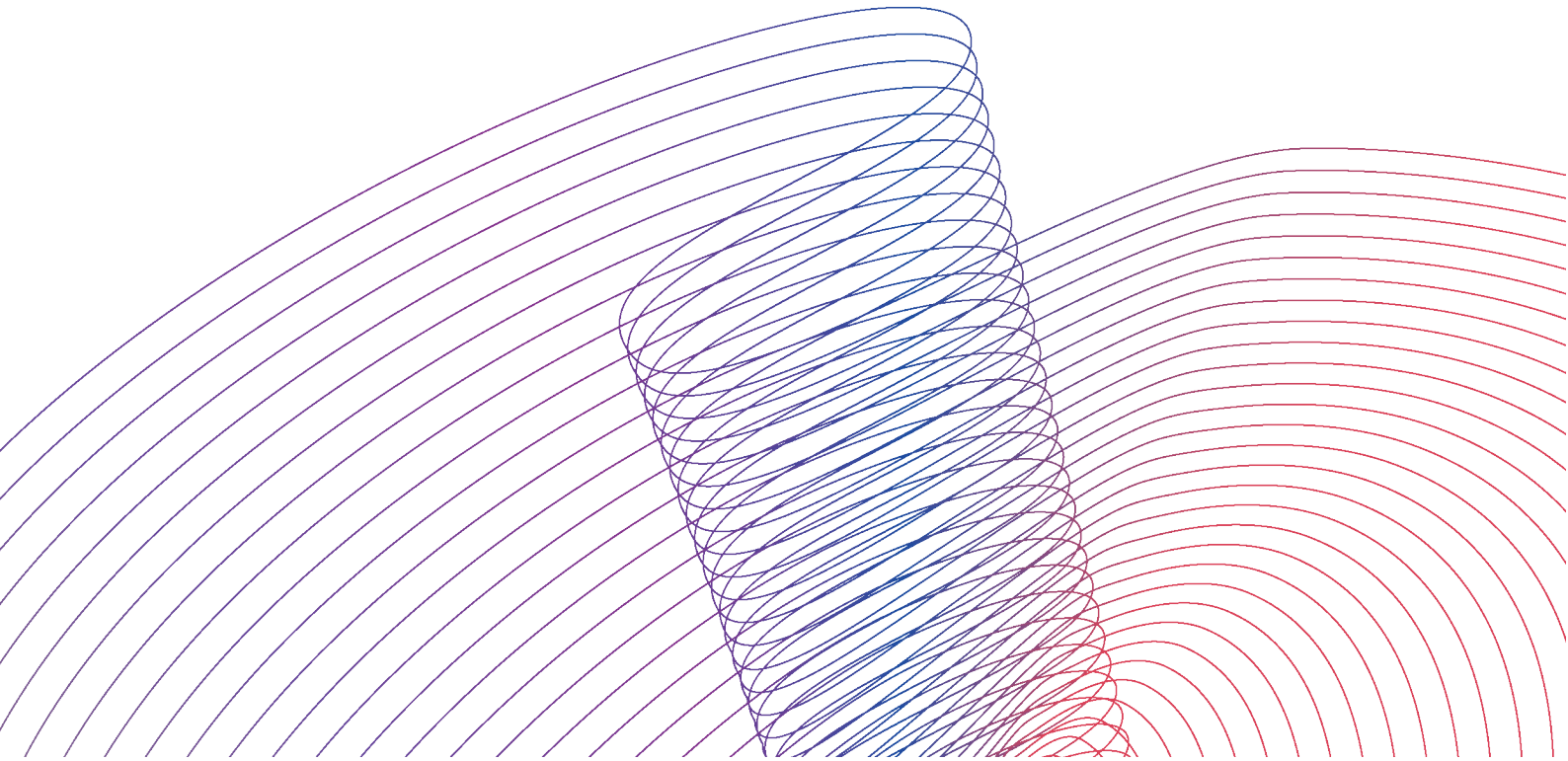
# Independent review into the Crime and Corruption Commission's reporting on the performance of its corruption functions

# REPORT

## 20 May 2024

The Honourable Catherine Holmes AC SC



20 May 2024

The Honourable Yvette D'Ath
Attorney-General and Minister for Justice and
Minister for the Prevention of Domestic and Family Violence
1 William Street
BRISBANE QLD 4001

Dear Attorney-General

I am pleased to present the *Report of the Independent Review into the Crime and Corruption Commission's reporting on the performance of its corruption functions*.

Yours sincerely

**The Hon. Catherine Holmes AC SC**
**Reviewer**
**Independent CCC Reporting Review**

# Abbreviations

| Abbreviation | Term |
|---|---|
| **Commission** | Crime and Corruption Commission (Queensland) |
| ***Crime and Corruption Act*** | *Crime and Corruption Act 2001* (Qld) |
| **IBAC** | Independent Broad-based Anti-corruption Commission |
| **ICAC** | Independent Commission Against Corruption |
| **LGAQ** | Local Government Association of Queensland |
| **Parliamentary Committee** | Parliamentary Crime and Corruption Committee |
| **Private Member's Bill** | Crime and Corruption Amendment Bill 2023 (Qld) |
| **QCAT** | Queensland Civil and Administrative Tribunal |

# Table of Contents

# Preface

This report endeavours to reconcile the different public interest considerations which apply in identifying what reporting and public statement powers would appropriately be conferred on the Crime and Corruption Commission. There is no easy answer to the questions involved, no simple solution to determining how the Commission may report and make public statements which would apply across all circumstances.

It has become clear over the course of the Review that a "one size fits all" approach, giving the Commission an unlimited discretion to report and speak on investigations, whether the kind of conduct investigated is minor or serious, individual or systemic in nature, whether in fact any evidence of corruption has emerged, whatever the status of the individuals concerned—elected or employed—is not the answer. The number of variables involved has made it necessary instead to propose a range of circumstances for reporting and making statements.

It is also important to remember that while the work of anti-corruption commissions is vital, it can be accompanied by a human toll; which requires safeguards to protect individuals who may be caught up in the process.

The conclusions I have reached almost certainly will not please all, but they set up a workable regime which balances the considerations of human rights protection and the desirability of public sector transparency and accountability.

In this undertaking, I have had the assistance of a small, talented group of lawyers, researchers and administrative officers, to whom, throughout the Report, I refer collectively as the Review team. I am grateful to them for their meticulousness, dedication and hard work.

# Executive summary

This review was established as a result of the Government's recognition that, because of the High Court's decision in *Crime and Corruption Commission v Carne*,[1] legislation would be needed to give the Crime and Corruption Commission public reporting and statement powers in relation to corruption investigations; and that before legislating, the many different and sometimes competing public interest and human rights factors involved required careful consideration. The expanded terms of reference also incorporated the Commission's prevention function so far as it concerns corruption.

The terms of reference required recommendations as to:

> (a) how and when such reports or statements should be published;
>
> (b) the content of such reports or statements including the desirability of requiring or limiting the inclusion of certain information in the reports or statements;
>
> (c) whether the legislative amendments should be made to operate retrospectively; and
>
> (d) any matters relevant to (a), (b) or (c).

In this Report, after having regard to the matters prescribed by the terms of reference, I have made recommendations for legislative change. The compatibility of each proposed change with human rights under the *Human Rights Act 2019* has been considered, in each instance with a positive conclusion. The recommendations fall into five groups, prefaced by an initial recommendation which articulates this proposition: that public reports and public statements should only ever be made in the public interest, in considering which a number of specified factors should be taken into account.

The first group of recommendations concerns the circumstances in which, and subject matter on which, the Commission should be able to report for publication. (For a number of reasons explained in the Report, I concluded that a relatively unfettered discretion to report was not appropriate, and reporting should only take place once an investigation was complete.) Those recommendations recognise:

- that reporting in relation to an individual against whom there has been no finding of, or sanction based on, corrupt conduct cannot ordinarily be justified
- that for a number of reasons, elected officials should form an exception to that proposition, but if they have not been found guilty of any corruption related offence, reporting in relation to them should be confined to the purely factual
- that there is a distinction to be drawn between systemic and individual corrupt conduct, the former posing the greater threat; in relation to the latter, reporting

should only take place where there has been a finding of, or sanction based on, corrupt conduct (a finding of guilt, a finding of corrupt conduct by the Queensland Civil and Administrative Tribunal, or dismissal or equivalent disciplinary action, because of the conduct) and where the Commission forms the view that the conduct in question is serious corrupt conduct

- that because of the graver consequences likely to result from systemic corrupt conduct, it should be reportable whether or not an individual involved has been the subject of a finding or sanction, but generally without identifying individuals unless it is reasonably necessary
- that in exercising its prevention function, the Commission should be able to make reports which include corruption investigation details, again avoiding the identification of individuals
- that the Commission should be able to report to dispel allegations of corrupt conduct, because that is in the interests of public confidence in the integrity of the public sector
- that although it seems implicit in s 69 of the *Crime and Corruption Act 2001* that the Commission can report on public hearings, the matter should be put beyond doubt by the conferral of an express power.

The second group of recommendations deals with the Commission's ability to table and otherwise publish reports. Continuation of the previous convoluted arrangement, by which the Commission would ask the Parliamentary Crime and Corruption Committee to direct it under s 69 to provide a report to the Speaker, is undesirable. It is recommended that the Commission be able to provide reports to the Speaker of its own volition, although the existing requirement that a report on a public hearing be tabled should be retained, and so should the Parliamentary Committee's ability to direct the Commission to provide a report to the Speaker for tabling should it see fit. There will need to be an amendment to s 214 of the *Crime and Corruption Act* to avoid unauthorised publication of reports yet to be tabled, for example where drafts have been provided for procedural fairness reasons. Where the Commission has been given reporting powers as recommended here, it is sensible that it should also have the ability to publish reports made in the exercise of those powers, whether it decides to table them or not.

The third group of recommendations accepts that the Commission should have the power to make public statements, but for reasons of prudence prescribes the circumstances in which that should take place. Those recommendations recognise that protection of the rights of privacy and reputation requires a distinction to be drawn between public statements made while an investigation is still on foot (when exceptional circumstances should be required before a statement is permissible) and those made where the investigation is complete. Again in the interests of privacy and reputation, it is recommended that the power to make a public statement be qualified

by a requirement that individuals not be identified unless it is reasonably necessary, or exceptional circumstances make it appropriate.

The fourth set of recommendations recognises the human rights of individuals liable to exposure in published reports or public statements by proposing an additional safeguard. That is by way of an expansion of the existing procedural fairness requirements in s 71A of the *Crime and Corruption Act*, so that they are more extensive and apply at different stages of the Commission's decision-making.

The fifth and final group of recommendations concerns the issue of retrospectivity. The proposal that everything the Commission has prepared or published by way of report and statement in the past should be validated is rejected. In any event, that course of action is largely unnecessary; almost all of the Commission's reports have the protection of parliamentary privilege, because they were tabled, and the Commission and its staff enjoy, as well, a significant degree of statutory protection from liability. There is logic in saying that the standard of fairness and compatibility with human rights recognised in the recommended changes should also apply retrospectively. On that basis, reports and public statements which would have been valid had they been made pursuant to the powers now recommended should be given retrospective effect.

Attached is a summary of the proposed model; the recommendations themselves are Annexure A.

# Summary of model

## What can the Crime and Corruption Commission report?

The *Crime and Corruption Act 2001* should be amended to give the Commission the discretion to prepare and publish the following reports in relation to corruption investigations.

| | |
|---|---|
| Public hearing report | The Commission should be able to report on the evidence elicited in a public hearing. |
| Report that allegation is unfounded | The Commission should be able to report on a completed investigation to confirm that corruption allegations about a person are unfounded. Reports must not identify the person, unless reasonably necessary or they wish to be identified, or include critical commentary or opinions or recommendations based on their conduct. |
| Report about elected official | The Commission should be able to report on corruption allegations about elected officials even if the person is not found guilty. Reports must not include critical commentary or opinions or recommendations based on their conduct. |
| Serious corrupt conduct report | The Commission should be able to report on investigations into serious corruption where the subject of the investigation has<br>• been found guilty<br>• had their services terminated<br>• had a disciplinary declaration made against them under s 95 of the *Public Sector Act 2022* and their services would have been terminated had their employment not ended already<br>• had a finding of corrupt conduct made against them by QCAT under ch 5, pt 2 of the *Crime and Corruption Act 2001*. |
| Systemic corrupt conduct report | The Commission should be able to report on investigations that reveal systemic corruption. A person cannot be named in the report unless reasonably necessary, unless they have been named in a public hearing or unless they could be named in a serious corrupt conduct report. |
| Prevention report | The Commission should be able to report on corruption investigations in the exercise of its prevention function. A person cannot be named in the report unless reasonably necessary, unless they have been named in a public hearing or unless they could be named in a serious corrupt conduct report. |

### Can the Commission make public statements?

The Commission should have a general discretion to make public statements but only for limited purposes, for example, to inform the public that a referral is not warranted (if the matter is already in the public domain and the subject of the investigation agrees).

For particular situations at the earlier stages of investigations where there is a higher risk to reputation and a fair trial, the Commission should only be able to make a public statement if there are exceptional circumstances. No person should be named unless reasonably necessary.

### A public interest test

The Commission's discretion to report or make public statements should only be exercised in the public interest, taking into account:

- the need for transparency and accountability in government and the public sector
- the effect on the human rights of persons who may be identified, including their rights to privacy, reputation, the presumption of innocence and a fair trial
- the need to ensure that any pending legal proceedings are not prejudiced
- the seriousness of the matter under investigation or assessment
- whether the matter in question has been the subject of significant public controversy.

### What other safeguards are recommended?

If a report refers to the actions of people who were not the subject of the investigation, the report must not identify them unless reasonably necessary or include critical commentary or opinions about them or recommendations based on their conduct.

Procedural fairness requirements should be strengthened. They should apply to decisions to prepare, table or otherwise publish reports, and to make public statements on corruption investigations. For reports, a person affected should be given a minimum of 30 days to respond to the initial draft, and then a further 14 days to respond to the final version to be tabled or otherwise published.

### How will reports be published?

The Commission should be able to provide reports directly to the Speaker for tabling instead of the Parliamentary Crime and Corruption Committee. The Parliamentary Committee should still be able to direct the Commission to provide a report to the Speaker to be tabled.

In addition, the Commission should be able to publish reports without tabling.

### Should the amendments be retrospective?

Past reports should be retrospectively authorised if they were prepared and published consistent with the powers to prepare, table and publish reports recommended.

Similarly, past statements should be retrospectively authorised if they would have come within scope of the proposed power to make public statements.

[1] *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737.

# Chapter 1: Introduction

As the terms of reference (which are to be found at the end of this introduction) make clear, the High Court's decision in *Crime and Corruption Commission v Carne*[1] was the impetus for this Review.[2] In that case, the High Court held that the Crime and Corruption Commission had no power to report on an investigation of alleged corrupt conduct other than to the relevant authorities for the purposes of criminal or disciplinary proceedings.[3] Such reports were not of the kind which the *Crime and Corruption Act 2001* permitted to be tabled in Parliament; they could not reach the public in that way. As a result of that ruling, I have been asked to carry out this Review of the Commission's ability to report publicly and make public statements in connection with its corruption functions, and to make recommendations for legislative amendments.

