

19 March 2024

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

Sent via email: CCCReportingReview@justice.qld.gov.au

Dear Justice Holmes,

RE: LGAQ Submission to Independent CCC Publication Review

Thank you for your correspondence of 27 February 2024 containing an overview of the Independent Review into the Crime and Corruption Commissions' reporting on the performance of its corruption functions ("the Review"), that you are leading.

Our members have had significant interest in the performance and operations of the Crime and Corruption Commission, particularly in recent years following a litany of failed prosecutions – most notably the failed prosecution involving several former Logan City councillors, which has had serious and lasting impacts on both that council, the community and other elected representatives across the State.

While the devastating impact of those failures cannot be forgotten, the LGAQ has sincerely appreciated the inquiries undertaken by the Parliamentary Crime and Corruption Committee (PCCC), which led to the PCCC's Report No. 108, Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters (Report No. 108). That report then subsequently recommended the Commission of Inquiry relating to the Crime and Corruption Commission.

Overview

The LGAQ and its member councils support high standards of integrity, transparency and accountability. Queensland councils have a responsibility to comply with appropriate standards relating to applicable governance arrangements to ensure the system of local government is accountable, democratic, efficient, sustainable and transparent. This includes electoral arrangements, financial accountability and reporting, integrity and ethical standards, and oversight by independent bodies including the Queensland Audit Office, Integrity Commissioner, Ombudsman, the Office of the Independent Assessor and the Crime and Corruption Commission.

The local government sector in Queensland both understands and supports the need for a body such as the CCC to provide oversight and to identify, investigate and stamp out instances of corruption. Indeed, it is pivotal to maintaining confidence in both levels of government in Queensland. There needs to be a high-level of confidence in Queensland's integrity agencies for those who wish to make a complaint, for those who stand accused of a complaint, and for the general public whose taxes fund these agencies as a vital check and balance on our democracy.

Terms of Reference

Thank you for providing a copy of the Terms of Reference for the Review.

Transparency in the investigations and other reporting functions undertaken by the CCC is of critical importance to the local government sector, ensuring there is important context behind any public policy recommendations made by the CCC.

The CCC undertakes multiples roles, from its critical lead role in corruption investigations, to research and analysis of the public policy framework that is implemented by the State Government. The State Government takes public policy recommendations made by the CCC seriously so it is crucial that there is transparency regarding how the Commission has arrived at those recommendations, to ensure they are robust and truly representative. An example of concern we have previously raised with the CCC and also the PCCC regarding this, is detailed below.



CCC's report *Influence and Transparency in Queensland's Public Sector*

Assertions and recommendations made in the CCC's report, *Influence and Transparency in Queensland's Public Sector*, released by the CCC on 30 January 2023 were of great concern to the LGAQ and our member councils as they were unclear and raised concerns in how they were derived, because of a lack of transparency. In that example, there was no consultation with the sector in relation to how it operates, nor the ability to test any of the assertions being made in the report. Untested and unsubstantiated allegations from anonymous or unpublished submissions should not simply form the basis of assertions or recommendations made. This is of greater concern, given the weight these recommendations are given by the very fact that they are made by the CCC.

Of most concern to the LGAQ is the CCC's unwillingness to be transparent in publishing the submissions it received to its inquiry to inform its assertions and final recommendations. The LGAQ first wrote to the CCC on 6 February 2023 seeking information as to when and where the submissions to its inquiry would be published.

CCC Chair Bruce Barbour wrote in response:

At this stage, the CCC is not proposing to publish the submissions received due to the nature of their content and to respect the wishes of some submitters who requested their submissions be treated confidentially.

The LGAQ wrote again on 14 February 2023 seeking further clarification of the decision not to publish the submissions.

As the LGAQ stated in this correspondence, given the serious nature of the *Influence and Transparency in Queensland's Public Sector* report's assertions and recommendations, the potential implications of its suggested reforms, and the complete absence of consultation with the local government sector ahead of its release, it is not an unreasonable request that there be transparency and accountability regarding the submissions on which the CCC's assertions and recommendations were based.

Typically, submissions to such inquiries are published in the interests of transparency, with measures taken to protect those who wish to remain anonymous, such as the removal of names and identifying information before publication. It should be remembered that this was a research paper published by the CCC, which makes recommendations for public policy reform. The genesis of those recommendations is critical in understanding the rationale behind any recommended changes. In the LGAQ's view, it was unacceptable that the CCC refused to take this step.

CCC's draft "Carne report"

Further, it is instructive to have regard to the High Court's summary of what was intended to be published by the CCC in relation to Mr Carne's matter. At paragraph 13 of the High Court's Reasons (specifically, the reasons of Kiefel CJ, Gageler and Jagot JJ) it is stated: -

The Report differed from the earlier draft in that, relevantly, it included a foreword by the Chairperson of the Commission which spoke at some length about standards of conduct on the part of public officials who held positions of trust. Given that the respondent was identified in the Report as the public official whose conduct was the subject of allegations and investigation, the foreword would be understood to be directed to him and to be highly critical of him, although the body of the Report contained no findings of corrupt conduct against him. The conclusion of the foreword contained a statement urging Ministers, senior public sector employees and members of the public to read the Report.

