for your letter of 27 February 2024, inviting views on the human rights aspects of the Terms of Reference (**TOR**) for your review into the powers of the Crime and Corruption Commission (**CCC**) to make public statements and reports as part of its corruption functions (**the Review**).

This is an initial response to the TOR and is intended to assist by identifying and explaining relevant human rights principles. It covers the following:

- the different ways in which human rights are engaged when considering public reporting on corruption;
- recent views of the United Nations (**UN**) Human Rights Committee on the issue of public reporting and the right to privacy;
- the operation of the *Human Rights Act 2019* (Qld) (**HR Act**) in relation to decisions to publicly report on corruption investigations;
- interpretation of relevant rights under the HR Act; and
- key human rights considerations for recommendations.

Please let me know if further discussions or submissions would assist in the future.

### **Engagement with human rights**

Human rights are directly engaged in several ways by the core issues for the Review.

#### *Prevention of corruption as a State obligation and legitimate aim*

Prevention of corruption is a State obligation under international law.<sup>1</sup> Corruption is a primary source, directly, of harm to multiple human rights, particularly those of more vulnerable citizens.<sup>2</sup> Preventing corruption is a legitimate aim in itself.

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<sup>1</sup> For example, under the United Nations *Convention against Corruption* signed in 2003 and ratified by Australia in 2005.

<sup>2</sup> Committee on the Elimination of Discrimination against Women, Committee on Enforced Disappearances, Committee on Migrant Workers, Committee on the Rights of the Child, Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Committee on the Rights of Persons with Disabilities, 'Joint Statement on 'Corruption and Human Rights' (31 May 2021).

Powers granted to anti-corruption agencies, including the power to issue reports as part of their corruption functions, should be compatible with the body's institutional setting and overall purpose. This leads to questions such as:

- Is the power to issue public reports appropriate to the CCC's institutional role, powers and functions?
- Does the particular report contemplated advance the prevention of corruption, and if so, in what way?
- Is identification of individuals necessary in the particular report?
- What is the intended audience?
- Is the relevant interest to be met in reporting an urgent one or one that could await the outcome of other legal processes?

Other related legitimate aims may also underpin powers to report, given the CCC's institutional setting. These legitimate aims include those already provided for under the *Crime and Corruption Act 2001 (Qld) (CC Act)*, such as reporting as required to:

- facilitate referrals to other government departments or agencies to take steps in response to investigated corruption;
- educate public servants;
- maintain transparency and accountability to Parliament; and
- facilitate supervision by the Parliamentary Crime and Corruption Committee (**PCCC**) of CCC activities.

#### *Transparency and human rights related to government*

There is a more general public interest in a being informed of corrupt conduct in the public sector. This may be for broader anti-corruption purposes, educational purposes, deterrence, or to enable the participation of the public in public life in s 23 of the HR Act (ie. to inform voting). The right to access information held by government is not directly referred to in the HR Act but is contained in the *Right to Information Act 2009 (Qld)*, and freedom of expression in s 21 of the HR Act includes the freedom to seek and receive any kinds of information. In light of Constitutional rights implied from representative and responsible government, there is a generally accepted public interest in being informed about serious and systemic matters of public service corruption; although the public interest in knowing might reduce for less serious or less prevalent conduct. Further, the nature and extent of information that is necessary to report in the public domain, and the timing of it, will vary. In particular, the question of whether or not that information must identify individuals would be informed by the impact such disclosures might have on their human rights, as discussed next.

#### *Potential impact of public reporting on the privacy and reputation of individuals*

Public reports and statements by the CCC about its corruption investigations have the potential to make public otherwise private and confidential information in breach of individuals' rights to privacy. These involve the use of powers of compulsion for a broad remit to investigate 'corrupt conduct'. Whilst there is parliamentary encouragement towards more serious and systemic cases of corruption, that does not limit the jurisdiction.

In some circumstances, such statements may severely damage the reputations and livelihoods not only of investigation targets or suspects, but also of other witnesses. Many of these individuals will not be charged with any offence or be the subject of any disciplinary action. However, if named or otherwise identified as being believed by the CCC to have engaged in corrupt conduct, they may not only lose their jobs, but will have their reputations severely impacted.

Accordingly, as you note in your letter, individual rights to privacy and to reputation, protected under s 25 HR Act, are engaged by the proposed power. As discussed further below, these rights are of particularly broad scope. Together with the right to take part in public life under s 23 HR Act and the right to property in s 24 HR Act, they arguably operate to additionally recognise and protect work rights.