## 1.1 The reaction to the *Carne* decision

The *Carne* decision caused immediate concern; the day it was given, the chair of the Commission, Mr Barbour, issued a media release in which he said that the Commission would immediately seek legislative amendment to enable it to report on issues revealed in investigations of corruption. In the past, Mr Barbour said,

> Reporting has occurred when there has been a strong public interest in doing so and when there are issues uncovered in investigations that the public, public sector agencies and elected officials should be made aware of to raise integrity standards and to reduce corruption risks in Queensland.[4]

Subsequently Mr Nicholls, the shadow Attorney-General, presented, as a Private Member's Bill, the Crime and Corruption Amendment Bill 2023 to amend the *Crime and Corruption Act 2001* by, among other things, enabling the Commission to report on corruption investigations to the Legislative Assembly, and validating Commission reports of that kind previously tabled in the Legislative Assembly.

## 1.2 The impact of the *Carne* decision

The Commission provided to the Parliamentary Crime and Corruption Committee a list of 32 corruption investigation reports and 256 media releases[5] related to corruption investigations over the past 26 years which it said would have fallen foul of the Court of Appeal's decision in the *Carne* case. (The Court had held, as the High Court later did also, that the Commission had no power to make the report in that case and it could not be tabled.) It can be seen from that list that investigation reports have not been produced in great numbers.

Annexure D to this report, "Commission annual reports", provides some further illustration of the extent to which the Commission has lost the ability to report publicly

on its corruption investigations as a result of the *Carne* decision. The table sets out key figures for corruption matters between the years 2000 and 2023. Generally, the pattern over the decade to date is this: thousands of complaints were received annually, of which a fraction, numbering in the tens, required investigation by the Commission. Of the investigations undertaken, two or three reports were tabled in Parliament each year. What the table demonstrates (as do the figures provided by the Commission to the Parliamentary Committee) is that public reporting has been the exception, not the rule, for corruption investigations. The making of public statements relating to corruption investigations over the past ten years, has in contrast, been far more extensive.

The Commission has made the point that it proceeded for many years on the understanding that it did have the capacity to report publicly, and that assumption was not challenged.[6] But the reason for that lack of challenge may not be general satisfaction with the existing state of affairs so much as the difficulty of seeking relief, both in terms of proving a case and assembling the monetary resources needed to mount it. The situation to which the decision in *Carne* has given rise is very similar to that in *Independent Commission Against Corruption v Cunneen*;[7] the New South Wales Act had operated for 27 years without the question arising of whether it could be used to investigate conduct which might adversely affect a public official's exercise of functions. The result was that when the question was raised, and answered by the High Court in the negative, the legality of a number of that Commission's investigations was thrown into question.

## 1.3 The terms of reference

As a result of the *Carne* ruling, I was asked to make recommendations on possible legislative amendments to enable the Commission to publicly report on, and make statements about, investigations of corruption matters, those amendments to be framed with a view to ensuring a proper balance between individual rights and the public interest.[8]

Importantly, I was not asked to consider the Commission's functions beyond reporting, or its reporting in relation to other functions, such as its crime functions.[9] However, at my request, the terms of reference were changed in the course of the Review to make it clear that my examination of the Commission's public reporting powers and power to make public statements extended beyond its corruption function to its prevention function so far as it concerns corruption; that is, not in relation to its crime prevention function.[10]

I considered that prudent for two reasons. Firstly, the decision in *Carne* has raised some concern as to whether the Commission can prepare prevention reports concerning the outcomes of corruption investigations and it has previously published on its website, particularly in its "Prevention in focus" series, reports containing case studies drawn

from investigations.[11] Secondly, the Commission itself relied, in its submission to the Review, on its corruption prevention function as a justification for public reporting.[12]

## 1.4 The High Court's decision in *Carne* in more detail

To further explain the effect of the High Court's decision, it is necessary to refer to three sections of the *Crime and Corruption Act*. The first is s 49, which enables the Commission where it has investigated a complaint involving corruption to report: to a prosecuting authority for the purposes of prosecution proceedings; to the chief executive officer of a relevant "unit of public administration", in order to have disciplinary action taken; or, where the investigation involves a judicial officer, to the relevant head of jurisdiction. "Unit of public administration" is a defined term (s 20); the expression extends to cover, among other entities, the Legislative Assembly, the Executive Council, the courts, local government, the police service and public service departments (but not the Commission itself).

Section 64 of the Act provides that the Commission may report in performing its functions and must include in its reports any recommendations and "an objective summary of all matters of which it is aware that support, oppose or are otherwise relevant to its recommendations". It may include its comments on those matters.

The next provision of importance is s 69 of the Act, which requires that a Commission report be given to the chairperson of the Parliamentary Committee, the Speaker and the Minister, to be tabled in the Legislative Assembly by the Speaker. The reports to which the section does and does not apply are set out. Under s 69(1), it applies to "a report on a public hearing [and] a research report or other report that the parliamentary committee directs be given to the Speaker", but s 69(2) makes it inapplicable to the Commission's annual report or reports under s 49, s 65 or s 66. (Sections 65 and 66 concern reports about court or court registry procedures and reports involving confidential information.) It is an offence to publish a report to which s 69 applies unless the report has been published by order of the Legislative Assembly (which is the effect of tabling it) or with the authorisation of the Clerk of the Legislative Assembly under s 69(6), or its publication is authorised by another provision of the *Crime and Corruption Act*.[13]

The Commission had conducted an investigation into allegations in an anonymous complaint against Mr Carne while he held the office of Public Trustee of Queensland. The outcome of the investigation was that the Commission referred some information to the Attorney-General for consideration of disciplinary action against Mr Carne and also made some recommendations to the acting Public Trustee for improvement of systems in the Public Trust Office. The Commission then sought to present a report to the Parliamentary Crime and Corruption Committee under s 69 of the Act and to obtain the direction of the Committee for its tabling. Mr Carne sought relief in the Supreme

Court of Queensland, arguing, among other things, that the report was not one which fell under s 69. He failed at first instance,[14] but succeeded on appeal.[15] The Commission then obtained special leave to appeal to the High Court.[16]

The High Court held (as the Queensland Court of Appeal had done) that the Commission's report was not a report for the purposes of s 69(1). The reports to which s 69(1) referred were those made under the broad power contained in s 64.[17] Section 64 reports were appropriately brought to the attention of the Legislative Assembly or made public, whereas s 49 reports were very different, involving the investigation of individuals' conduct. The power under s 49 to report to authorities who could take action against the person investigated was distinct from the s 64 power; its existence should "be understood to mean that the Commission is not to exercise an unqualified power to report on the investigation of a complaint to a different audience".[18]

The report which the Commission was seeking to present to the Parliamentary Committee was not in fact a s 49 report, and s 49 was the only provision which gave power to report on an investigation into alleged corrupt conduct on the part of an individual.[19] Section 64 provided no power to make a report on an investigation of a particular complaint of corrupt conduct. (The Court acknowledged that there could be cases in which it was an "evaluative question" whether a report purportedly made under s 64 did or did not amount to a report on the investigation of the complaint.[20])

## 1.5 How the Review was carried out

As the terms of reference recognise, the question of what legislative change should be made to provide the Commission with public reporting and statement powers is a difficult and many-faceted one. To be given due weight on the one hand were concerns of accountability, transparency, community confidence in the public sector and contemporary community standards; and on the other, individual rights to procedural fairness, a fair trial and the preservation of privacy and reputation.[21] Adding to the difficulty of considering and weighing those factors is the need to consider whether any legislation should be given retrospective effect.[22]

Recognising the complexity of the issues involved, the terms of reference directed me to have regard to, not only the *Carne* decision itself, but other relevant case law; the relevant provisions of the *Crime and Corruption Act* and their history; reports of other reviews and inquiries; and legislation and developments in other jurisdictions relating to public reporting on corruption, both in Australia and overseas.[23] All of that was done, and the results of that research emerge in the following chapters of this report. To understand not only what the legislative requirements of other jurisdictions are but how they operate in practice, I or senior members of my Review team had discussions with representatives of anti-corruption bodies around the country.

Among reports of other inquiries, I had regard to the findings of the Parliamentary Crime and Corruption Committee's Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council and related matters;[24] but because matters involved in that Inquiry and resulting report are now the subject of litigation,[25] I have removed from this Report all references to any conclusions which might be drawn from the Parliamentary Committee's findings.

Consultation was important: specifically, I was to ascertain the views of the Commission itself and others with expertise, particularly in corruption investigations and prevention and human rights,[26] and to consult with the Chairperson of the Commission, the Director of Public Prosecutions, the Queensland Police Commissioner, the Queensland Human Rights Commissioner and heads of government departments and agencies.[27] Their views were sought in written form, and I met in person with the Chairperson of the Commission, Mr Barbour, the Queensland Human Rights Commissioner, Mr McDougall, and the Director of Public Prosecutions, Mr Fuller KC. I also asked former Chairs of the Commission to give me their views. One, Mr Needham, did so in person, while two others, Mr Butler AM KC and Mr Martin KC, provided written comments.[28]

The terms of reference did not require the seeking of public submissions, and given the limited subject matter of the Review and its very tight reporting period, I did not do so; but it was made clear on the Review website that anyone who wished to contribute information or comment could do so. I did, however, actively seek submissions from a number of people and entities who might be expected to have informed views on the subject, including some who are, or represent, people affected in various ways by the prospect of amended legislation. They included the Local Government Association of Queensland; the relevant unions, Together Queensland (the public sector union) and the Queensland police unions of employees and of commissioned officers; entities with an interest in corruption; and the media, in the form of the Australia's Right to Know coalition. Not all invitations yielded any response. Permission was sought before any submission was published on the Review website.

The Commission's proposed report in the *Carne* matter was not the only one which attracted litigation. The former Deputy Premier and Treasurer, Ms Jackie Trad, also sought review of the Commission's decision to publish a report of an investigation concerning her.[29] I have not seen either of the Carne or Trad reports, and it was unnecessary that I do so in order to formulate objective criteria for publication of investigation reports and statements. Ms Trad did, however, through her counsel make a submission to the Review.

Invitations to make submissions on the subjects of the terms of reference were extended to a number of university schools of public policy, government and law around the country; without, unfortunately, any result. However, I was able to obtain the

services of three highly distinguished academics who have written on the subject of integrity bodies, Professor AJ Brown, Professor Gabrielle Appleby and Associate Professor Yee-Fui Ng, from, respectively, Griffith University, the University of New South Wales and Monash University, to undertake a review of the literature in the field (see Annexure E).

Where individuals or representatives of relevant organisations were interviewed (rather than, or in addition to, making written submissions), they were asked to confirm the accuracy of any statement to be attributed to them in the Report, and any adjustments were made accordingly. Some comments are made through the course of the Report which might be considered adverse to the Commission or an individual; in each instance, advice was provided of the substance of the comment, an invitation to respond was given and any response was considered, again with adjustments as appropriate.

References in this Report to the *Crime and Corruption Act* are to the Act as it stood at the time of writing. There is presently a Bill before the Legislative Assembly to amend the Act[30] which will include a change to s 49, requiring the Commission to seek the advice of the Director of Public Prosecutions before reporting under that section. That amendment (of which more detail is given in chapter 2) will not have any bearing on the public reporting issue with which this Review is concerned.

## 1.6 *Human Rights Act* compatibility

One of the requirements of the Review was that I consider the compatibility of my recommendations with human rights under the *Human Rights Act 2019*,[31] an aspect addressed in chapter 9 and in the course of making recommendations in chapters 11 to 15; but the Review itself has been conducted mindful of my own obligations under the Act. At the outset of my work, I had an assessment carried out of those obligations. I adopted that assessment and have acted in compliance with it.

# Terms of reference

## Background

The Crime and Corruption Commission (CCC) is established under the *Crime and Corruption Act 2001* (CC Act). The origins of the CCC date back to the Fitzgerald Inquiry Report in 1989 and it has been subject to various reforms, including in 2001 when the then Criminal Justice Commission and Queensland Crime Commission were merged into the Crime and Misconduct Commission.

One of the main purposes of the CC Act, as set out in section 4, is to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector. Section 5 provides that the CC Act's purposes are to be achieved primarily by establishing the CCC, which is to have investigative powers, not ordinarily available to the police service, that will enable it to effectively investigate major crime and criminal organisations and their participants and also that the CCC is to:

a. investigate cases of corrupt conduct, particularly more serious cases of corrupt conduct; and
b. help units of public administration to deal effectively and appropriately with corruption by increasing their capacity to do so.

Since its inception the CCC has, from time to time, prepared and published reports relating to individual corruption matters.

Until recently, the CCC's authority to prepare and publish these reports, and make other relevant public statements, had not been challenged or tested before a court.

However, in *Crime and Corruption Commission v Carne* [2023] HCA 28 (the High Court decision), the High Court found that, while the CCC could report generally in relation to the performance of its corruption functions, it does not have (and never has had) the ability to publicly report on individual corruption matters through section 69(1)(b) or any other provision of the CC Act.

Following the High Court decision, the CCC Chairperson issued a statement acknowledging the decision and stating that the CCC would seek urgent legislative amendments. The CCC is of the view that having the ability 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.

The Government acknowledges the need to legislate new reporting powers for the CCC, while also recognising that the publishing of reports relating to individual corruption matters raises complex legal, ethical and human rights issues.

Accordingly, the Government has initiated this review to ensure that any legislative amendments strike a proper balance between the rights of the individual and the broader public interest.

## Terms of Reference

1. I, YVETTE MAREE D'ATH, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence (Attorney-General), appoint the Honourable Catherine Holmes AC SC (the reviewer) to review and consider issues relating to public reporting by the CCC on corruption matters.

### Scope

2. The reviewer is asked to examine the issue of the ability of the CCC to publicly report and make public statements in performing its corruption functions and prevention function so far as it concerns corruption, particularly in relation to the investigation, assessment, consideration or disposition of individual corruption matters (whether ongoing or concluded).
3. Arising from their examination of these matters, the reviewer is to make recommendations on appropriate legislative amendments to enable the CCC to publicly report and make statements in performing its corruption functions and prevention function so far as it concerns corruption.
4. In making their recommendations, the reviewer is asked to consider:
    a. how and when such reports or statements should be published;
    b. the content of such reports or statements, including the desirability of requiring or limiting the inclusion of certain information in the reports or statements;
    c. whether the legislative amendments should be made to operate retrospectively; and
    d. any other matters relevant to (a),(b) or (c).
5. The review is not asked to examine:
    a. reporting in relation to the procedures and operations of State courts or the procedures and practices of the registry or administration offices of State courts;
    b. public reporting in respect of any of the CCC's other functions (e.g., its crime functions);
    c. any prohibition on the publicising of allegations and complaints of corrupt conduct by third parties;
    d. the issues of parliamentary privilege explored in the High Court decision; or
    e. other issues relating to the operation of the CC Act or its powers and functions relating to corruption investigations, including for example provisions relating to the holding of hearings.

6. In undertaking this review, the reviewer should have regard to:
    a. the High Court decision and other relevant case law;
    b. relevant provisions of the CC Act and legislative history of provisions relating to public reporting;
    c. the need for accountability, transparency, openness, public trust and community confidence in government, public administration and integrity bodies in Queensland;
    d. principles of procedural fairness, the rule of law and the right of a person to a fair trial, the right to privacy and reputation and need to ensure prosecutions, legal proceedings and other actions arising out of a corruption investigation are not improperly or unduly compromised or prejudiced;
    e. the need to ensure Queensland's laws reflect contemporary community standards;
    f. the findings and recommendations of relevant reviews and inquiries relating to the CCC, including the Commission of Inquiry relating to the Crime and Corruption Commission undertaken by the Commissioners, the Honourable Gerald Edward (Tony) Fitzgerald AC QC and the Honourable Alan Wilson QC and PCCC Report No. 106*, Review of the Crime and Corruption Commission's activities* (June 2021);
    g. the views of the CCC and other relevant experts, including those with specialist expertise in corruption investigations and corruption prevention and human rights;
    h. the legislation, operation, practices and procedures in other jurisdictions within Australia and overseas relating to public reporting on corruption;
    i. recent developments, reform, and other research in other Australian and international jurisdictions relevant to public reporting on corruption and related human rights;
    j. the compatibility of the recommendations with the *Human Rights Act 2019*; and
    k. any other matters that the reviewer considers relevant.

