

GPO Box 3123
Brisbane QLD 4001

Level 2
North Tower Green Square
515 St Pauls Terrace
Fortitude Valley QLD 4006

Tel.: **07 3360 6060**
Toll-free: 1800 061 611
(in Queensland outside
Brisbane)

Fax: 07 3360 6333

mailbox@ccc.qld.gov.au
www.ccc.qld.gov.au

ABN 32 164 714 360



Our Reference: AD-24-0310; 24/049304

14 March 2024

The Honourable Catherine Holmes AC SC
Reviewer
Independent CCC Publication Review

By email: CCCReportingReview@justice.qld.gov.au

Dear Ms Holmes,

RE: Independent Review into the Crime and Corruption Commission's reporting on the performance of its corruption functions

I write further to our recent correspondence, in light of a matter which has just arisen.

As I am sure you are aware, yesterday the High Court delivered its decision in the matter of *AB (a pseudonym) v Independent Broad-based Anti-corruption Commission* [2024] HCA 10.

That decision involved consideration of procedural fairness requirements in relation to special reports prepared by the Independent Broad-based Anti-corruption Commission ('IBAC').

In particular, the Court considered the correct construction of s162(3) of the *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)* ('IBAC Act') which relevantly provided that if IBAC intends to include in a report "a comment or an opinion which is adverse to any person", then the IBAC must first provide the person a reasonable opportunity to respond to "adverse material". The issue was whether the reference to 'adverse material' meant the proposed comments or opinions expressed in the report, or the material upon which those comments or opinions are based.

The Court held that the correct construction was that 'adverse material' meant the evidentiary material on which the proposed adverse comments or opinions are based.

However, the Court also held that the obligation to provide adverse material may be satisfied by the provision of the substance or gravamen of the underlying material, rather than the underlying material itself.

In the particular case (save for one proposed comment), it was accepted that IBAC had provided the affected person a reasonable opportunity to respond to the gravamen of the material on which the opinions or comments were made, by inclusion of that information in the draft report. However, "IBAC conceded that the provision of a reasonable opportunity in accordance with s162(3) might require disclosure of material beyond that included in the Draft Report." (at [30])

The *Crime and Corruption Act 2001* ('CC Act') deals with the obligation to afford a person about whom an adverse comment is to be made in s71A. It is differently expressed to s162 of the IBAC Act, and in its terms only requires the commission to give the person 'an opportunity to make submissions about the proposed adverse comment.'

Nevertheless, having due regard to the principle that what is required to afford procedural fairness will vary from case to case, the CCC recognises that statutory prescription of some aspects of procedural fairness obligations (such as those considered in this case) may be appropriate.

Should the CCC identify any further issues or information which may assist the Review, we will provide a further response.

Yours sincerely



Bruce Barbour
Chairperson

This correspondence is suitable for publication.