Australia also has international obligations to respect people's privacy and reputation by enacting sufficient protections.<sup>3</sup> Defamation laws exist domestically to fulfil this obligation. However, any potential expansion of documents that can be tabled under s 69 of the CC Act would expand the protections of Parliamentary privilege — an absolute privilege under domestic defamation law. This can lead to significant harm to reputation, but without defamation law protections, and with no mechanism to test the allegations and obtain exoneration.

#### *Interaction between public reporting, fair trial rights, and procedural fairness*

Publication of statements of belief by the CCC about criminal or other misconduct even where proceedings have been instituted as a result of an investigation, and before they are completed, has the potential to compromise fair trial rights. In the HR Act, those rights are set out in ss 31 (Fair hearing) and 32 (Rights in criminal proceedings).

At common law, if the power to report is authorised by statute, capacity for harm to reputation is recognised by the need to afford procedural fairness prior to publishing. Section 31 of the HR Act (Fair Hearing) supports and strengthens those requirements. It may also require an effective right of review or other exoneration process.

#### **Recent consideration by the UN Human Rights Committee**

The UN Human Rights Committee, which monitors state parties' compliance with the International Covenant on Civil and Political Rights, has recently considered some of these issues in *Charif Kazal v Australia*.<sup>4</sup>

Mr Kazal brought a human rights complaint against Australia, having exhausted his domestic legal options, for the publication of his name in a report issued publicly by the NSW Independent Commission Against Corruption (**ICAC**). In that report, the ICAC found that Mr Kazal had sought to influence official functions of a public officer. It concluded that Mr Kazal's conduct was corrupt, and could involve two criminal offences. However, there was insufficient evidence to charge Mr Kazal and no charges were laid. Because Mr Kazal had not been charged with any criminal offence, his criminal law rights were not engaged. However, the Committee considered whether his rights to privacy and reputation had been breached by his being named in the ICAC report.

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<sup>3</sup> UN Human Rights Committee CCPR General comment No. 16 re Article 17 (right to privacy) of the *International Convention on Civil and Political Rights (ICCPR)*, 8 April 1988, HRI/GEN/1/Rev.9 (Vol. I) par 11.

<sup>4</sup> *Views adopted by the Committee under art 5(4) of the Optional Protocol concerning Communication No. 3088/2017, CCPR/C/138/D/3088/2017, Human Rights Committee of the United Nations, adopted 7 July 2023 (Kazal v Australia).*

In doing so, consistent with how the right has been interpreted in Australia, discussed below, the Committee applied the principle that even in pursuit of the legitimate aim of investigating alleged corruption in the public sector, any interference with the privacy of individuals by State action must be proportionate to a legitimate end sought, and necessary in the circumstances of any given case.<sup>5</sup>

Australia argued that the interference in Mr Kazal's right to privacy was not arbitrary, but was aimed at the legitimate purpose of investigating corruption in the public sector and subject to a range of proportionate procedural safeguards and restrictions.<sup>6</sup>

The Committee noted concerns that had been raised with the inquiry involving the author, including that:

the Office of the Inspector published a report in 2017 which was critical of the inquiry conducted by the ICAC and which concluded that the ICAC's findings were "weak and flawed", while also being critical of the public nature of the proceeding, noting that the ICAC had not provided written reasoning as to its decision to make the proceedings public, and also criticizing the lack of an exoneration protocol available to the author. The Committee further notes statements made by the Attorney-General as referred to by the author, in which the Attorney-General stated that the author and his co-accused had been 'unable to test the corrupt finding made against [them] in a court of law. The consequence is that each has been stigmatised and ashamed by a finding that has not been made, and cannot be tested in an environment that has rules of evidence and procedures established over centuries to ensure a fair and impartial hearing to them and to their opponents'.

The Committee found the public hearing and reporting by ICAC to be in violation of Mr Kazal's right to privacy under Article 17 of the *ICCPR*:

In the present case the Committee finds that the decision by the ICAC to hold a public hearing and make public findings in which the ICAC concluded that the author had sought to improperly influence the impartial exercise of the official functions of a public officer, but where said findings could not be challenged by the author before any domestic authority and for which the ICAC provided no reasoning as to its decision to make the proceedings and findings public, amounted to an arbitrary interference in the author's right to privacy. The Committee finds that the decision to make the proceedings public, without providing the author with adequate procedural safeguards, cannot be found to be proportionate and necessary to the objective pursued in the particular circumstances of the case, especially taking into account the author's claim that the publication of the findings damaged his reputation and his ability to conduct his family business.<sup>7</sup>

The Committee found that Mr Kazal should be compensated for the violation and Australia should take all steps necessary to prevent similar violations from occurring in the future.