## Consultation

The reviewer shall consult with any person or entity in or outside Queensland considered relevant having regard to the issues relating to the review, including but not limited to:

(a) the CCC Chairperson, Director of Public Prosecutions and Queensland Police Commissioner; heads of government departments and agencies; and
(b) the Queensland Human Rights Commissioner.

## Timeframe

The reviewer is to provide a final report to the Attorney General by 20 May 2024, unless otherwise extended, and may provide the final report at an earlier date if possible.

Dated 20 March 2024

YVETTE D'ATH MP

Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence

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1 *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737.
2 Terms of reference, 1.
3 *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 743 [26], 747 [58], 749 [69].
4 Bruce Barbour, 'Statement from CCC Chairperson following High Court of Australia decision' (Media Release, Crime and Corruption Commission Queensland, 13 September 2023).
5 Letter from Crime and Corruption Commission to Parliamentary Crime and Corruption Committee, 26 August 2022; Letter from Crime and Corruption Commission to Parliamentary Crime and Corruption Committee, 20 October 2022.
6 The same point was made by the Hon Tim Nicholls MP: Public briefing, Community Safety and Legal Affairs Committee, Parliament of Queensland, *Inquiry into the Crime and Corruption Amendment Bill 2023* (27 March 2024) 3.
7 *Independent Commission Against Corruption v Cunneen* (2015) 256 CLR 1.
8 Terms of reference, [4], [6](c)–(d).
9 Terms of reference, [5](b).
10 Terms of reference, [3].
11 Crime and Corruption Commission, *Prevention in focus: case studies* (Web Page, 28 June 2019) <https://www.ccc.qld.gov.au/publications/prevention-focus-case-studies>.
12 Crime and Corruption Commission, first submission, dated 12 March 2024, 10.
13 *Crime and Corruption Act 2001*, s 214.
14 *Carne v Crime and Corruption Commission* [2021] QSC 228.
15 *Carne v Crime and Corruption Commission* (2022) 11 QR 334.
16 *Crime and Corruption Commission v Carne* [2022] HCATrans 225 (15 December 2022).
17 *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 747 [59].
18 *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 748 [65].
19 *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 749 [69].
20 *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 749 [69].
21 Terms of reference, [6](c)–(e).
22 Terms of reference, [4](c).
23 Terms of reference, [6](a), (b), (f), (h), (i).
24 Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters* (Report No 108, December 2021).
25 *Breene v State of Queensland* (Supreme Court, Proceeding Number 4567/24, commenced 12 April 2024).
26 Terms of reference, [6](g).
27 Terms of reference, 3.
28 Butler submission, dated 11 March 2024; Martin submission, dated 20 March 2024.
29 Rachel Riga, 'Former deputy premier Jackie Trad revealed as politician seeking to suppress CCC report on under treasurer recruitment', *ABC News* (online, 17 March 2022)

<https://www.abc.net.au/news/2022-03-17/qld-court-former-deputy-premier-jackie-trad-suppression-order/100919388>.

30 Crime and Corruption and Other Legislation Amendment Bill 2024 (Qld).

31 Terms of reference, [6](j).

# Chapter 2: Legislative history of reporting functions and powers

The functions and powers of the Crime and Corruption Commission in reporting about corruption can be traced to the functions and powers of the former Criminal Justice Commission.[1] Those powers in turn were the product of recommendations of the Fitzgerald Inquiry. Tracing that legislative history reveals that the Commission and its precursors have never had a specific power to report on individual investigations of corruption complaints to the general public. Instead, in relation to investigations into individual matters, they have had a power to report to appropriate authorities for consideration as to whether they should prosecute or take disciplinary action. The Commission has since its inception had a separate power to give reports to the Parliamentary Crime and Corruption Committee and others for tabling in Parliament.

It has always been recognised that not all Commission reports are appropriate for tabling and disclosure to the general public. At various times, the Parliamentary Committee has expressed views that different forms of report should be tabled: research reports into systemic issues, de-identified case studies of corruption investigations, and reports on investigations into allegations of widespread corruption conducted by way of public hearing. A key amendment in 1997 to the previous *Criminal Justice Act 1989* clarified that reports about investigations into individual matters were not among those required to be given to the Parliamentary Committee and tabled in Parliament. That clarification carried over to the current provisions of the *Crime and Corruption Act 2001*.

The scope of what the Commission can report on has also changed over time, beginning with "official misconduct", which was narrowed to "corrupt conduct" in 2014 and in turn expanded in a new definition of "corrupt conduct" in 2018.

## 2.1 Recommendations of the Fitzgerald Inquiry

In mid-1989, the Fitzgerald Inquiry recommended that the Criminal Justice Commission be established as a permanent body to continue the Inquiry's work.[2] It was envisaged that the Commission would report on a regular basis; when instructed to do so; and when it decided it was necessary to do so.[3] The Commission would report to a standing parliamentary committee, but:

> many of the matters to be the subject of report by the [Criminal Justice Commission] ... may need to be confidential. In consequence, the reporting of the [Criminal Justice Commission] should not be to the Parliament in the first instance, and, in some cases, not at all.[4]

Instead, the Parliamentary Committee "should decide what material matters reported to it can be reported to and tabled in Parliament and when that is to be done. Some matters may never be tabled".[5]

When it came to the function of the proposed Official Misconduct Division of the Commission, the envisaged reporting powers were more confined. "Reports made by the Division as a result of complaints referred to it or as a result of matters initiated by it" would be directed only to the Director of Public Prosecutions, the Misconduct Tribunal or the chief executive of the relevant unit of public administration to consider what action to take.[6]

The Commission would also have a role in reporting on general trends in the exercise of its research and intelligence functions.[7]

## 2.2 Reporting functions and powers under the *Criminal Justice Act 1989*

In accordance with those recommendations, in late 1989, the Queensland Parliament enacted the *Criminal Justice Act 1989*. In the second reading speech, the Premier noted that among the vital functions the new Commission would perform would be "to investigate official misconduct, corruption and organised criminal activity and ensure referral of matters to necessary authorities for determination".[8] That is, rather than suggesting any general reporting power, the Premier emphasised the function of referring investigations of particular matters to the relevant authority for consideration.

That is reflected in the *Criminal Justice Act* as enacted and as it evolved over time. The original section numbers of the *Criminal Justice Act* were renumbered in 1993.[9]

Section 2.14(2) (renumbered as s 21) gave the Criminal Justice Commission the function—subject to s 2.18 (later s 26)—of reporting to the Parliamentary Criminal Justice Committee on a regular basis in relation to the Commission's activities; and, in relation to any matter concerning the administration of criminal justice, when instructed to do so by the Parliamentary Committee or when the Commission thought it appropriate to do so.[10] Under s 2.15 (s 23), the Commission was given the broad responsibility to report in relation to law enforcement resources, proposals for reform, the effectiveness of the administration of criminal justice and the implementation of the recommendations of the Fitzgerald Inquiry.[11] Those responsibilities to report in s 2.15 did not identify to whom the report was to be provided.[12]

Section 2.18 (s 26) dealt with the Commission's reports more generally, in terms that are similar to the current s 69 of the *Crime and Corruption Act 2001*.[13] Section 2.18 provided that a report of the Commission, signed by its Chairman, was to be given to the Chairman of the Parliamentary Committee, the Speaker of the Legislative Assembly and to the Minister.[14] The Speaker was then required to table the report in the Assembly.[15] If

the Assembly was not sitting, the report was to be provided to the Clerk of the Parliament instead, and the report would be deemed to have been tabled.[16] In addition, the Commission had a discretion to provide a copy of the report to the principal officer in the unit of public administration concerned with the subject matter of the report.[17]

The reporting obligation in s 2.18 (s 26) did not apply to the Commission's annual report.[18] It also did not apply in the case of reports about court or registry procedures. Instead, under s 2.19(1) (s 27(1)), the report was to be provided to the head of jurisdiction or relevant judicial officer. More broadly, s 2.19(2) (s 27(2)) allowed the Commission to maintain the confidentiality of information in its possession, either by not making a report on the matter, or by not disclosing the information in its report. A later amendment in 1997 allowed reports on court and tribunal procedures to be disclosed to the Parliamentary Committee, the Speaker and the Minister, but with additional safeguards for confidential information.[19]

In relation to the Official Misconduct Division, s 2.20(2) (renumbered as s 29(3)) conferred on the Division a number of functions relating to misconduct, including:

- investigating the incidence of official misconduct generally in the State
- investigating alleged or suspected misconduct by police officers and official misconduct by other public officials
- offering advice and assistance, by way of education or liaison, to units of public administration and others about the detection and prevention of misconduct
- reporting "as prescribed in relation to its investigations".[20]

Section 2.24 (s 33) then provided more specifically for the reports of the Division, in similar terms to the current s 49 of the *Crime and Corruption Act*.[21] The Director of the Official Misconduct Division was required to report on every complaint received and investigation initiated by the Division.[22] The report was to be provided to the Chairman "with a view to action by the Commission as he considers desirable".[23] With the Chairman's authority (later with the Commission's authority),[24] the report was also to be given to the appropriate authority to consider what action to take. Those authorities were the relevant prosecuting authority, the Misconduct Tribunal, the relevant head of jurisdiction for a court, or the relevant principal officer of the unit of public administration.[25] Any report referred to the Director of Prosecutions or the Misconduct Tribunal was to include any exculpatory evidence.[26]

Where the investigation was the result of a complaint (rather than an own-motion investigation), the Director of the Official Misconduct Division was also required to respond to the complainant to inform them of the outcome.[27] An amendment in 1993 clarified that a response to a complainant was not required in certain circumstances (such as where they did not give their name) and the Director was not to disclose information they considered should remain confidential.[28] A further amendment in 1997

altered the requirement slightly, so that the Director was not to disclose information to the complainant if the disclosure would not be in the public interest.[29] As will be seen, that formulation of the requirement to inform complainants of the outcome came to be reflected in the current s 46 of the *Crime and Corruption Act*.

The scope of what the Commission reports on has changed over time. Originally, the Commission investigated and reported on "official misconduct". That was defined in s 2.23 (later s 32) of the *Criminal Justice Act*[30] as comprising three separate categories of official misconduct, broadly:

- conduct that adversely affected, or could adversely affect, the honest and impartial discharge of functions of a unit of public administration (or a person holding an appointment in a unit of public administration)
- conduct by a person holding an appointment in a unit of public administration that was not honest or impartial, or that involved a breach of trust or
- misuse of information in connection with the discharge of functions by the holder of an appointment in a unit of public administration.

In addition, the conduct had to constitute either grounds for dismissal (in the case of a person holding an appointment in a unit of public administration) or a criminal offence (in the case of anyone, regardless of whether they held an appointment). A subsection clarified that it was irrelevant that proceedings could no longer continue; for example, action for termination of services because the person had already resigned.

The definition of "unit of public administration" in s 1.4(1) (later s 3A) included the Legislative Assembly, and s 1.4(2) (later s 4) provided that an appointment was held whether it was "by way of selection or election"; so it was clear that the term "person holding an appointment in a unit of public administration" extended to a Member of Parliament. That has remained the case in subsequent legislation.[31]

Elsewhere in the *Criminal Justice Act*, particular divisions of the Criminal Justice Commission were given general reporting functions in relation to research and intelligence.[32]

Section 3.21(2)(c) set out what the Commission was to include in its reports. The Commission was required to include its recommendations, as well as an objective summary and comment on all considerations for and against its recommendations. In 1993 that requirement was moved to a new standalone s 93 without any substantive change.[33] Section 3.21 (s 93) was not a source of power to issue reports; it regulated the exercise of the reporting powers found elsewhere in the Act.

In carrying out the Commission's reporting functions, the officers of the Commission were also subject to confidentiality requirements. Under s 6.7 (later s 132), it was an offence for the Commissioner and Commission officers to disclose information that

had come into their possession in their official capacity, except for the purposes of the Commission or the Act. In 1993, the confidentiality requirements were expanded to capture people engaged by the Commission,[34] and in 1997, the exceptions were expanded to include, for example, the situation where the information was already publicly available.[35] Another 1997 amendment imposed, in s 84D of the Act, a similar confidentiality obligation on the public interest monitor.[36]

## 2.3 The 1997 amendment to s 26 of the *Criminal Justice Act 1989*

In 1997, the *Criminal Justice Act* was amended to clarify the interaction between the general reporting requirement in s 2.18 (by then renumbered as s 26) and the specific reporting requirement for misconduct investigations in s 2.24 (by then s 33). As will be seen, that clarification was later adopted in the *Crime and Misconduct Act 2001* and has continuing significance for the reporting powers of the Crime and Corruption Commission.

The general reporting obligation in s 26 of the *Criminal Justice Act* was amended to add the following definition:

> **"report of the commission"** means —
>
> (a) a report on a hearing conducted by the commission under section 25, other than a report under section 33; or
>
> (b) a research or other report prepared by the commission that the parliamentary committee directs the commission to give to the Speaker of the Legislative Assembly.[37]

According to the explanatory notes, the reason for the change was "to clarify the commission's obligation to furnish reports and to achieve the parliamentary committee's recommendations in reports 13 and 38 that there should be a definition of 'a report of the commission' for the purposes of section 26".[38]

The larger background to the amendment is as follows. In 1991, the Parliamentary Criminal Justice Committee issued its Report No 13. The Parliamentary Committee recommended that "report" in s 2.18 be defined, noting that "[i]t is clearly not appropriate for all reports prepared by the [Criminal Justice Commission] to be dealt with in the way envisaged by s 2.18". While "[r]eports of the [Official Misconduct Division] into completed general investigations … should be reports for the purposes of s 2.18 … some major investigations may not appropriately be released".[39] As examples of completed general investigations appropriate for release, the Parliamentary Committee gave the "major investigations in the nature of the Corrective Services Commission and Local Government Reports". Both reports had been tabled in the Legislative Assembly earlier in 1991.[40]

Those reports provide useful examples of the kind of report that the Parliamentary Committee considered should be provided under s 2.18 and tabled in Parliament. The first was a report on allegations of significant corruption and drug trafficking within prisons, first raised by a member of Parliament in 1990 under cover of parliamentary privilege.[41] The Criminal Justice Commission decided to investigate the allegations in public hearings because the media reporting had given rise to a perception of large-scale corruption in Queensland prisons, and that perception required a public response.[42] In its report, in the interests of transparency, the Commission named many of the people who were the subject of allegations. In order "to minimise the possibility of damage to personal reputations", the Chairman sought to emphasise that most of the allegations were hearsay and found to be unsubstantiated and unfounded.[43] However, in particular cases, the Chairman did make suppression orders. For one witness, he ordered that "there be no publication of the witness' name, address, present or past employment, or any matter or thing which might identify or tend to identify any of those matters".[44] Ultimately, although some people were named in the report, all were exonerated. It would appear that the report was considered appropriate for public release because it was the result of hearings that had been conducted in public in any event, and the decision to conduct the hearings in public had been made by the Commission after taking into account the public interest.[45]

The second report was a report on six case studies of complaints against local government authorities in Queensland. The Commission had received nearly 200 complaints of misconduct at the local government level. In carrying out investigations into these complaints, the Commission had identified common themes, and decided to select six case studies to form the basis of a report.[46] These investigations were carried out by investigation teams at the Commission, in most cases, supplemented by closed hearings. As the report was "intended primarily to be educative rather than punitive, the names of the individual local authorities and persons involved, or other identifying information, ha[d] not been included".[47] In this case, it would appear that the report was considered appropriate for public release because it had been de-identified and served an educative function in relation to recurring issues.

