

A Submission to the Independent Review of the CCC Reporting Powers by Her Honour Catherine Holmes AC SC

Introduction.

My name is David Barbagallo. In this submission to the Independent Review, I outline some impacts of publication by the CCC of its report of the following investigation:

Investigation Keller: An investigation into allegations relating to the former Chief of Staff to the Honourable Anastacia Palaszczuk MP, Premier of Queensland and Minister for Trade.

The main purpose of my submission is to question what appears to be the CCC's default position, that a detailed public report is the necessary conclusion of any CCC investigation.

My comments and observations primarily relate to the issue of the CCC's reporting function *when* a person is cleared of any impropriety.

In my case, the outcome of the investigation is that the CCC found no evidence of corrupt conduct, and only a procedural irregularity that led it to make some recommendations about minor procedural reforms.

Given those conclusions, I question whether any report at all was justified.

I believe it is self-evident that the balance of a person's right to privacy and to be protected from further reputational damage when they are cleared of corrupt conduct outweighs the notional benefits of reporting in detail elements of the investigation which, in my case, contained unfounded allegations and misleading assumptions.

I accept there might be circumstances where the CCC would want to make recommendations to improve systems designed to prevent corrupt conduct, even where no such finding is made against the person investigated. That should affect the way in which the report is constructed and does not justify a report of the nature of the one published in my case.

To explain my submission, I feel I need to make some comments and observations about the investigation itself. I understand the review has no charter to examine how the CCC undertakes its investigative function. However, I think my remarks about the investigation provide important context about both the CCC's decision to report and the nature of the report itself.

The impact of this investigation and the subsequent reporting in the media has caused me significant harm.

It has impacted my mental health, my earning capacity and caused me to retreat from aspects of social interaction. I continue to suffer ill effects including some periods of depression. It has restricted me from continuing to engage in a lifelong involvement in political discourse. I have lost some friendships.

These may appear to be trivial outcomes to some or not unrelated to the nature of the role in which I was employed. However, I cannot overstate their importance to me.

The Investigation and Report

The CCC has significant powers to search, surveil and seize, to conduct hearings that compel people to attend and give evidence and produce documents and other material. All these powers were exercised in this investigation. The report noted that all persons interviewed co-operated fully.

The Investigation found **no** evidence that I had improperly used my position to influence the outcome of the awarding of a government grant to a company of which I was a director.

Unfortunately, the CCC conflated a minor oversight regarding the completion of a declaration of non-pecuniary interests on a form with the overall and important management of conflicts in my role.

There was overwhelming evidence from multiple sources that I had in fact managed conflicts. The report placed undue emphasis on a mistake of no substance on a form. The CCC rejected the submission by my legal representative to include in the report the only reasonable conclusion to the oversight. This is covered below but goes to the issue of the inability of the CCC to make balanced decisions when it is both the judge and jury.

The resulting report was unfair, unbalanced and caused serious harm to my reputation and has continued to impact on my mental health as well as ability to earn a living.

It is what is colloquially referred to as "clear and smear." The investigation could have been reported in the following manner:

The CCC has completed its investigations and found no evidence of improper conduct. A small number of issues relating to process and better management of the perception of conflict are covered in the recommendations. If implemented they will provide improved guidelines and information for the management of conflicts by public officials.

Another example of the inappropriate nature of the report is the treatment of my resignation.

The evidence confirmed I had resigned from my position as COS **prior** to any allegations which prompted the investigation being made. The report **implied** that the investigation had been the reason for the resignation to avoid the possibility of disciplinary action.

The act the CCC identified to support the possibility of disciplinary action was my failure to complete a detail in a conflict declaration form. I **had** declared my pecuniary interests - ie shares **and** income from fees as a director. Inadvertently, I had not actually listed I was a director of the company at the centre of the investigation.

The CCC reported that this was a breach of requirements and “*had I not resigned*” could have led to disciplinary action and possible dismissal.

Seriously? The investigation found no evidence of corrupt conduct.

Read as a whole, the information I gave on the form only makes sense if I *was* a Director. Why else would I receive Director’s fees and leave breadcrumb evidence of share ownership?

It is Dickensian to opine that the failure to complete a form correctly could be the basis for disciplinary action leading to dismissal. This is a form stored in a secure cabinet in the Premier’s Office that no-one had access to, other than the Premier.

The CCC compounded this excoriation by implying I resigned to evade this course of action.

I did not get the opportunity to comment on the final version of the CCC report. I did see the draft report. In his submissions, my legal representative, Glen Cranny, expertly laid out how the draft report was variously wrong in fact, unbalanced, unfair, pejorative in its use of language, prejudicial in its conclusions and gave no credit for the efforts (supported by evidence) of my ongoing and active management of conflicts. I have included his submissions as attachments to this submission.

Relevantly, I instigated compulsory training for over 200 Ministerial staff on the importance of proper conduct, management of conflicts and compliance with statutory obligations in their roles. The Integrity Commissioner, the Public Sector Commissioner, the Cabinet Secretary and a Deputy Director General of Premiers and Cabinet were just some of the trainers. Prior to my appointment this had not occurred in the previous 2 1/2 years of the Labor Government. The training was conducted over a full day in groups of 20 to 30. I attended all sessions for some period to underscore the importance and significance of the issues covered in the training. This was given no weight in the report.