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<sup>5</sup> *Kazal v Australia* at [8.3], [8.5].

<sup>6</sup> *Kazal v Australia* at [8.4].

<sup>7</sup> *Kazal v Australia* at [8.5].

## Operation of the *Human Rights Act 2019* (Qld)

The HR Act applies to courts and tribunals, Parliament, and public entities.<sup>8</sup>

### *Application to Parliament*

Parliament is responsible for making and passing laws and, under the HR Act, must consider whether any limitations on human rights in legislation are justified. This occurs through the tabling of statements of compatibility with Bills and human rights certificates for subordinate legislation, scrutiny through the committee process,<sup>9</sup> and parliamentary debate.

Parliament may override the HR Act by including an override declaration with a Bill expressly declaring that the Act, or a provision of the Act, has effect despite being incompatible with one or more human rights. This power is intended to be used only in exceptional circumstances and the HR Act gives the examples of 'war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order'. A provision of an Act containing an override declaration expires 5 years after the provision commences.<sup>10</sup>

Once a law is passed, any future human rights compatibility assessment will generally only arise if raised in litigation. The Supreme Court or Court of Appeal cannot invalidate legislation under the HR Act. Instead (as long as no override declaration is in place) it may make a declaration of incompatibility where the court is of the opinion that a statutory provision cannot be interpreted in a way compatible with human rights. The court must then give notice to the Attorney-General and the Commission of the incompatibility, but this does not affect the validity of the law.<sup>11</sup>

### *Application to the CCC*

The CCC and its employees are each 'public entities' under the HR Act, to which the obligations of s 58 of the HR Act apply.<sup>12</sup>

The proper application of s 58 of the HR Act, which has been accepted by the CCC and otherwise held to apply to its decisions,<sup>13</sup> provides structure to decision-making affecting individual human rights, requiring the decision-maker to identify, understand and weigh human rights as against other identified important public interests.<sup>14</sup>

Accordingly, decision-making under the CC Act must, by application of s 58 of the HR Act, involve the proper consideration of all relevant human rights, and, subject to the statute directing a particular incompatible result,<sup>15</sup> the exercise of discretion must be compatible with human rights. Furthermore, s 48 of the HR Act operates to ensure that all statutory provisions be interpreted, to the extent possible, consistent with their purpose, compatibly with human rights.

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<sup>8</sup> *Human Rights Act 2019* (Qld) (HR Act), s 5.

<sup>9</sup> HR Act ss 38–41.

<sup>10</sup> HR Act ss 43–47.

<sup>11</sup> HR Act s 53.

<sup>12</sup> HR Act s 9(1)(a), (b) and (i). *SQH v Scott* (2022) 10 QR 215 at [124].

<sup>13</sup> *SQH v Scott* (ibid) at [124].

<sup>14</sup> *SQH v Scott* at [120]-[121].

<sup>15</sup> HR Act, s 58(2); see *SQH v Scott* at [123]-[129], [143]-[144].

### *Assessing compatibility with human rights*

Compatibility with human rights is a defined term: see s 8 of the HR Act. It will be satisfied if human rights are not limited, or, if limited, the limit is only to the extent that is reasonable and demonstrably justifiable under s 13. Section 13 embodies a proportionality test,<sup>16</sup> setting out relevant considerations to determine if limits are reasonable and justifiable, in a free and democratic society based on human dignity, equality and freedom.

The Victorian approach recently adopted by Martin J in *Johnston v Carroll*<sup>17</sup> to ascertaining compatibility with human rights was:

- (1) identifying the human rights that are relevant to, engaged by or apparently limited by, the decision;
- (2) determining whether the right has been limited (restricted or interfered with) – this requires considering the scope of the right; and
- (3) determining whether the limit is justified under s 13.

A number of human rights are engaged by the question of publication of such reports and statements by the CCC (each discussed in more detail below). These include:

- Common law rights to procedural fairness, also recognised in the right to a fair hearing (s 31 HR Act)
- Rights to privacy and reputation (s 25 HR Act)
- The right to property (s 24 HR Act)
- The right to take part in public life (s 34 HR Act)
- The rights of people charged with criminal offences or subject to disciplinary processes, to a fair trial (s 31), and to other criminal law rights (s 32 HR Act).