In 1994, the absence of a definition of "report" had produced litigation, in *Criminal Justice Commission v News Ltd*.[48] In that case, the Commission had sought an injunction to prevent *The Australian* from publishing information the Commission alleged had come from a "leaked" report to the Parliamentary Committee. The newspaper argued that the injunction should not be granted because, among other things, the information would be made public in due course in any event. That was because the Act envisaged that any report the Commission provided to the Parliamentary Committee would need to be tabled under s 2.18 (s 26).[49] Dowsett J acknowledged that the argument had some force, especially given that "report" in s 2.18 was not defined. However, given that the Act contemplated that the

Parliamentary Committee would receive highly sensitive information, his Honour did not accept that the Commission was only able to communicate confidential information to the Committee by way of a report subject to s 2.18.[50]

On appeal, Fitzgerald P also observed that the Act did not define "report", so that the word must carry its ordinary meaning. While Fitzgerald P considered that "the Act appears to recognise that the Commission may inform the Committee otherwise than by report",[51] Pincus JA had doubts that the report to the Committee could be anything but a report falling within s 2.18 (s 26).[52]

In 1997, in its Report No 38, the Parliamentary Committee cited this litigation as showing why amendments were needed to clarify which reports were to be tabled in accordance with s 2.18 (s 26). It reiterated its earlier recommendation to define "report" for the purposes of s 2.18 (by then s 26) of the *Criminal Justice Act*.[53] A further impetus was a disagreement that had arisen between the Commission and the Parliamentary Committee over whether research reports fell within s 2.18 (s 26). The Commission had taken the view that they were not "reports" but instead publications in the nature of general information papers designed to inform the community. The Parliamentary Committee thought they ought to be tabled to ensure they received as wide a circulation as possible.[54]

Ultimately, those concerns led to the definition of "report of the commission". Reports that resulted from a public or closed hearing were to be provided to the Parliamentary Committee under s 2.18 (s 26), but not reports about individual complaints under s 2.24 (s 33). Those were to be given to the appropriate authority to consider what action to take. The new definition also put beyond doubt that research reports were reports that potentially needed to be given to the Parliamentary Committee and tabled in Parliament.

## 2.4 Reporting functions and powers under the *Crime Commission Act 1997*

In 1997, another forerunner to the Crime and Corruption Commission was established under the *Crime Commission Act 1997*. The Queensland Crime Commission was established as a law enforcement body to investigate organised crime and paedophilia, using greater powers than would normally be available to law enforcement, such as coercive questioning.[55] Creating a separate body to investigate organised crime was seen as freeing the Criminal Justice Commission "to concentrate more fully on its very important charter of corruption detection and prevention".[56]

The Crime Commission's reporting obligations were also different from those of the Criminal Justice Commission. Under s 37, the Crime Commission was required to provide the Minister with an annual report, which the Minister was then required to table

in Parliament (whereas by then,[57] the Criminal Justice Commission's annual report was not required to be tabled).[58] The annual report was not to identify any suspects or anyone as having committed an offence, unless they had already been convicted.[59] The Crime Commission was also required to take reasonable care not to identify anyone in the annual report if that would prejudice their safety, reputation or prospects of receiving a fair trial.[60]

Under s 49, the Crime Commission was required to keep the Management Committee informed of the general conduct of its operations, and to provide any information requested by the Management Committee. That information was to be kept confidential. Under ss 60 and 61, the Parliamentary Commissioner was to conduct an annual review of the Crime Commission's intelligence data. Otherwise, the Crime Commission was not required to report on the outcome of its investigations.

Section 126 required Crime Commission officers to maintain secrecy in information that had come to their knowledge in their capacity as a Crime Commission officer, unless an exception applied, such as disclosure for the purposes of the Commission or the Act. The s 126 secrecy requirement would later form the basis of a similar requirement in the *Crime and Corruption Act*, discussed below.

## 2.5 Reporting functions and powers under the *Crime and Misconduct Act 2001* as enacted

In 2001, the Criminal Justice Commission and the Crime Commission were amalgamated into the Crime and Misconduct Commission. The *Criminal Justice Act* and the *Crime Commission Act* were repealed and replaced by the *Crime and Misconduct Act 2001*. The functions and powers of the new Commission were an amalgam of the functions and powers of the previous bodies. However, its reporting obligations in relation to corruption investigations were drawn almost exclusively from the previous *Criminal Justice Act*.

The definition of "official misconduct" was recast in ss 14 and 15 of the new Act.[61] Those sections retained the same three broad categories of official misconduct as previously, though s 4 clarified that the first category (adverse effects) could apply to anyone, whereas the other categories (dishonesty, partiality, breach of trust or misuse of information) could only apply to a person who held an appointment in a unit of public administration. Again, the conduct needed to be conduct that could, if proved, either be grounds for dismissal, "if the person is or were the holder of an appointment", or a criminal offence. As to the use of the subjunctive "were", according to the explanatory notes, "[t]he definition [wa]s intended to make it clear that the conduct can still be official misconduct notwithstanding that the person has resigned from their position in a unit of public administration".[62] That is, the conduct would be official misconduct if it

fell into one of the three categories of corruption and the person would be liable to dismissal "if the person … were [still] the holder of an appointment".

While the use of the subjunctive captured public servants who had resigned, it also had the potential to capture people who were never public servants, but whose conduct would be grounds for dismissal were it the case that they were public servants. However, in 2003, the subjunctive "were" was replaced with "was",[63] apparently to "correct[] a grammatical error".[64]

Chapter 2, pt 3 of the new Act set out the Commission's misconduct functions. Under s 33, those functions were to raise standards of integrity and conduct in units of public administration and to ensure that complaints about misconduct were dealt with in the appropriate way. The function of raising standards was to "emphasise [] the commission's prevention role".[65]

Within that part, s 49 provided for reports following investigation into individual corruption complaints. The explanatory notes state that it was based on s 33 of the *Criminal Justice Act*.[66] Like s 33, the new s 49 provided for the report to be given to one or more of the Director of Public Prosecutions or another prosecuting authority, listed judicial officials, or the chief executive officer of the relevant unit of public administration for the purpose of taking disciplinary action. The reports were to contain all relevant information, including exculpatory evidence. The Director of Public Prosecutions also had the power to require the Commission to make further investigation or supply further information relevant to a prosecution.

In the second reading speech for the Crime and Misconduct Bill, the Premier also noted that the Bill addressed many of the issues raised by the Parliamentary Committee in its Report No 55.[67] Notably, in relation to s 33 of the former *Criminal Justice Act*, the Parliamentary Committee had recommended that an amendment be made to require reports of individual corruption investigations to be provided to the Committee in addition to the relevant prosecuting or disciplinary authority. According to the Parliamentary Committee:

> the confidential nature of the matter or issues may be such that the Committee is the only agency to which the [Criminal Justice Commission] could appropriately report. Further, such a suggestion simply gives effect, to some extent, to current practice in that the [Criminal Justice Commission] has in the past provided the Committee with a comprehensive confidential report in respect of a matter which either was the subject of a more limited "sanitised" public report or in respect of which there was no public report.[68]

While that suggested amendment was not taken up in the drafting of s 49 of the *Crime and Misconduct Act*, it does indicate that reports on individual corruption investigations

were considered as potentially being confidential and inappropriate for publishing to the world at large.

After setting out the Commission's other functions, at the end of ch 2, pt 6 dealt with reporting in general. Within that part, a new provision, s 64, provided that the Commission "may report in performing its functions". Like s 93 of the *Criminal Justice Act*, s 64 required the Commission to include in each of its reports its recommendations as well as an objective summary of all matters and comments for and against its recommendations.[69]

Section 69 then provided for certain reports to be tabled in Parliament. According to the explanatory notes, s 69 was based on s 26 of the former *Criminal Justice Act*.[70] Like s 26, the new s 69 required the Commission to provide certain reports to the Parliamentary Committee, the Speaker and the Minister. The obligation only applied to a report on a public hearing, a research report or another report that the Parliamentary Committee directed be given to the Speaker. Like the former s 26, the obligation did not apply to annual reports or reports on investigations into individual misconduct complaints under s 49. Otherwise, s 69 adopted the provisions in the former s 26 relating to the tabling of reports, including when the Legislative Assembly was not sitting.

The categories of reports that needed to be tabled under the new s 69 reflected the stalemate that had been reached in relation to the former s 26 in the Parliamentary Committee's Report No 55. In that inquiry, the Commission had originally submitted that s 26 should be expanded to allow the Commission to table other reports it considered should be made public.[71] According to the Commission, it was "inappropriate" that reports—other than reports on hearings—could only be tabled if the Parliamentary Committee first gave a direction. The Parliamentary Committee agreed, in principle, that s 26 should be amended, noting that it did not seek "a right to veto or otherwise prevent the [Commission] from tabling a report in the Parliament". However, the Commission then wavered and abandoned its proposal due to a fear that amending s 26 could produce "quite unexpected results in terms of the ability to produce reports". As a result, the Parliamentary Committee recommended no change to the categories of reports that needed to be tabled under s 26,[72] and that status quo flowed over to the new s 69.

There were also related provisions to protect the confidentiality of information in reports. Under s 66, the Commission was empowered to maintain confidentiality of information in its possession, either by not disclosing the information in the report, or by not reporting on the matter altogether. Instead, the information could be disclosed to the Parliamentary Committee in a separate report. Section 67 also required the Commission to keep a register of confidential information it withheld. These provisions were based on s 27 of the *Criminal Justice Act*.[73]

Section 214 made it an offence to publish a Commission report to which s 69 applied, unless the Legislative Assembly had already authorised its printing (as occurs when a report is tabled), or publication was otherwise authorised under the Act. Section 214 was based on a similar prohibition in s 26(6) of the *Criminal Justice Act*.[74] More broadly, s 213 made it an offence for particular people connected with the Commission to disclose information that had come to their knowledge in that capacity, subject to certain exceptions, such as where the disclosure was made for the purposes of the Commission or the Act, or where the information was already publicly available. Section 213 combined the secrecy and confidentiality requirements in ss 84D and 132 of the *Criminal Justice Act* and in s 126 of the *Crime Commission Act*.[75]

The Crime and Misconduct Commission was also given a new prevention function in s 23 of the Act (in ch 2, pt 1). Section 24 provided for how the Commission performed its prevention function, including, in s 24(i), by "reporting on ways to prevent major crime and misconduct". Sections 23 and 24 were novel, not based on any antecedent provisions in the *Criminal Justice Act* or the *Crime Commission Act*.[76] They were part of what the Premier described in his second reading speech as a move to take the Commission's misconduct functions "to a new level". According to the Premier, "[i]n addition to continuing to investigate relevant misconduct and official misconduct," the Commission would "take up a proactive role in raising standards of integrity and conduct in units of public administration".[77]

These provisions have been amended a number of times since 2001.[78] For the purposes of this Review, the key amendments were:

- an amendment in 2012 to s 49 to require a report to be given to the Attorney-General if the Commission recommended a prosecution be considered for giving false evidence to Parliament
- amendments in 2014 to narrow the Commission's jurisdiction by shifting from "official misconduct" to "corruption"
- amendments in 2014 and 2016 to ss 23 and 24 to remove and then reinstate the Commission's function of reporting on ways to prevent corruption
- amendments in 2018 to expand the Commission's jurisdiction by expanding the definition of "corrupt conduct"
- an amendment in 2018 to s 49 to remove the power to provide reports to the Director of Public Prosecutions and
- an amendment in 2018 to insert s 71A to require procedural fairness before the preparation of a report to be tabled or published that contained adverse comment.

## 2.6 The 2012 amendment to s 49 of the *Crime and Misconduct Act 2001* to introduce reports to the Attorney-General

In 2012, the offence of lying to Parliament was reintroduced in s 57 of the *Criminal Code*. As a related amendment, s 49 of the *Crime and Misconduct Act* was amended to require the Commission, where it decided that prosecution proceedings should be considered for an offence of giving false evidence before Parliament, to report on the investigation to the Attorney-General.[79] That requirement to report to the Attorney-General continues to appear in s 49(3) of the Act.

## 2.7 The 2014 amendments to narrow the Commission's jurisdiction

The definition of official misconduct was overhauled in 2014,[80] shifting from "official misconduct" to "corruption". The aim was to raise the threshold for matters within the Commission's jurisdiction.[81] This shift implemented the recommendations of the Callinan and Aroney Review (conducted by the Hon Ian Callinan AC KC and Professor Nicholas Aroney), and their view that the Commission should focus on investigating serious cases of corrupt conduct and that there should be a reduction in the number of trivial complaints handled by the Commission to ensure that its resources were used more effectively.[82]

That led to a change in terminology in 2014, with the Act being renamed the *Crime and Corruption Act* and the Commission being re-titled the Crime and Corruption Commission.[83] It also led to a narrowing of the corruption function in s 33, by removing the function of raising standards of integrity and conduct in units of public administration, leaving only the function of ensuring that complaints about corruption were dealt with in the appropriate way.[84]

Previous references to "official misconduct" in the Act were also replaced with references to "corruption". That was defined in the dictionary to the Act as meaning "corrupt conduct" or "police misconduct".[85] In turn, "corrupt conduct" was defined in a new s 15.

Under the new, narrower definition, conduct was "corrupt conduct" if it met four cumulative elements. Previously, the definition applied different elements depending on whether the person held an appointment in a unit of public administration. Under the new definition, the cumulative elements applied to any person "regardless of whether the person holds or held an appointment" in a unit of public administration.

Broadly, the four cumulative elements were:

- the conduct adversely affected, or could adversely affect, the performance of functions of a unit of public administration (or a person holding an appointment in a unit of public administration) and
- the conduct resulted in, or could result in, the performance of the functions in a way that was not honest or impartial, involving a breach of trust or involving a misuse of information and
- the conduct was engaged in to provide a benefit or cause a detriment to a person and
- if proved, the conduct "would"—not merely "could"[86]—be grounds for dismissal, "if the person is or were a holder of an appointment", or a criminal offence.

(The transition back to the subjunctive "were" is not explained in the extrinsic material.[87])

The new definition also included a list of types of offences or behaviours which could be corrupt conduct if the preconditions in the definition were met, such as abuse of public office or bribery.

The other component of "corruption"—"police misconduct"—was defined in the dictionary to the Act as meaning conduct, other than corrupt conduct, of a police officer that was disgraceful, improper or unbecoming; that showed unfitness; or that did not meet the standard of conduct the community reasonably expected of a police officer.[88]

## 2.8 The 2014 and 2016 amendments to ss 23 and 24 to remove and then reinstate the corruption prevention function

As noted above, the 2014 amendments narrowed the corruption function by removing the function of raising standards of integrity. The Callinan and Aroney Review also recommended removing the Commission's misconduct prevention function to allow it to focus on investigating more serious cases of corrupt conduct.[89] That recommendation was implemented by removing references to "misconduct" in the Commission's prevention function in ss 23 and 24 of the Act, leaving the Commission with its prevention function in relation to major crime only.[90] That meant the Commission no longer had a function of reporting on ways to prevent misconduct.

In 2016, the Commission's corruption function of raising standards of integrity and conduct in units of public administration was reinstated,[91] as was the Commission's corruption prevention function.[92] It was said that the removal of the corruption prevention function in 2014 had "removed the [Commission's] ability to proactively support public sector agencies in the prevention of corruption and created a critical gap in Queensland's integrity system". Reinstating the corruption prevention function would

"enable the [Commission] to build the capacity of units of public administration to prevent corruption".[93] Reflecting the change in terminology, the Commission's prevention function now relates to "corruption" rather than "misconduct".