I understand that the review has no requirement to address these individual issues however it is important for context when considering the CCC’s reporting function.

Perhaps the most egregious aspect of this process was the fact that I was given no opportunity to respond to the final report.

The CCC has significant powers to take enforcement action for breaches of confidentiality regarding their investigations. So, I find it unfathomable that the CCC did not allow a response to the final report, which remained partial and unbalanced.

The problem caused by the tone and content of the report was compounded by the CCC’s decision to include my response to their draft report as an addendum to the final report.

My view is that is a fig leaf to fairness and to distract from the very essence of a star chamber, where the allegations and assertions against me can not be tested in an open process.

If one accepts the proposition that institutions like the CCC are necessary to protect and enhance our civil society, it follows their processes and the consequences of their activities should ensure that the approach to fairness should be tipped in favour of the respondent. Particularly *when they are cleared*.

The absurdity of their current processes is highlighted by the fact that passages of my response to the draft report referred to sections of the draft report which no longer existed in the final report. Some of these passages had factually incorrect assertions.

Fortunately (and appropriately) the CCC removed them from the final report. However, my response to the draft report, included as an addendum to the final report, necessarily referred to those incorrect assertions.

On publication of the final report, absolute privilege attached to these factually incorrect assertions, which acquired immunity from defamation proceedings should they be published by bad faith actors – which of course invariably occurred. Adding farce to this pantomime is the effort that ensued by the CCC to renumber the references in my response to the changed paragraphs in the final report.

The CCC pays perfunctory lip service to the requirements of the *Human Rights Act 2019*, asserting their duties and responsibilities outweigh the rights of individuals to privacy and reputational protection.

I ask if they have even once demurred in favour of the rights of an individual who has been investigated and cleared. Rather reporting is favoured because of the CCC's bed wetting anxieties that there is a potential of improper conduct by all elected officials and it is the CCC's apparent divine function to root it out as the chosen and worthy few.

I note that despite the determination of the High Court in *CRIME AND CORRUPTION COMMISSION v CARNE* [2023] HCA 28 the Keller Report remains on the CCC Website.

I would suggest it should have been removed immediately after the determination of the High Court. Incredulously the CCC has maintained a public narrative which has been misleading at best and explicitly deceitful at worst in their campaigning for amendments to the legislation. It would be disappointing if this conduct was not the subject of adverse comment in the review.

My legal representative presciently and expertly raised with the CCC the legal issues about the decision to report that were central to the Court of Appeal and High Court decisions. It would be instructive to find out whether the CCC sought external legal advice at that time or simply relied on the knowledge that a legal challenge is expensive and exhausting for applicants. One could suggest that is an improper use of public funds and contrary to the principles of a model litigant. Applying Ockam's razor it is difficult to ignore the simplest explanation that the CCC and its Chairperson were arrogant and believed their own interpretation of the CCC's powers was superior.

Another issue I would submit for your consideration is to fully explore the difference between *'what is in the public interest'* and *'what is of interest to the public'*.

The determination of this contrast is best illustrated by an examination of the recommendations in the Keller Report. Frankly they are a hotchpotch of insipid public policy minutiae, of such momentous consequence to be a breakthrough cure for insomnia.

They range from how to improve forms, to requiring standing agenda items in meetings, to better recording processes, to only the consideration of legislative amendments for a formal process for disclosure of advice from the Integrity Commissioner. Not exactly earth shattering or meeting a standard of being in the *'public interest'*. Ironically, these particular recommendations would not even meet the lower threshold of being interesting to the public.

What transpired in my case was the publication of unproven allegations, hand wringing by the CCC over distorted perceptions of potential misconduct and out of context quotations of evidence. The result is the media ramps up the hyperbole and faux outrage which underpins the commercial model for selling newspapers and generating clicks. Where there is no actual corrupt conduct the consequential reporting undermines public confidence in the governance of the State and has a longer term corrosive impact on the public interest.

The CCC appears to understand the environment in which it operates however their actions present little comfort to those who might expect this understanding would influence their approach to individual's rights.

Conclusion

The big picture story is a person in a very powerful position and with significant influence ***did not*** use their role inappropriately. The CCC reported there was no evidence. What got included in the report was innuendo, unsubstantiated allegations, a preoccupation with potential corrupt scenarios and a failure to scrutinize the arse protecting by some.

The discharge of the Commission's roles responsibilities and functions could have been met by the release of a short media statement advising of the outcome of the investigation, correspondence with relevant government agencies (such as the QIC, DPC and Public Service Commission) providing the minor procedural recommendations, or the making of a general publication regarding any systemic issues that should be addressed within the public sector.

Instead, the CCC's report has damaged my reputation, impacted me financially and has had a lasting impact on my health. Luckily, I was cleared.

I am available to speak in person to clarify any matters raised in this submission.

Yours faithfully
David Barbagallo AM