Some or all of these rights may be limited by public reporting of corruption investigations. Under s 13 of the HRA, consideration of compatibility with human rights, despite limits being placed upon those rights, requires:

- attention to the purpose for the power that authorises the limit, and whether it reflects a sufficiently important public interest, consistent with the repository's institutional role and function, to outweigh individuals' protected human rights; and
- consideration of whether the limit to those human rights is narrowly tailored to purpose; being the least infringing upon human rights alternative reasonably available to meet the stated aim.

### **Relevant human rights**

The scope of any right should be construed in the broadest possible way by reference to the right's purpose and underlying values.<sup>18</sup>

#### *Common law procedural fairness and right to a fair hearing – s 31 HRA*

The common law right to procedural fairness sits alongside the right to a fair hearing, under s 31 of the HR Act. The right to a fair hearing is not confined to judicial proceedings, but

<sup>16</sup> *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250, 291 [104]; *Momcilovic v The Queen* (2011) 245 CLR 1, 39-40 [22], 43-44 [34]; 172 [432], 213-214 [555]-[557].

<sup>17</sup> *Johnston v Carroll* [2024] QSC 2 at [74].

<sup>18</sup> *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* at [130].

also applies to certain proceedings of an administrative character.<sup>19</sup> Its content dovetails with the requirements of natural justice under common law – the two sources of rights are ‘mutually reinforcing’.<sup>20</sup> Consistently with the rules of procedural fairness, the requirements of a fair hearing are flexible, depending upon the features of the case.<sup>21</sup>

As already noted, the rights of a witness or suspect under investigation by the CCC to procedural fairness do not extend to interrogating evidence that might exist against them through cross-examination or otherwise. There is no judicial process undertaken by the CCC before findings are made, and no external merits review mechanisms for the decision to publish a report or with respect to its contents including adverse findings.

It is uncontroversial that procedural fairness conditions the publication of adverse findings in any public report. Section 71A of the CC Act (and amendments to it such as those proposed in the Private Members’ Bill introduced in relation to the Act in 2023<sup>22</sup>) are designed to provide procedural fairness to those who are named in CCC reports and statements by notifying those individuals that the CCC intends to make an adverse comment, giving them the opportunity to make submissions in relation to the adverse comment, and ensuring that those submissions are reflected in any report making such adverse comment. The breadth of proposed amendments in the Private Members’ Bill would permit their content to be flexible according to the circumstances of the case. However, disclosure does not extend past a requirement to disclose the substance, in summary, of the adverse material, and not to disclose the evidence itself.<sup>23</sup>

Construing procedural fairness broadly, it may be appropriate for legislation to allow a person potentially affected by a report proposed to be published to make submissions regarding anonymisation and the decision to report the matter publicly in addition to any response that is to be made as to its proposed content.

#### *Right to privacy – s 25(a)*

The rights to privacy and reputation in s 25 of the HRA are modelled on Art 17(1) of the ICCPR.<sup>24</sup> The concept of privacy extends from the traditional aspects of a person’s private life (family, home, belongings, correspondence) to include physical and mental integrity, legal personality, individual identity and choice with respect to release of information.<sup>25</sup> Bell J in *Director of Housing v Sudi* described the right as protecting ‘the existence, autonomy, security and wellbeing of every individual in their own private sphere’.<sup>26</sup>

The right to privacy has been interpreted under the European Convention, but not yet by the UN Human Rights Committee, to include the way one interacts with the world, by forming

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<sup>19</sup> *Re Kracke and the Mental Health Review Board* (2009) 29 VAR 1, [370]-[419]. See further UN Human Rights Committee, CCPR General comment No. 32 re Article 14 (right to equality before the courts and right to a fair trial), UN Doc CCPR/C/GC/32, [16]. Construing the right broadly, it may apply to proceedings before an anti-corruption commission: see, eg, Joint opinion by Committee members Laurence R. Helfer and Bacre W. Ndiaye (partially dissenting) in *Kazal v Australia*. Note, however, that the majority of Committee members found that Article 14(1) of the ICCPR did not apply to proceedings of the NSW ICAC in that case.

<sup>20</sup> *Matsoukatidou v Yarra Ranges Council* (2017) 51 VR 624 at [178].

<sup>21</sup> *Victoria Police Toll Enforcement v Taha* (2013) 49 VR 1 at [205].