## 2.9 Amendments to confidentiality provisions proposed but not implemented

In their 2013 Review, Callinan and Aroney also considered the Commission's practice of, in some circumstances, acknowledging that a complaint had been made, as well as the Commission's relationship with the media more generally.[94] In their view, there was, ordinarily, no public interest in disclosing that a person was being investigated by the Commission for misconduct.[95] The Commission had noted that sometimes the information was already in the public domain, so that it was effectively forced to correct errors or confirm whether or not the person was in fact under investigation.[96] The solution, according to Callinan and Aroney, was to prevent the information from entering the public domain in the first place. This could be done by extending the confidentiality obligations to complainants and others, similar to the secrecy obligations in the equivalent South Australian legislation at the time.[97] Accordingly, they recommended that it be made an offence for any person (including an officer of the Commission) to disclose that a complaint had been made to the Commission, the nature or subject of a complaint, or the fact of any investigation by the Commission.[98]

However, the Callinan and Aroney Review also accepted that the need for secrecy might cease to apply in certain circumstances, for example:

- once the Commission made a report recommending that the person be charged or that disciplinary proceedings be commenced; or
- where the investigation was carried out by public hearing, noting that the Commission would already have been required, in that instance, to consider whether holding a public hearing would be unfair to the person or contrary to the public interest.[99]

Although the government at the time accepted the recommendation in principle,[100] the suggested amendment was not implemented. Incidentally, the South Australian secrecy provision—which had been the model for the recommendation—was repealed in 2021.[101] The relevant parliamentary committee in South Australia recommended relaxing the confidentiality requirements after the Deputy Premier and Attorney-General was referred for possible prosecution in relation to a statement she had made to address rumours known to be circulating publicly at the time.[102]

## 2.10 The 2018 amendments to expand the Commission's jurisdiction

The Commission's corruption functions in s 33 of the Act were further expanded in 2018. In addition to raising standards of integrity and ensuring that complaints of corruption were dealt with appropriately, the Commission was given the function of:

- investigating and otherwise dealing with conduct liable to allow, encourage or cause corrupt conduct as well as conduct connected with corrupt conduct and
- investigating whether corrupt conduct or related conduct may have happened, may be happening or may happen in the future.[103]

The definition of "corrupt conduct" was also expanded in 2018,[104] resulting in the current version of the definition in s 15. According to the explanatory note, the amendment was designed to simplify the definition in s 15(1) and also to widen the definition to a new category of "corrupt conduct", which would capture certain conduct outside the public sector.[105]

Section 15(1) was a reworking of the previous definitions of corrupt conduct or official misconduct, returning to alternative categories of conduct, rather than cumulative elements. Again, the alternative categories applied to any person regardless of whether they currently or formerly held an appointment in a unit of public administration. Broadly, under s 15(1), corrupt conduct now comprises:

- conduct that adversely affects, or could adversely affect, the performance of functions of a unit of public administration (or a person holding an appointment in a unit of public administration) or
- conduct that results in, or could result in, the performance of functions by a unit of public administration (or person holding an appointment in one) in a way that is not honest or impartial, that involves a breach of trust, or that involves misuse of information in connection with the discharge of functions by the holder of an appointment in a unit of public administration.

Again, the conduct must also be conduct that, if proved, would be grounds for dismissal, "if the person is or were a holder of an appointment", or a criminal offence. The element of motive has, however, been removed; it is not necessary that the conduct was engaged in to provide a benefit or cause a detriment.

New s 15(2) added a further category of corrupt conduct, namely conduct that impairs or could impair public confidence in public administration, even where it does not involve a lack of propriety by a person who holds or held an appointment in a unit of public administration. This extended definition is limited to conduct involving:

- collusive tendering

- fraud relating to an application for a licence, permit or other authority under an Act
- dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets
- evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue or
- fraudulently obtaining or retaining an appointment.

Again, the conduct also needs to be conduct that, if proved, would be grounds for dismissal, "if the person is or were a holder of an appointment", or a criminal offence.

Section 15(2) was modelled on[106] the New South Wales definition of "corrupt conduct"[107] as expanded in response to the High Court's ruling in *Independent Commission Against Corruption v Cunneen*.[108] In that case, the High Court found that conduct is "corrupt" in the sense that it "adversely affects", or "could adversely affect", the exercise of official functions by a public official if it adversely affects (or could adversely affect) the *probity* of the exercise of an official function by the official, but not the *efficacy* of the exercise of the function.[109]

As can be seen, the scope of what the Commission has been able to report on in the discharge of its corruption functions under s 49 of the Act has changed over time, waning in 2014 and waxing in 2018.

## 2.11 The 2018 amendment to s 49 to remove reports to the Director of Public Prosecutions

Another amendment in 2018 removed the power of the Commission to refer corruption investigation briefs to the Director of Public Prosecutions for the purposes of considering prosecution proceedings. The reference to the Director of Public Prosecutions in s 49(2) was removed, as was the power of the Director in s 49(4) to require further investigation. The current definition of "prosecuting authority" (which excludes the Director of Public Prosecutions) was also added to s 49(5).[110]

The impetus for these changes is canvassed in detail in the 2022 Fitzgerald-Wilson Report[111] (conducted by the Hon Tony Fitzgerald AC KC and the Hon Alan Wilson KC). For some years, going back to 2003, successive Directors of Public Prosecutions had expressed concerns about the Commission's practice of referring all corruption matters to the Director of Public Prosecutions for advice before charging. Seeking advice before charging was said to be resource intensive and led to duplication.

In 2016, the Director at the time, Mr Byrne KC, repeated those concerns to the Parliamentary Committee. In addition, he raised concerns about the possible implications of a line of High Court decisions culminating in *Lee v The Queen*.[112] That case concerned compulsory examination material obtained under the *New South*

*Wales Crime Commission Act 1985* (NSW). The High Court found that disclosure of that material to the prosecutors for use in a subsequent criminal trial had led to a miscarriage of justice.[113] This raised concerns about possible implications in Queensland. Because s 49 of the *Crime and Corruption Act* required all relevant material to be provided, the brief to the prosecutor could, potentially, include compulsorily obtained material. That led to practical difficulties for the Office of the Director of Public Prosecutions. Any staff who had been exposed to the brief were not able to prosecute the matter, leading to "a double handling of a brief which is usually complex and lengthy".[114] Accordingly, Mr Byrne recommended removing the ability to report on investigations to the Office of the Director of Public Prosecutions altogether.

The Parliamentary Committee endorsed that recommendation in its Report No 97,[115] leading to the 2018 amendment to s 49. The amendment does not prevent the Commission from referring corruption investigation briefs to police officers (including police officers seconded to the Commission), who in turn may then refer that matter to the Director of Public Prosecutions for consideration.[116] The longstanding practice of the Commission has been to treat its seconded police officers as a "prosecuting authority" within the meaning of s 49(5).[117]

Following on from the 2018 amendment, in 2022, the Fitzgerald-Wilson Report recommended reinstating the role of the Director of Public Prosecutions under s 49 of the Act. According to the Report, requiring advice from the Director prior to charges being laid would help to ensure independence and impartiality. It would also help to avoid harming a person's reputation unnecessarily, since the Director of Public Prosecutions might advise that charges should not be laid; either because of insufficient prospects of success or because it would not be in the public interest.[118]

## 2.12 The 2018 amendment to insert s 71A to require procedural fairness

At the same time that s 49 was amended in 2018, a new s 71A was also inserted into the Act, requiring the Commission to provide procedural fairness if it proposed to make an adverse comment in a report to be tabled in Parliament or published to the public.[119] According to the explanatory notes, this requirement would apply to "reports about corruption investigations that the Commission chooses to table in accordance with the [Crime and Corruption] Act".[120] However, it was not intended to apply to "section 49 reports or media statements published on the Commission's website".[121] Those statements in the explanatory notes appear to reflect a view that Commission reports into individual investigations could be reports under s 69 rather than reports under s 49.

The 2018 amendment followed the recommendation of the Parliamentary Committee in its Report No 99.[122] In that report, the Parliamentary Committee investigated a complaint by a former police officer, that he had not been provided procedural fairness

by the Commission. The Commission had investigated allegations that an improper relationship existed between a prisoner and members of the Queensland Police Service. Following its investigations, the Commission issued a report in 2009, in which it referred to the police officer by a pseudonym.[123] Although the report portrayed the police officer in an adverse light, the Commission did not provide him with a draft of the report or give him an opportunity to respond, and the resulting report did not state that he had strongly rejected the allegations. The report into the investigation was treated as one falling within s 69 of the Act (on what basis is not explained) and tabled in the Legislative Assembly.[124]

## 2.13 The Crime and Corruption and Other Legislation Amendment Bill 2024

There is currently a Bill before the Legislative Assembly to implement the recommendation of the Fitzgerald-Wilson Report to reinstate a role for the Director of Public Prosecutions in advising whether prosecution proceedings should be commenced.[125] That Bill is the Crime and Corruption and Other Legislation Amendment Bill 2024. Rather than simply reinsert the Director as a "prosecuting authority" in s 49, cl 7 of the Bill would insert a new subdivision (comprising ss 49A to 49G) setting out the role of the Director.

Under those new provisions, if the Commission is intending to report to a prosecuting authority under s 49 for the purpose of considering whether to commence a prosecution, the Commission must first seek the Director's written advice as to whether the person should be prosecuted for a corruption offence arising from the investigation. The Commission is to provide the Director with all relevant information, including evidence obtained using coercive powers. Subject to exceptional circumstances (such as where immediate arrest is required), a prosecution can only be commenced if the Director has recommended that the person be prosecuted for a corruption offence. Even in exceptional circumstances, the Director's advice must be sought in due course.

Clause 6 of the Bill makes consequential amendments to s 49. If the Commission provides a report to a prosecuting authority or the Attorney-General, the report must be accompanied by the Director's advice. The definition of "prosecuting authority" would also be amended to put beyond doubt that seconded police officers are prosecuting authorities.

According to the extrinsic material, the role of the Director of Public Prosecutions in reviewing all relevant information will provide an important safeguard and will support sound charging decisions. The amendments are designed to avoid the situation where charges are brought but later withdrawn, which is seen as potentially undermining public trust and confidence in the Crime and Corruption Commission.[126]

[1] For a broad overview of the amendments to the *Criminal Justice Act 1989* and the *Crime and Corruption Act 2001*, though with a different focus, see: Gerald Edward (Tony) Fitzgerald and Alan Wilson, *Commission of Inquiry relating to the Crime and Corruption Commission* (Report, August 2022) 156–88 (app D).

[2] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Report, 3 July 1989) 308 [10.2].

[3] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Report, 3 July 1989) 308 [10.2].

[4] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Report, 3 July 1989) 309 [10.2].

[5] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Report, 3 July 1989) 309 [10.2].

[6] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Report, 3 July 1989) 311 [10.2.3](a).

[7] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Report, 3 July 1989) 316–7 [10.2.5], 318 [10.2.6].

[8] Queensland, *Parliamentary Debates*, Legislative Assembly, 5 October 1989, 1381–2 (Theo Russell Cooper, Premier and Treasurer and Minister for State Development).

[9] By force of *Criminal Justice Amendment Act 1993*, s 2, sch, cl 150 and *Reprints Act 1992*, s 43.

[10] Prior to its repeal, the general reporting function in s 2.4(2) (renumbered as s 21(2)) was not the subject of amendment. Subsections (1) and (3) were the subject of minor amendments that are not relevant: *Criminal Justice Amendment Act 1993*, s 2, sch, cls 30–31; *Criminal Justice Legislation Amendment 1997*, s 13.

[11] *Criminal Justice Act 1989*, ss 2.15(c), (e), (j), (k), as enacted. These paragraphs were subject to only minor amendment prior to the repeal of the Act. In 1993, a reference in s 2.15(c) was changed from the Public Defender to the Legal Aid Commission, and a reference in ss 2.15(j)–(k) was changed from the Police Force to the Police Service: *Criminal Justice Amendment Act 1993*, s 2, sch, cls 32–3. In 1997, the reference in s 23(j) to "in particular, organised crime" was omitted: *Crime Commission Act 1997*, s 136. Other paragraphs (ss 23(d), (f)–(i)) were also subject to minor amendments that are not relevant: *Criminal Justice Amendment Act 1992*, s 2; *Criminal Justice Amendment Act 1993*, s 2, sch, cls 33–4; *Crime Commission Act 1997*, s 136.

[12] As noted in *Criminal Justice Commission v News Ltd* [1994] QSC 7, 3 (Dowsett J).

[13] Prior to its repeal, s 2.18 (renumbered as s 26) of the *Criminal Justice Act 1989*, was amended a number of times. The key change was to add a definition of "report of the commission" in s 26(9) in 1997 (considered further at [2.3] of chapter 2): *Criminal Justice Legislation Amendment 1997*, s 16. Otherwise, the amendments to s 2.18 were relatively minor. In 1990, a new sub-s (7) was added to s 2.18 to allow the Criminal Justice Commission to send a copy of the report to the Government Printer: *Whistleblowers (Interim Protection) and Miscellaneous Amendments Act 1990*, s 8. In 1993, the words "Except as is prescribed or permitted by [s 2.19]" in s 2.18(1) was changed to "Subject to [s 2.19]": *Criminal Justice Amendment Act 1992*, s 2, sch, cl 35. At the same time, an incorrect reference in s 2.18(5) to printing of the report by the Speaker under sub-s (2) was changed to sub-s (3): *Criminal Justice Amendment Act 1992*, s 11. In 1994, the words "referred to in section 7.10" were omitted from s 26(7) (which had been inserted in 1990): *Justice and Attorney-General (Miscellaneous Provisions) Act 1994*, s 3(1), sch, entry "Criminal Justice Act 1989", cl 1.

[14] *Criminal Justice Act 1989*, s 2.18(1), as enacted.

[15] *Criminal Justice Act 1989*, s 2.18(5), as enacted.

[16] *Criminal Justice Act 1989*, ss 2.18(3)–(4), as enacted.

[17] *Criminal Justice Act 1989*, s 2.18(2), as enacted.

[18] Originally, s 7.10 of the *Criminal Justice Act 1989* provided for annual reports to be provided to the Minister who was required to table it. That provision was omitted in 1993: *Criminal Justice Amendment Act 1993*, s 2, sch, cl 149. The extrinsic material does not explain why: Queensland,

*Parliamentary Debates*, Legislative Assembly, 18 November 1993, 5982–3; Explanatory Notes, Criminal Justice Amendment Bill 1993 (Qld) 7.

[19] *Criminal Justice Legislation Amendment 1997*, s 17, inserting ss 27(3)–(10) of the *Criminal Justice Act 1989*. The only other amendment to s 27 was relatively minor. In 1993, the reference to the Chairman of the District Court in s 2.19(1)(b) was replaced with a reference to the Chief Judge, and a new para (ba) was inserted in relation to the Childrens Court: *Criminal Justice Amendment Act 1993*, s 2, sch, cls 36–37.

[20] In 1992, s 2.20(2)(d) was omitted so that para (h) became (g): *Criminal Justice Amendment 1992*, s 3. Otherwise, s 2.20(2)(g) was not the subject of amendment. The other paragraphs were subject only to minor amendments that are not relevant: *Criminal Justice Amendment Act 1993*, s 12 and s 2, sch, cl 38; *Criminal Justice Legislation Amendment Act 1997*, s 19; *Crime Commission Act 1997*, s 137.