The LGAQ is concerned that if amendments are made to the *Crime and Corruption Act 2001* ("the CC Act") to simply allow the CCC to publish reports containing content similar to that described above, the CCC will have the unfettered ability (which it previously thought it already had) to seriously besmirch the reputations of councillors and Council senior executive officers (including chief executive officers) in circumstances, such as the above, where there are no findings of corrupt conduct. This is not an acceptable outcome, so far as the LGAQ is concerned.

Such an outcome would also be incompatible with the *Human Rights Act 2019*, section 25(b), which prescribes that a person has the right not to have their reputation unlawfully attacked.



Terms of reference 4(a) and 4(b)

Accordingly, in relation to terms of reference 4(a) and 4(b), the LGAQ submits that proposed CCC reports in relation to the investigation, assessment, consideration or disposition of individual corruption matters, when there is no finding of corrupt conduct:-

1. Should only be reported upon at set times throughout each year (e.g. quarterly or half yearly (term of reference 4(a)) – this will assist in de-identifying the individual the subject of the report;
2. Should only be given, by way of tabling, in the manner described in section 69(3) of the CC Act (term of reference 4(a));
3. In relation to the report to be tabled by the Speaker/published by the clerk (as per subsections (4), (5) and (6) of section 69), should be redacted to de-identify the person the subject of the report, and any other persons who were required to contribute to the subject matter of the report as a witness (term of reference 4(b)).

In relation to other CCC reports, such as the CCC's report, *Influence and Transparency in Queensland's Public Sector*, released by the CCC on 30 January 2023 (discussed earlier in this submission), the LGAQ submits these types of reports, whilst more advisory in nature, should nevertheless be prepared in a procedurally fair way (term of reference 4(b)) that would require, for example: -

- Publication of the submissions (albeit in a de-identified way) upon which the CCC bases its assertions and recommendations for reform of the local government sector;
- Direct consultation with the LGAQ and local government regarding recommendations for reform of the local government sector that the CCC proposes, based on those submissions; and
- Publication of the LGAQ's (and other local government's) responses to the CCC's proposed recommendations for reform.

Term of reference 4(c)

So far as term of reference 4(c) is concerned, the LGAQ is concerned that regardless of changes that might be made to the CC Act to prevent identification of persons the subject of these reports, no amount of redaction will enable the identities of Mr Carne or Ms Trad to be suppressed, given the notoriety of both of these previous CCC investigations. If Ms Trad were a former councillor (as opposed to a former State MP and Minister) the LGAQ would certainly not be supporting that the amendments under consideration be made retrospective. The LGAQ has no other specific submission to make in relation to this specific term of reference.

Previous Inquiries

As noted in Term of Reference 6(f) and as outlined in this submission, the LGAQ has great interest in relation to recent Inquiries undertaken by the PCCC and also the Commission of Inquiry, which in itself was a recommendation of the PCCC's Report.

As the LGAQ outlined in our submission to the CCC Commission of Inquiry, Queensland needs to have a fearless CCC that is thorough, rigorous and robust. But it must have adequate checks and balances to preserve its own reputation and trust with the public, and to ensure it is not abusing its extensive powers.

We would like the recommendations from previous inquiries implemented as quickly as possible. In that respect it was pleasing to see that the State Government has introduced legislation into the Queensland Parliament that would give effect to recommendation 25 from the Commission of Inquiry. The LGAQ has consistently stipulated that the implementation of recommendation 25 is the key element to prevent what happened to a number of former councillors of Logan City Council, Moreton Bay Regional Council as well as other councils, from ever occurring again.

Other related matters

One element the LGAQ would ask the Review team to consider, particularly with respect to Term of Reference 6(d), relates to procedural fairness.



At the 2022 LGAQ Annual Conference, Queensland councils endorsed the following resolution:

The LGAQ calls on the State Government to ensure alignment of Public Interest Disclosure Act 2010 (Qld), Defamation Act 2005 (Qld), Parliament of Queensland Act 2001 (Qld) and Local Government Act 2009 (Qld) to ensure protections for councillors against claims when responding in good faith to requests from integrity agencies to participate in councillor conduct complaints investigations as part of their obligations under the Local Government Act.

Protections against reprisal are sought to ensure councillors are comfortable and willing participants in the process of reporting matters as part of their required participation “on request” from the Office of the Independent Assessor (OIA), CCC and potentially other agencies in response to dealing with councillor conduct complaints.

There have been numerous reports of councillors feeling a form of decision paralysis in recent years due to the many examples of councils and councillors caught up in investigations with many questions raised about the quality of advice and conduct of various integrity agencies.

In this context, there is increasing concern that councillors and staff in local government may be less willing to report matters of concern, for example breaches of the *Local Government Act 2009*, due to the increasing examples of councillors who have unfortunately been on the receiving end of negative outcomes, despite fulfilling their obligations under the *Local Government Act 2009*.

If this is an issue of interest to your Review, we would be happy to make enquiries with impacted councils to explore whether impacted individuals are willing to share their experiences directly with you.

Thank you for contacting the LGAQ about your Review. We have communicated the opportunity to our member councils as well, albeit they have been in caretaker mode since the writ for the 2024 quadrennial local government elections was issued on 29 January 2024. If your Review team would like any further information in relation to this submission, they can contact Nathan Ruhle, Manager – Intergovernmental Relations on [REDACTED]

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alison Smith', written in a cursive style.

Alison Smith
CHIEF EXECUTIVE OFFICER