<sup>22</sup> *Crime and Corruption Bill 2023*, cl 7. The Bill was introduced by shadow Attorney-General Mr T Nicholls MP on 11 October 2023.

<sup>23</sup> See the recent discussion of the right in the context of public reports, in *AB (a pseudonym) v IBAC* [2024] HCA 10.

<sup>24</sup> Explanatory Notes, *Human Rights Bill 2018* (Qld) (EN), p22.

<sup>25</sup> EN, p22. *DPP v Kaba* (2014) 44 VR 526.

<sup>26</sup> *Director of Housing v Sudi* [2010] VCAT 328 at [29].

relationships and expressing oneself personally or in business.<sup>27</sup> It is arguable that the right to privacy in s 25(a) therefore also protects some aspects of the right to work.<sup>28</sup>

It should also be noted, however, that the European Court of Human Rights has recently indicated that some persons, by virtue of their position in public office, can be taken to have consented to interference with some aspects of his or her business life, particularly where the intrusion relates to an area that the public may validly be interested in.<sup>29</sup>

The protection for privacy is against ‘unlawful or arbitrary’ interference. In a decision that has been adopted in Queensland,<sup>30</sup> in *Thompson v Minogue*, the Victorian Court of Appeal considered that ‘lawful’ directs attention to compliance with the non-human rights law, and ‘arbitrary’ involves ‘an interference which is capricious, or has resulted from conduct, which is unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought’. It entails a broad assessment of whether the interference extends beyond what is reasonably necessary to achieve the purpose being pursued.<sup>31</sup>

#### *Right to reputation – s 25(b)*

A person’s reputation is protected under the HR Act from ‘unlawful attacks’. Personal reputation is also protected under the common law and the *Defamation Act 2005* (Qld). However, the tabling of reports under s 69 in the Legislative Assembly ousts this protection.<sup>32</sup>

The impact of a breach of the person’s right to reputation is significant; it can impact a person’s livelihood, social standing, and mental health/personal integrity. Publication of reports under the cloak of Parliamentary privilege leaves no recourse to vindicate it.

#### *Right not to be arbitrarily deprived of property – s 24(2)*

‘Property’ is not defined, and consistent with the approach to be taken to rights contained in the HR Act, it should be beneficially construed to encompass real and personal property, economic or other interests and legitimate expectations.

Caselaw on the right to ‘peaceful enjoyment’ of ‘possessions’ under the First Protocol to the European Convention has limited the right to *existing* possessions and not future acquisitions or income.<sup>33</sup> However, the goodwill associated with a right to practice one’s profession is capable of protection<sup>34</sup> so too a licence to trade.<sup>35</sup>

Together with s 25(a), s 24(2) arguably assists to protect against arbitrary deprivation of the right to work, at least as to work which is already contracted for and legitimately expected to continue, subject to fitness or eligibility requirements.

<sup>27</sup> *C v Belgium* (2001) 32 EHRR 2, 33-34 [25]; *Bagirov v Azerbaijan* (2020) 71 EHRR 30, 1014-16 [91]-[104]; *Pretty v UK* (2002) 35 EHRR 1, 36 [61]; *Volkov v Ukraine* [2014] ECHR 32 at [154] citing *Neimietz v Germany* (1993) 16 EHRR 97, 11 [29]

<sup>28</sup> *ZZ v Secretary, Department of Justice* [2013] VSC 267, [86]-[95].

<sup>29</sup> *Butkevicius v Lithuania (Application 70489/17)* European Court of Human Rights, 2022.

<sup>30</sup> *Johnston v Carroll* (supra) at [362]-[363], [367].

<sup>31</sup> *Thompson v Minogue* (2021) 67 VR 301 at [49], [55]-[56].

<sup>32</sup> Absolute privilege applies: s 27 Defamation Act. Note also the defence of absolute privilege to any defamation proceedings provided to the Commission in respect of publications made for the purpose of performing the Commission’s functions: *Crime and Corruption Act 2001* (Qld), s 335(6).

<sup>33</sup> *Malik v the United Kingdom* (2012) ECtHR, Application no. 23780/08 at [81], [88], [93].

<sup>34</sup> *Malik* (ibid), [81], [89]-[93]; *Holder v Law Society* [2003] 1 WLR 1059.

<sup>35</sup> *Malik* at [91], and the authorities cited there.