[21] Prior to its repeal, s 2.24 (renumbered as s 33) of the *Criminal Justice Act 1997* was amended a number of times. In 1992, the requirement in s 2.24(1)(a) to report on every investigation carried out by the Division was made subject to the caveat "other than by or on behalf of the Complaints Section": *Criminal Justice Amendment Act 1992*, s 4. In 1993, s 2.24(4) was replaced and new sub-ss (5)–(6) were inserted to clarify that a response to a complainant was not required in certain circumstances and the Director was not to disclose information they considered should remain confidential: *Criminal Justice Amendment Act 1993*, s 13. At the same time, the reference to the Chairman of the District Court in s 2.24(2)(d) was replaced with a reference to the Chief Judge, and a new para (da) was inserted in relation to the Childrens Court: *Criminal Justice Amendment Act 1993*, s 2, sch, cls 40–42. In 1994, the internal paragraph references in s 33(2)(g) were updated to add "(e)": *Justice and Attorney-General (Miscellaneous Provisions) Act 1994*, s 3(1), sch, entry "Criminal Justice Act 1989", cl 2. In 1997, with the separation of the Misconduct Tribunal from the Criminal Justice Commission, the power to report to the Tribunal in s 33(2)(b) of the *Criminal Justice Act* was omitted: *Misconduct Tribunals Act 1997*, s 48, sch 1, entry "Criminal Justice Act 1989", cl 9. At the same time in 1997, in a different amending Act, the wording in the chapeau in s 33(2) was simplified, exculpatory evidence was to be included in any report under s 33 (not only those provided to the Director of Prosecutions), a new sub-s (7) was inserted to give the Director of Public Prosecutions the power to require that the matter be further investigated, and a new sub-s (8) was inserted to give the Criminal Justice Commission the power to issue guidelines to the Director about how to perform their powers: *Criminal Justice Legislation Amendment Act 1997*, s 20.

[22] *Criminal Justice Act 1989*, s 2.24(1), as enacted.

[23] *Criminal Justice Act 1989*, s 2.24(2), as enacted.

[24] *Criminal Justice Legislation Amendment Act 1997*, s 20, inserting s 33(2A).

[25] *Criminal Justice Act 1989*, s 2.24(2), as enacted. In 1997, with the separation of the Misconduct Tribunal from the Criminal Justice Commission, the power to report to the Tribunal in s 33(2)(b) of the Act was omitted: *Misconduct Tribunals Act 1997*, s 48, sch 1, entry "Criminal Justice Act 1989", cl 9.

[26] *Criminal Justice Act 1989*, s 2.24(3), as enacted.

[27] *Criminal Justice Act 1989*, s 2.24(4), as enacted.

[28] *Criminal Justice Amendment Act 1993*, s 13, replacing s 2.24(4), and inserting new sub-ss (5) and (6).

[29] *Criminal Justice Legislation Amendment Act 1997*, s 20(3), amending s 33(6).

[30] Prior to the repeal of the *Criminal Justice Act 1989*, s 2.23 (renumbered as s 32) was only subject to one minor amendment. In 1993, "therein" in s 2.23(1)(a) was replaced with "in a unit of public administration": *Criminal Justice Amendment Act 1993*, s 2, sch, cl 39.

[31] *Crime and Corruption Act 2001*, ss 20–21. Section 20 has only been amended once in 2008 to add local governments as a unit of public administration: *Justice Legislation Amendment Act 2008*, s 52. Section 21 has never been amended.

[32] *Criminal Justice Act 1989*, ss 2.45(2)(i), 2.47(2)(e), as enacted.

[33] *Criminal Justice Amendment Act 1993*, ss 19–20, omitting s 3.21(2) and inserting a new s 3.21A, renumbered as s 93. According to the extrinsic material, s 3.21A was "a new section which reflects the provisions of the existing section 3.21(2)(a) and (b)": Explanatory Notes, Criminal Justice Amendment Bill 1993 (Qld) 4. There was a further amendment to s 92 (what was s 3.21) regarding

rules of evidence which is not relevant: *Misconduct Tribunals Act 1997*, s 48, sch 1, entry "Criminal Justice Act 1989", cl 25.

[34] *Criminal Justice Amendment Act 1993*, s 27, replacing s 6.7 (renumbered as 132).

[35] *Criminal Justice Legislation Amendment Act 1997*, s 44, amending s 132.

[36] *Crime Commission Act 1997*, s 141.

[37] *Criminal Justice Legislation Amendment Act 1997*, s 16.

[38] Explanatory Notes, Criminal Justice Legislation Amendment Bill 1997 (Qld) 5. The second reading speech also notes that the Bill gave effect to reports of the Parliamentary Crime and Justice Committee, though without referring to the amendment to s 33 in particular: Queensland, *Parliamentary Debates*, Legislative Assembly, 7 October 1997, 3603–4 (Denver Beanland, Attorney-General and Minister for Justice).

[39] Parliamentary Criminal Justice Committee, Parliament of Queensland, *Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission Part B – Analysis and Recommendations* (Report No 13, 1991) 65 (recommendation 10) <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/R-9ED4/rpt-13-031291.pdf>.

[40] Queensland, *Parliamentary Debates*, Legislative Assembly, 18 July 1991, 175 (Jim Fouras, Speaker).

[41] Criminal Justice Commission, *Report on a Public Inquiry into certain allegations against employees of the Queensland Prison Service and its successor, the Queensland Corrective Services Commission* (Report, July 1991) 3, 14–15 <https://www.ccc.qld.gov.au/sites/default/files/Docs/Public-Hearings/Public-inquiry-certain-allegations-employees-qld-prison-service/A-public-inquiry-into-certain-allegations-against-employees-of-the-qld-prison-service-and-QCS-Report-1991.pdf>.

[42] Criminal Justice Commission, *Report on a Public Inquiry into certain allegations against employees of the Queensland Prison Service and its successor, the Queensland Corrective Services Commission* (Report, July 1991) 3, 15–17.

[43] Criminal Justice Commission, *Report on a Public Inquiry into certain allegations against employees of the Queensland Prison Service and its successor, the Queensland Corrective Services Commission* (July 1991) 30.

[44] Criminal Justice Commission, *Report on a Public Inquiry into certain allegations against employees of the Queensland Prison Service and its successor, the Queensland Corrective Services Commission* (July 1991) 31.

[45] At the time, s 2.17(4) of the *Criminal Justice Act 1989* provided: "A hearing of the Commission shall, as a general rule, be open to the public but if, having regard to the subject matter of the investigation, or the nature of the evidence expected to be given, the Commission considers it preferable, in the public interest, to conduct a closed hearing, it may do so". Section 2.17(4) was replaced by s 3.20B (renumbered as s 90), which provided that the Commission could order a hearing be closed if the Commission considered it unfair to a person or contrary to the public interest: *Criminal Justice Amendment Act 1993*, s 18. Later, s 90 was amended to provide that hearings were to be closed to the public unless the Commission ordered otherwise: *Criminal Justice Legislation Amendment Act 1997*, s 34.

[46] Criminal Justice Commission, *Complaints against local government authorities in Queensland – six case studies* (Report, July 1991) 1 <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CJC/Complaints-against-local-government-authorities-in-qld-Report-1991.pdf>.

[47] Criminal Justice Commission, *Complaints against local government authorities in Queensland – six case studies* (Report, July 1991) 4.

[48] [1994] QSC 7.

[49] *Criminal Justice Commission v News Ltd* [1994] QSC 7, 24.

[50] *Criminal Justice Commission v News Ltd* [1994] QSC 7, 25–6. Ultimately, his Honour refused to grant the injunction, in part, because much of the information had already been disclosed by the Commission in media releases: at 29–30.

[51] *Criminal Justice Commission v Nationwide News Pty Ltd* [1996] 2 Qd R 444, 448.

[52] *Criminal Justice Commission v Nationwide News Pty Ltd* [1996] 2 Qd R 444, 455.

[53] Parliamentary Criminal Justice Committee, Parliament of Queensland, *A Report on the Accountability of the CJC to the PCJC* (Report No 38, 1997) 34–8 [3.7] (recommendation 6) <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/generic/pcmc-rpt38-61a3.pdf>.
[54] Parliamentary Criminal Justice Committee, Parliament of Queensland, *A Report on the Accountability of the CJC to the PCJC* (Report No 38, 1997) 35–6.
[55] Explanatory Notes, Crime Commission Bill 1997 (Qld) 1.
[56] Queensland, *Parliamentary Debates*, Legislative Assembly, 30 October 1997, 4109 (Theo Cooper, Minister for Police and Corrective Services and Minister for Racing).
[57] Originally s 7.10 of the *Criminal Justice Act 1989* required the Commission's annual report to be tabled. For unknown reasons, that provision was omitted in 1993: *Criminal Justice Amendment Act 1993*, s 2, sch, cl 149.
[58] *Crime Commission Act 1997*, ss 37(1)–(2).
[59] *Crime Commission Act 1997*, s 37(4).
[60] *Crime Commission Act 1997*, s 37(5).
[61] Explanatory Notes, Crime and Misconduct Bill 2001 (Qld) 8–9.
[62] Explanatory Notes, Crime and Misconduct Bill 2001 (Qld) 9.
[63] *Criminal Proceeds Confiscation Act 2002*, s 283, sch 3, cl 1.
[64] Explanatory Notes, Criminal Proceeds Confiscation Bill 2002 (Qld) 64.
[65] Explanatory Notes, Crime and Misconduct Bill 2001 (Qld) 14.
[66] Explanatory Notes, Crime and Misconduct Bill 2001 (Qld) 20.
[67] Queensland, *Parliamentary Debates*, Legislative Assembly, 16 October 2001, 2822 (Peter Beattie, Premier and Minister for Trade).
[68] Parliamentary Criminal Justice Committee, Parliament of Queensland, *Three Yearly Review of the Criminal Justice Commission* (Report No 55, 2001) 331 (recommendation 86).
[69] Section 64 was based on ss 23(h) and 93 of the *Criminal Justice Act 1989*: Explanatory Notes, Crime and Misconduct Bill 2001 (Qld) 25. Section 64 has not been amended since it was enacted.
[70] Explanatory Notes, Crime and Misconduct Bill 2001 (Qld) 27. According to the Explanatory Notes, s 26 was also based on s 138 of the former *Criminal Justice Act 1989*. At the time of its repeal, s 138 of the *Criminal Justice Act 1989* was a general offence provision and does not appear to have been translated into s 69 of the *Crime and Misconduct Act 2001*. The reason for the reference to it in the explanatory notes for the Crime and Misconduct Bill 2001 is unclear.
[71] Parliamentary Criminal Justice Committee, Parliament of Queensland, *Three Yearly Review of the Criminal Justice Commission* (Report No 55, 2001) 321–2.
[72] Parliamentary Criminal Justice Committee, Parliament of Queensland, *Three Yearly Review of the Criminal Justice Commission* (Report No 55, 2001) 322 (recommendation 80).
[73] Explanatory Notes, Crime and Misconduct Bill 2001 (Qld) 26. Again, as with s 69, the Explanatory Notes indicate that s 66 was also based on s 138 of the *Criminal Justice Act 1989*. It is unclear how s 69 is based on s 138.
[74] Explanatory Notes, Crime and Misconduct Bill 2001 (Qld) 60.
[75] Explanatory Notes, Crime and Misconduct Bill 2001 (Qld) 60.
[76] Explanatory Notes, Crime and Misconduct Bill 2001 (Qld) 11.
[77] Queensland, *Parliamentary Debates*, Legislative Assembly, 16 October 2001, 2819 (Peter Douglas Beattie, Premier and Minister for Trade).
[78] In addition to the amendments outlined in the text, s 49 was amended in the following minor ways. In 2002, the conjunction between the paragraphs in s 49(4) (then section 49(3)), regarding the relevant information to be provided to the appropriate authority, was changed from "and" to "or": *Criminal Proceeds Confiscation Act 2002*, s 283, sch 3, cl 5. In 2009, ch 5, pt 2 was inserted into the Act giving the Queensland Civil and Administrative Tribunal jurisdiction to hear disciplinary proceedings relating to misconduct for particular prescribed persons. Consequently, the references to ss 219F and 219G (in chapter 5, part 2) were added to ss 49(4)(c)–(d) (then ss 49(3)(c)–(d)): *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*, s 1398. In 2014, s 49 underwent a change in terminology from "misconduct" to "corruption": *Crime and Misconduct and Other Legislation Amendment Act 2014*, s 94(1), sch 1, cl 2. In 2019, ss 49(4)(c)–(d) were amended to

add a reference to s 219FA: *Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019*, s 32, sch 1, entry "Crime and Corruption Act 2001", cl 2. Sections 66–67 of the *Crime and Corruption Act* have never been amended. Section 69 has been amended in the following minor ways. In 2003, ss 69(6)–(8) were substituted to replace references to printing with publishing: *Parliament of Queensland Amendment Act 2003*, s 17, sch, entry "Crime and Misconduct Act 2001", cl 1. In 2014, "chairperson" in s 69(3) was changed to "chairman", and in 2016, it was changed back: *Crime and Misconduct and Other Legislation Amendment Act 2014*, s 94(1), sch 1, cl 7; *Crime and Corruption Amendment Act 2016*, s 45(1). Section 213 has been the subject of a number of minor amendments: *Crime and Misconduct and Other Legislation Amendment Act 2006*, s 19 (to insert "conducted by the commission" following "investigation" in s 213(4)(b)(ii)); *Criminal Organisation Amendment Act 2011*, s 20 (to insert references to the *Criminal Organisation Act 2009*); *Crime and Misconduct and Other Legislation Amendment Act 2014*, s 27 (to insert a definition of "commission officer"); *Crime and Corruption Amendment Act 2016*, s 15 (to include the chief executive officer); *Serious and Organised Crime Legislation Amendment Act 2016*, s 51 (to omit references to the *Criminal Organisation Act 2009*). Section 214 of the *Crime and Corruption Act* was amended in 2003 to replace "printed" with "published": *Parliament of Queensland Amendment Act 2003*, s 17, sch, entry "Crime and Misconduct Act 2001", cl 2.

79 *Criminal Law (False Evidence Before Parliament) Amendment Act 2012*, s 7. The amendment to the *Crime and Misconduct Act 2001* was introduced during consideration in detail of the Criminal Law (False Evidence Before Parliament) Amendment Bill 2012, without a detailed explanation provided: Queensland, *Parliamentary Debates*, Legislative Assembly, 2 August 2012, 1474 (Jarrod Bleijie, Attorney-General and Minister for Justice); Explanatory Notes for Amendments to be moved to the Criminal Law (False Evidence Before Parliament) Amendment Bill 2012 during consideration in detail by the Honourable Jarrod Bleijie MP Attorney-General and Minister for Justice, 5.

80 *Crime and Misconduct and Other Legislation Amendment Act 2014*, s 9.

81 Explanatory Notes, Crime and Misconduct and Other Legislation Amendment Bill 2014 (Qld) 2, 4, 17–8; Queensland, *Parliamentary Debates*, Legislative Assembly, 19 March 2014, 700, 701 (Jarrod Bleijie, Attorney-General and Minister for Justice).

82 Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 47–8, 70, 115–20, 213.

83 *Crime and Misconduct and Other Legislation Amendment Act 2014*, ss 4–5. The change in terminology was also reflected in amendments throughout the Act, eg, in relation to s 49, see s 94(1), sch 1, cl 2 of the Amendment Act.

84 *Crime and Misconduct and Other Legislation Amendment Act 2014*, s 12.

85 Inserted by *Crime and Misconduct and Other Legislation Amendment Act 2014*, s 82(2).

86 Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 117.

87 The version of the definition proposed in the Callinan and Aroney Review retained the past tense "was": Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 213 (recommendation 3A). When the government at the time accepted that recommendation, it noted that "[t]here may be further refinements to the provision": Parliamentary Crime and Misconduct Commission, Parliament of Queensland, *Parliamentary Crime and Misconduct Committee : Report No 90 – Inquiry into the Crime and Misconduct Commission's release and destruction of Fitzgerald Inquiry documents and Review of the Crime and Misconduct Act 2001 and Related matters, by the Honourable Ian Callinan AC and Professor Nicholas Aroney : Government response* (Government Response, 3 July 2013) 23.

88 Inserted by *Crime and Misconduct and Other Legislation Amendment Act 2014*, s 94(1), sch 1.

89 Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 155–6, 215 (recommendation 4). See also Explanatory Notes, Crime and Misconduct and Other Legislation Amendment Bill 2014 (Qld) 6.

90 *Crime and Misconduct and Other Legislation Amendment Act 2014*, ss 10–11, amending ss 23–24.

91 *Crime and Corruption Amendment Act 2016*, s 9, amending s 33.

[92] *Crime and Corruption Amendment Act 2016*, ss 6, 7(3), amending ss 23, 24(f) (s 24(f) renumbered as s 24(i)).
[93] Queensland, *Parliamentary Debates*, Legislative Assembly, 1 December 2015, 2969 (Yvette D'Ath, Attorney-General and Minister for Justice and Minister for Training and Skills). See also Explanatory Notes, Crime and Corruption Amendment Bill 2015 (Qld) 1, 5–6.
[94] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 82–113 (ch 6).
[95] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 88, 91, 102.
[96] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 101–2.
[97] *Independent Commissioner Against Corruption Act 2012* (SA) s 56, as enacted. Section 56 has since been repealed: *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* (SA) s 50.
[98] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 216–7 (recommendation 8).
[99] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 112.
[100] Parliamentary Crime and Misconduct Commission, Parliament of Queensland, *Parliamentary Crime and Misconduct Committee: Report No 90 – Inquiry into the Crime and Misconduct Commission's release and destruction of Fitzgerald Inquiry documents and Review of the Crime and Misconduct Act 2001 and Related matters, by the Honourable Ian Callinan AC and Professor Nicholas Aroney: Government response* (Government Response, 3 July 2013) 29.
[101] *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* (SA) s 50.
[102] Crime and Public Integrity Policy Committee, Parliament of South Australia, *Report into Matters of Public Integrity in South Australia* (Report No 5, December 2020) 59–63, 155–6 (recommendation 5).
[103] *Crime and Corruption and Other Legislation Amendment Act 2018*, s 7, inserting s 33(2).
[104] *Crime and Corruption and Other Legislation Amendment Act 2018*, s 5.
[105] Explanatory Notes, Crime and Corruption and Other Legislation Amendment Bill 2018 (Qld) 13.
[106] Explanatory Notes, Crime and Corruption and Other Legislation Amendment Bill 2018 (Qld) 3, 13–4.
[107] *Independent Commission Against Corruption Act 1988* (NSW) s 8(2A). In turn, giving effect to Murray Gleeson and Bruce McClintock, *Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption* (Report, 30 July 2015) xi (recommendation 1), 39–40 [7.4.13].
[108] (2015) 256 CLR 1.
[109] *Independent Commission Against Corruption v Cunneen* (2015) 256 CLR 1, 10 [2]–[3], 25–8 [50]–[55].
[110] *Crime and Corruption and Other Legislation Amendment Act 2018*, s 12.
[111] Gerald Edward (Tony) Fitzgerald and Alan Wilson, *Commission of Inquiry relating to the Crime and Corruption Commission: Report* (Report, August 2022) 112–6.
[112] (2014) 253 CLR 455. The other cases in that line of authority were *X7 v Australian Crime Commission* (2013) 248 CLR 92; *Lee v NSW Crime Commission* (2013) 251 CLR 196.
[113] (2014) 253 CLR 455, 467–8 [32]–[34], 473–4 [51] (French CJ, Crennan, Kiefel, Bell and Keane JJ).
[114] Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Review of the Crime and Corruption Commission* (Report No 97, June 2016) 34, quoting the submission from Office of the Director of Public Prosecutions.
[115] Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Review of the Crime and Corruption Commission* (Report No 97, June 2016) 33–4 [5.3.4]–[5.3.5] (recommendation 5).
[116] Gerald Edward (Tony) Fitzgerald and Alan Wilson, *Commission of Inquiry relating to the Crime and Corruption Commission: Report* (Report, August 2022) 112, 115, 122.
[117] Gerald Edward (Tony) Fitzgerald and Alan Wilson, *Commission of Inquiry relating to the Crime and Corruption Commission: Report* (Report, August 2022) 112.
[118] Gerald Edward (Tony) Fitzgerald and Alan Wilson, *Commission of Inquiry relating to the Crime and Corruption Commission: Report* (Report, August 2022) 131–3.

[119] *Crime and Corruption and Other Legislation Amendment Act 2018*, s 17.
[120] Explanatory Notes, Crime and Corruption and Other Legislation Amendment Bill 2018 (Qld) 16.
[121] Explanatory Notes, Crime and Corruption and Other Legislation Amendment Bill 2018 (Qld) 16.
[122] Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Report on a complaint by Mr Darren Hall* (Report No 99, November 2016) 6 (recommendation 1).
[123] Crime and Misconduct Commission, *Dangerous Liaisons – A Report arising from a CMC investigation into allegations of police misconduct (Operation Capri)* (Report, July 2009).
[124] Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Report on a complaint by Mr Darren Hall* (Report No 99, November 2016) app A, 1.
[125] Explanatory Notes, Crime and Corruption and Other Legislation Amendment Bill 2024 (Qld) 1, 7–9; Queensland, *Parliamentary Debates*, Legislative Assembly, 15 February 2024, 249–50 (Yvette D'Ath).
[126] Statement of Compatibility, Crime and Corruption and Other Legislation Amendment Bill 2024 (Qld) 25; Queensland, *Parliamentary Debates*, Legislative Assembly, 15 February 2024, 249 (Yvette D'Ath).

# Chapter 3: The Commission's historical reporting practices

Media statements and an extensive investigative report were powerful means by which the Fitzgerald Inquiry communicated its corruption-related activities to the broader public.[1] The Crime and Corruption Commission and its predecessors have placed similar reliance on those methods since. But notwithstanding their continuity in time and practice, the Fitzgerald Inquiry and successive Commissions were and are separately constituted, with different functions and powers.[2] The Crime and Misconduct Commission and Crime and Corruption Commission, however, are the same entity, albeit that the name, functions and powers of that body have changed over time.[3] This chapter outlines the historical reporting practices of the current Commission by reference to policy documents, submissions, publicly available information, and the 256 media statements and 32 public reports said to be affected by the decision in *Carne v Crime and Corruption Commission*.[4]

## 3.1 Media communications

As may be expected, the Commission's engagement with media has changed over time. As early as 1994, the Supreme Court noted that the Criminal Justice Commission showed "a relatively high degree of sophistication in media management".[5] The Commission employed a media liaison officer and regularly provided journalists with copies of reports on aspects of its operation, including about complaints it received.[6] Certainly, by 1998, the Commission began taking a "proactive" approach to its media profile.[7] In the years following, the Queensland Law Society identified the Commission's practice of holding press conferences and issuing media releases about investigations as cause for concern.[8]

The Commission's early media policy required that it not comment on current investigations unless details were a matter of public record, or it was clear the media intended to publish material that could jeopardise an investigation.[9] The policy guidelines required that the Commission "balance accountability considerations against the clear legislative emphasis on confidentiality".[10] The risk of damage to an individual's reputation and the protection of operational information were expressly identified as factors that would ordinarily outweigh any desire to inform the public about operational matters.[11]

Tension over the way that the Commission communicated matters, including with the public and media, became a continuing theme.[12] In its three-yearly review of the Commission in 2004, the Parliamentary Crime and Corruption Committee recommended the Commission "continue to improve its communication strategies,

particularly in communicating progress and outcomes to, as appropriate, the complainant, the subject officer, any relevant agency, the media, and the public".[13] During the subsequent review in 2006, the Local Government Association of Queensland sought amendments requiring that complaints and investigations be confidential until an investigation was completed.[14] The Association identified the risk of reputational damage and the effect on the presumption of innocence as factors in favour of its suggestion.[15] The Commission resisted the proposal on grounds including that it would be difficult to enforce.[16] The Parliamentary Committee agreed with the Commission, a view it endorsed again three years later, in 2009.[17]

The Commission's media policy was in the spotlight again during the Parliamentary Committee's 2012 review. At the time, the policy was summarised as seeking to balance individual and community rights: on one hand, the media's right to report on matters of public interest, and on the other, the entitlement of those investigated to privacy and confidentiality.[18] The Commission's practice remained to "neither confirm nor deny" any aspect of a current complaint or investigation unless it was publicly known.[19] Where a matter was incorrectly reported in the media, the policy proposed either public or private methods for addressing the issue—for example, by issuing a corrective statement to the organisation or media, or by discussing the problem with the journalist or agency.[20] As a result of the matters considered in its review, the Parliamentary Committee recommended the Commission review its media policies.[21] That recommendation was overtaken by the Callinan and Aroney Review, conducted by Hon Ian Callinan AC KC and Professor Nicholas Aroney in 2013.[22]

The Commission's media-related activities were no less contentious in the decade between 2013 and 2023. The question of whether amendments were necessary to require that complaints be kept confidential surfaced again in 2016, this time with the Commission driving the issue.[23] A proposal the Commission made then, for the creation of an offence directed to the publicising of allegations or complaints about councillors or candidates in local government elections, was not adopted.[24] In December 2019, the Commission's handling of allegations of corrupt conduct against the (then) Premier and former Deputy Premier—including its press releases in those matters—led the Parliamentary Committee to launch an inquiry into the Commission's performance of its functions to assess and report on complaints of corrupt conduct.[25] The inquiry was later incorporated into the Parliamentary Committee's review of the Commission's activities, reported upon in June 2021.[26]

Internal figures submitted to the Fitzgerald-Wilson Inquiry reveal something of the Commission's more recent media practices.[27] Between July 2016 and May 2022, the Commission published some 244 media releases and held 13 press conferences, although not all concerned corruption matters.[28] Consistently with those figures, the Commission's submissions to this Review explained it had, historically, "frequently

made media releases available on its website, and less frequently, held press conferences in relation to particular investigations". Its practice was said to have been to "issue detailed media releases regarding corruption matters as the occasion and the public interest required", noting that such releases would not necessarily preclude further detailed reporting.[29]

As indicated in chapter 1, the Commission identified some 256 media releases dating back to 2006 which it considers may be affected by the decision of the Court of Appeal (and, by extension, the High Court) in *Carne*.[30] Broadly, those fall into one of three categories, being releases: to "correct the public record" or comment on the actions of public persons or bodies; after an assessment or investigation where no prosecutorial or disciplinary action was to be taken or continued; or to the effect that an investigation, prosecution or proceeding was commenced, referred, ongoing or finalised. The media releases themselves reveal something of the Commission's changing media practices over time.

The releases identified by the Commission show that its engagement with the media about corruption matters skyrocketed between 2014 and 2017 and remained frequent until the *Carne* litigation commenced. Between 2006 and 2013, the Commission issued an average of just under 11 media releases about corruption matters per year. During that period, the year with the fewest releases was 2010 (eight); the year with the most was 2011 (13). In the period between 2014 and 2022 the average number of releases issued was almost 19 per year. The year with the lowest number of releases in that time was 2022 (two); the year with the most was 2017 (42). If 2021 and 2022—the years when the *Carne* litigation was in progress—are excluded, the average number of releases issued per year since (and including) 2014 was greater than 23, more than double the pre-2014 average. Even in 2020, when the pandemic was under way, the number of releases did not return to pre-2014 figures. By contrast, the number of releases per year in 2021 and 2022, during the *Carne* litigation, was just three and two, respectively.

Most of the media releases which are said to be affected by *Carne* fall into the third category mentioned above; that is, releases to the effect that that an investigation, prosecution or proceeding was commenced, referred, ongoing or finalised. Releases of this type were often, but not universally brief, and generally did not identify individuals discussed in the release. The exception to that practice arose largely where the release discussed individuals who had been convicted of an offence. However, there were occasions where releases either named or identified individuals where charges had been laid but not determined,[31] and perhaps more worryingly, where a matter was referred to another body for action.[32]

The Commission's internal media policy, entitled "Communications Policy and Procedure", gives some insight into the policy and practice driving those behaviours. The Commission provided the Review with a current copy of that policy that dates from

June 2023.[33] However, an earlier version of the same policy was produced to the Fitzgerald-Wilson Inquiry.[34] The superseded policy, dated February 2021, is perhaps more illustrative of the Commission's internal policy and practice in the period immediately before the *Carne* matter was first heard in the Supreme Court.[35]

The superseded document outlines the Commission's early 2021 policy position as having been, in part, to "promote transparency and confidence" in the Commission's operations by "actively seek[ing] opportunities" to inform and educate external parties about the Commission's work.[36] This necessitated, as a matter of procedure, that the content, method, and timing of all such communications was to be planned and subsequently approved by senior Commission staff.[37] At the planning stage, the policy recommended that all communications "consider the alignment to the functions of the [*Crime and Corruption Act 2001*], strategic objectives and areas of focus".[38] Various categories of communication attracted further, discrete considerations.

The policy explained that "publishing information" was the "key element of the [Commission's] communication strategy".[39] Decisions about what and how to publish were to be informed by matters including: legislative obligations, "considerations of equity to all stakeholders who have an interest in a matter", the stage of investigation, opportunities to reach the target audience, timeliness, and cost.[40] The phrase "equity to … stakeholders" is not further explained, and it is not clear what it is intended to mean, but it is not evident that it refers to human rights. The policy otherwise makes no express mention of human rights, reputation, or privacy, and no human rights policy is referred to in the "related documents" section of the superseded or current policy (see further [9.6] in chapter 9).[41]

## 3.2 Investigation reporting

Much of the controversy that has historically surrounded the Commission's media communications is echoed in its practice of publishing reports about its investigations. It is worth noting that the first report ever tabled by the Criminal Justice Commission, "Report on Gaming Machine Concerns and Regulations",[42] was itself the subject of a successful High Court challenge concerning procedural fairness and reputational damage.[43]

The Crime and Misconduct Commission's early approach to public reporting is captured in the following submission made to the Parliamentary Committee's three-yearly review in 2003:

> In some cases, allegations are made concerning individuals within the public sector that are not systemic, but have the potential to undermine confidence in government systems. These cases often receive extensive media coverage. Although investigations are conducted out of the public limelight, the [Commission] often publishes a report on its findings so that deficiencies are

> exposed and seen to be dealt with. A public report also enables reputations that have been unjustifiably damaged to be vindicated or restored. Sometimes a detailed media release may be all that is required to restore public confidence.[44]

Perhaps unsurprisingly, the precise terms of the Commission's policy and practice for publicly reporting on its investigations have been the subject of less frequent public discussion than have the terms of its media policy—at least directly—in the years since 2003. That said, the reports identified by the Commission as being affected by the *Carne* litigation permit some observations, if not about the Commission's reporting policy, then certainly about its broad reporting practices in that period.