### *Taking part in public life – s 23*

Section 23 is modelled on Article 25 of the ICCPR, and is described as conferring ‘a right to a democratic system’.<sup>36</sup> Section 23(1) contains the rights of everyone to the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through chosen representatives. Section 23(2)(a) protects the right to vote and be elected and sub-(b) provides for the right and opportunity, without discrimination, to have access on general terms of equality, to the public service and to public office.

### *Criminal law rights – s 32*

Those who are charged with criminal offences also have a right to a fair trial – s 31. In contrast to the common law protections, the HR Act recognises a positive right to a fair trial, rather than a negative right not to be tried unfairly.<sup>37</sup> Evidently, pre-trial publicity can lead to an unfairness at trial.

In addition to the fair hearing right s 32 lists a number of minimum standards pertaining to criminal proceedings, including and adding to those discussed in X7.<sup>38</sup>

### **Key human rights considerations for recommendations in the Review**

The requirements of the HR Act, at their core, oblige decision-makers to consider human rights, and either not limit them or otherwise justify any limits placed upon them by the decision to what is reasonably necessary to meet one or more sufficiently important competing public interests.<sup>39</sup> Limits to human rights are to be narrowly tailored to what is necessary to further a more important public interest.

Whilst the HR Act, in particular s 58, operates to condition decisions made under the CC Act, past reports that have been issued by the CCC since the HR Act was passed<sup>40</sup> suggest that stronger protections are required within the structure of any new reporting provisions. Amendments such as those in the Private Member’s Bill introduced into Parliament in October 2023<sup>41</sup> do not go far enough to sufficiently condition the proposed broadened powers under ss 64 and 69 CC Act.

In this light, the following issues are important to consider as ways in which the power to make public reports and statements might be conditioned within the legislation providing the power, to lessen the limits to individual human rights that are occasioned by its exercise:

- the need to identify the sufficiently important public purpose behind each kind of reporting power;<sup>42</sup>

<sup>36</sup> EN, p21.

<sup>37</sup> *DPP v Mokbel (Orbital & Quills Ruling No 1)* [2010] VSC 331 at [152]; *Re Application under Major Crimes (Investigative Powers) Act 2004* (2009) 24 VR 415 at [76].

<sup>38</sup> X7 (2013) 248 CLR 92, 142 [124].

<sup>39</sup> *Human Rights Act 2019* (Qld), ss 8, 13, 58.

<sup>40</sup> E.g. “Operation Yabber: An investigation into allegations relating to the Gold Coast City Council”, CCC 2020, pp10-11.

<sup>41</sup> *Crime and Corruption Amendment Bill 2023*.

<sup>42</sup> Institutional and human rights arguments regarding the holding of public hearings by anti-corruption agencies are discussed in detail in G Appleby and G Hoole, ‘Integrity of Purpose: A legal Process Approach to designing a federal Anti-Corruption Commission’ (2017) 38 Ad LR 397. See in particular the questions enumerated at pp 398-399, the concept of ‘Integrity of Purpose’ at pp 406-7, the tailoring of the level of incursion on traditional liberties in such circumstances at p 427, and the discussion of Evidential hearings at pp 431-433.

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- the requirement to consider limiting the extent of publication (or audience) as needed to meet the relevant purpose (including in relation to the timing or content of such reports<sup>43</sup>);
  - where public reporting may result, adjusting the way in which investigations are conducted, such as by more fulsome disclosure of evidence and powers of cross-examination to interested parties, and guidelines to ensure that not only inculpatory, but also exculpatory, evidence is investigated;<sup>44</sup>
  - requiring transparency around decisions to make investigations or their results public, including the provision of reasons for those decisions; and
  - including mechanisms to challenge that decision and/or the adverse findings in public reports.

The CCC has stated that the capacity to report on corruption matters is 'vital' so that the public, the public sector, and elected officials can understand the reasons for and outcomes of the CCC's activities.<sup>45</sup> However, each of the audiences to which the CCC wishes to publish reports might be reached for different purposes and in different ways. Different human rights calibrations will attend, depending upon the purpose and extent of publication proposed, as well as its timing and contents.

Yours sincerely



**Scott McDougall**  
Commissioner

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<sup>43</sup> TOR 4(a) and (b).

<sup>44</sup> See, eg, Law Council of Australia, 'Submission to *National Anti-Corruption Commission Bills 2022*, Joint Select Committee', 14 October 2023 (Submission 49), [115]-[136].

<sup>45</sup> Background to TOR, p1.