The first observation which might be made is, as might be expected, that the Commission does not publicly report on every corruption investigation it undertakes. The Commission's annual reports indicate that it finalised an average of just under 80 corruption investigations per year in the two decades between 2002 and 2022.[45] By contrast, only 32 "*Carne* affected" investigation reports—an average of fewer than two per year—were published in that timeframe. Consistently with the submission quoted above, early reports seem to have been published where the Commission considered a matter high profile or complex.[46] More recently, the reasons given for such reporting have included: "the systemic and serious nature of the conduct, [and] the seniority of people involved",[47] "to contribute to the discharge of [the Commission's] roles, responsibilities and functions",[48] because "the public interest [was] best served by publication",[49] and "to provide an accurate picture of what the evidence suggests actually occurred".[50]

The second observation which arises from the Commission's historic reporting is that it has not been limited to investigations where the evidence suggested, or subsequent proceedings determined, corruption had occurred. Several reports published throughout the years concern investigations where, on the Commission's assessment, there was insufficient or no evidence that such conduct took place.[51] It is worth noting that reports of this type have often, nevertheless, been critical of events or persons investigated or made recommendations for improvement or reform in light of apparent shortcomings identified by the Commission.[52]

The third observation to be made is that there was no hard and fast rule about who might have been named in a report. Some reports named only those who held significant public positions, had been named in the media, or were publicly identifiable.[53] Others identified individuals by position or rank only, even where allegations against them were substantiated in subsequent criminal or disciplinary proceedings.[54] Others still elected not to identify individuals by name even where the identity of those persons was apparent from their position and was otherwise well-ventilated in the media.[55]

A fourth observation is that recent reports routinely annexed submissions from persons the subject of adverse comment.[56] The regular adoption of that practice aligns with the introduction of s 71A of the *Crime and Corruption Act* in 2018.[57] That provision, of course, requires that reports not be tabled or made publicly available unless a person about whom adverse comment is made is given the opportunity to make submissions about the comment.[58] If submissions are made and the Commission still proposes to make the comment, the submissions must be "fairly stated in the report".[59] The Review received submissions critical of annexing submissions in that context,[60] and the operation of s 71A is considered in chapter 14. However, it bears mentioning here that annexing submissions to a report is not necessarily the same as fairly stating them *in* it, if that was what was intended by the practice.[61]

A fifth, related, and final, general observation is that the Commission appears to have become far more critical of individuals named in reports over time. Early reports tended to disclaim adverse inferences, making statements such as "the [Commission] does not have legislative power to make findings of guilt, and merely assesses the sufficiency of evidence … to determine if a report should be made … to an appropriate body to consider criminal or disciplinary proceedings",[62] or "It may sometimes be necessary for the Commission to reach conclusions about factual matters … However, the Commission is not a criminal court and it has no adjudicative role".[63] Some more recent reports have contained this statement: "No adverse inferences should be drawn … unless the report specifically attributes wrongdoing to the person".[64]

As with the Commission's media communications policy described above, current and historic versions of the Commission's internal documents—in this case the "Matter reports and publications" policy—also shed light on its reporting policy and practice as it stood in 2021. Until amendment in 2023, the Commission's reporting policy was said to outline "the requirements for the preparation and production of reports or publications that [were] the product of an investigation".[65] The superseded policy directed that decisions about what and how to publish were to be guided by a "careful balancing of … competing demands" arising from the same matters that informed those decisions under the media policy, and other factors such as procedural fairness and the longevity of published material.[66]

Procedurally speaking, publication of investigative and prevention reports was a stage within the "delivery" phase of an investigation;[67] that is, the later stage of an investigation, before it is finalised.[68] (The Commission's procedural documents are replete with language that has been fairly described as "opaque, unclear and imprecise".[69]) Planning for such publications was to begin immediately after a complaint had been assessed.[70] At that earlier stage, publication was "an anticipated or likely product of an investigation supporting the business case"—that is, the decision whether or not to undertake an investigation—for consideration and approval by a

committee of senior Commission staff, including the chairperson.[71] Once approved, a publication would be prepared, and finally reviewed and approved by senior Commission staff, who consulted with the Chief Executive Officer or Chairperson as necessary.[72] It seems to be that at this stage, a "procedural fairness draft" would be provided to affected persons and the Parliamentary Committee, the latter being advised of any intention for the Commission to seek a direction that the report be tabled.[73] Receipt and consideration of any procedural fairness submissions followed and a final draft would be prepared (and provided to the Parliamentary Committee, if it was to be tabled).[74]

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1 See, eg, Chris Salisbury, 'Thirty years on, the Fitzgerald Inquiry still looms large over Queensland politics', *The Conversation* (Web Page, 1 July 2019) <https://theconversation.com/thirty-years-on-the-fitzgerald-inquiry-still-looms-large-over-queensland-politics-119167>.

2 Cf *Criminal Justice Act 1989*; *Crime and Misconduct Act 2001* (renamed the *Crime and Corruption Act 2001*).

3 See *Crime and Misconduct and Other Legislation Amendment Act 2014*, s 32.

4 (2022) 11 QR 334; Letter from Crime and Corruption Commission to Parliamentary Crime and Corruption Committee, 20 October 2022.

5 *Criminal Justice Commission v News Ltd* [1994] QSC 7, 13–14 (Dowsett J).

6 *Criminal Justice Commission v News Ltd* [1994] QSC 7, 11–12.

7 Parliamentary Criminal Justice Committee, Parliament of Queensland, *Three Yearly Review of the Criminal Justice Commission 2001* (Report No 55, March 2001) 195.

8 See, eg, Parliamentary Criminal Justice Committee, Parliament of Queensland, *Three Yearly Review of the Criminal Justice Commission 2001* (Report No 55, March 2001) 47.

9 Parliamentary Criminal Justice Committee, Parliament of Queensland, *Three Yearly Review of the Criminal Justice Commission 2001* (Report No 55, March 2001) 197.

10 Parliamentary Criminal Justice Committee, Parliament of Queensland, *Three Yearly Review of the Criminal Justice Commission 2001* (Report No 55, March 2001) 197.

11 Parliamentary Criminal Justice Committee, Parliament of Queensland, *Three Yearly Review of the Criminal Justice Commission 2001* (Report No 55, March 2001) 197.

12 Cf Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Year Review of the Crime and Misconduct Commission 2004* (Report No 64, March 2004) 33–4.

13 Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Year Review of the Crime and Misconduct Commission 2004* (Report No 64, March 2004) 34.

14 Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Year Review of the Crime and Misconduct Commission 2006* (Report No 71, October 2006) 50.

15 Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Year Review of the Crime and Misconduct Commission 2006* (Report No 71, October 2006) 50–1, referring to Local Government Association of Queensland, Submission No 17 to Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Year Review of the Crime and Misconduct Commission 2006* (11 May 2006) 8.

16 Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Year Review of the Crime and Misconduct Commission 2006* (Report No 71, October 2006) 50. See also Crime and Misconduct Commission, Submission No 34 to the Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Year Review of the Crime and Misconduct Commission 2006* (July 2006) 4.

17 Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Year Review of the Crime and Misconduct Commission 2006* (Report No 71, October 2006) 51; Parliamentary Crime

and Misconduct Committee, Parliament of Queensland, *Three Yearly Review of the Crime and Misconduct Commission 2009* (Report No 79, April 2009) 37.

[18] Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Yearly Review of the Crime and Misconduct Commission 2012* (Report No 86, May 2012) 73.

[19] Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Yearly Review of the Crime and Misconduct Commission 2012* (Report No 86, May 2012) 73.

[20] Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Yearly Review of the Crime and Misconduct Commission 2012* (Report No 86, May 2012) 74.

[21] Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Yearly Review of the Crime and Misconduct Commission 2012* (Report No 86, May 2012) 79.

[22] Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Review of the Crime and Corruption Commission* (Report No 97, June 2016) 86–7.

[23] Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Review of the Crime and Corruption Commission* (Report No 97, June 2016) 89–90.

[24] Crime and Corruption Commission, *Publicising allegations of corrupt conduct: Is it in the public interest?* (Final Report, December 2016) 32–4.

[25] See, eg, Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Review of the Crime and Corruption Commission's activities* (Report No 106, June 2021) 3–4, 82–4.

[26] Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Review of the Crime and Corruption Commission's activities* (Report No 106, June 2021) 3–4.

[27] Crime and Corruption Commission, Submission to Commission of Inquiry relating to the Crime and Corruption Commission (11 May 2022) [39], attachment B.

[28] Crime and Corruption Commission, Submission to Commission of Inquiry relating to the Crime and Corruption Commission (11 May 2022) attachment B.

[29] Crime and Corruption Commission, first submission, dated 12 March 2024, 28.

[30] *Carne v Crime and Corruption Commission* (2022) 11 QR 334; *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737; Letter from Crime and Corruption Commission to Parliamentary Crime and Corruption Committee, 20 October 2022.

[31] See, eg, Crime and Misconduct Commission, 'Queensland Transport officers face charges after a Crime and Misconduct Commission investigation' (Media Release, 27 November 2006) <https://www.ccc.qld.gov.au/news/queensland-transport-officers-face-charges-after-crime-and-misconduct-commission-investigation>; Crime and Misconduct Commission, 'Former Minister and Queensland businessman face charges' (Media Release, 19 January 2007) <https://www.ccc.qld.gov.au/news/former-minister-and-queensland-businessman-face-charges>; Crime and Corruption Commission, 'Councillor charged with official corruption' (Media Release, 27 June 2019) <https://www.ccc.qld.gov.au/news/councillor-charged-official-corruption>.

[32] See, eg, Crime and Misconduct Commission, 'CMC examination of Coroner's findings' (Media Release, 18 June 2010) <https://www.ccc.qld.gov.au/news/cmc-examination-coroners-findings>; Crime and Corruption Commission, 'CCC finalises assessment of Minister Bailey's emails' (Media Release, 19 July 2017) <https://www.ccc.qld.gov.au/news/ccc-finalises-assessment-minister-baileys-emails>; Crime and Corruption Commission, 'CCC finalises assessment of complaint by Mr Robbie Katter MP' (Media Release, 27 September 2018) <https://www.ccc.qld.gov.au/news/ccc-finalises-assessment-complaint-mr-robbie-katter-mp>.

[33] Crime and Corruption Commission, second submission, dated 18 April 2024, annexure 9.

[34] Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (11 May 2022) [34], attachment A.

[35] *Carne v Crime and Corruption Commission* [2021] QSC 228.

[36] Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (11 May 2022) attachment A, 5.

[37] Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (11 May 2022) attachment A, 5.

[38] Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (11 May 2022) attachment A, 8.

[39] Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (11 May 2022) attachment A, 11.
[40] Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission, (11 May 2022) attachment A, 11–12.
[41] Cf Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (11 May 2022) attachment A, 13; Crime and Corruption Commission, second submission, dated 18 April 2024, annexure 9, 13.
[42] Criminal Justice Commission Queensland, *Report on Gaming Machine Concerns and Regulations* (Report, May 1990).
[43] See *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564.
[44] Crime and Misconduct Commission, Supplementary submission to the Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Yearly Review of the Crime and Misconduct Commission* (18 August 2003) 52, produced in Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (6 May 2022).
[45] See Annexure D: Commission complaints, investigations and reports 2002–2023.
[46] See, eg, Crime and Misconduct Commission, Submission No 26 to the Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Year Review of the Crime and Misconduct Commission 2006* (May 2006) 88–90.
[47] Crime and Corruption Commission, *Investigation Arista: A report concerning the investigation into the Queensland Police Service's 50/50 gender equity recruitment strategy* (Report, 12 May 2021) 13.
[48] Crime and Corruption Commission, *Investigation Keller: An investigation report into allegations relating to the former Chief of Staff to The Honourable Annastacia Palaszczuk MP, Premier of Queensland and Minister for Trade* (Report, 23 September 2020) 9.
[49] Crime and Corruption Commission, *An investigation into allegations relating to the appointment of a school principal* (Report, 2 July 2020) 8.
[50] Crime and Corruption Commission, *Investigation Workshop: An investigation into allegations of disclosure of confidential information at the Office of the Integrity Commissioner* (Report, 4 July 2022) 6.
[51] See, eg, Crime and Misconduct Commission, *An investigation of matters relating to the conduct of the Hon Ken Hayward MP* (Report, 27 November 2003); Crime and Misconduct Commission, *The Tugun Bypass investigation* (Report, 4 August 2004); Crime and Misconduct Commission, *Report of an investigation into the appointment of the Queensland Information Commissioner* (Report, 1 July 2005); Crime and Misconduct Commission, *Allegation against the Honourable TM Mackenroth in respect of land at Elimbah East: A report from the CMC* (Report, 1 September 2009); Crime and Corruption Commission, *An investigation into allegations relating to the appointment of a school principal* (Report, 2 July 2020); Crime and Corruption Commission, *Investigation Keller: An investigation report into allegations relating to the former Chief of Staff to The Honourable Annastacia Palaszczuk MP, Premier of Queensland and Minister for Trade* (Report, 23 September 2020); Crime and Corruption Commission, *Investigation Arista: A report concerning the investigation into the Queensland Police Service's 50/50 gender equity recruitment strategy* (Report, 12 May 2021).
[52] See, eg, Crime and Misconduct Commission, *Palm Island Airfare Controversy: A CMC report on an investigation into allegations of official misconduct arising from certain travel arrangements authorised by the Minister for Aboriginal and Torres Strait Islander Policy* (Report, 8 March 2005); Crime and Corruption Commission, *An investigation into allegations relating to the appointment of a school principal* (Report, 2 July 2020); Crime and Corruption Commission, *Investigation Keller: An investigation report into allegations relating to the former Chief of Staff to The Honourable Annastacia Palaszczuk MP, Premier of Queensland and Minister for Trade* (Report, 23 September 2020); Crime and Corruption Commission, *Investigation Arista: A report concerning the investigation into the Queensland Police Service's 50/50 gender equity recruitment strategy* (Report, 12 May 2021).
[53] See, eg, Crime and Misconduct Commission, *An investigation of matters relating to the conduct of the Hon Ken Hayward MP* (Report, 27 November 2003). See, also, Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Yearly Review of the Crime and Misconduct Commission 2012* (Report No 86, May 2012) 80.

[54] See Crime and Misconduct Commission, *Dangerous liaisons: A report arising from a CMC investigation into allegations of police misconduct (Operation Capri)* (Report, 22 July 2009).
[55] Crime and Corruption Commission, *Investigation Workshop: An investigation into allegations of disclosure of confidential information at the Office of the Integrity Commissioner* (Report, 4 July 2022).
[56] See Crime and Corruption Commission, *Culture and corruption risks in local government: Lessons from an investigation into Ipswich City Council (Operation Windage)* (Report, August 2018) app1; Crime and Corruption Commission, *Operation Yabber: An investigation into allegations relating to the Gold Coast City Council* (Report, 24 January 2020) app 1; Crime and Corruption Commission, *An investigation into allegations relating to the appointment of a school principal* (Report, 2 July 2020) annexure 7; Crime and Corruption Commission, *Investigation Keller: An investigation report into allegations relating to the former Chief of Staff to the Honourable Annastacia Palaszczuk MP, Premier of Queensland and Minister for Trade* (Report, 23 September 2020) annexure 1; Crime and Corruption Commission, *Investigation Arista: A report concerning an investigation into the Queensland Police Service's 50/50 gender equity recruitment strategy* (Report, 12 May 2021) app1.
[57] See *Crime and Corruption and Other Legislation Amendment Act 2018*, s 17. See also chapter 2 at [2.12].
[58] *Crime and Corruption Act 2001*, ss 71A(1)–(2).
[59] *Crime and Corruption Act 2001*, s 71A(3).
[60] Barbagallo submission, dated 22 March 2024, 3.
[61] Cf *Crime and Corruption Act 2001*, s 71A(3).
[62] Crime and Misconduct Commission, *The Volkers Case: Examining the conduct of the police and prosecution* (Report, 2 April 2003) 5.
[63] Crime and Misconduct Commission, *An Investigation of matters relating to the conduct of the Hon Ken Hayward MP* (Report, 27 November 2003) 4.
[64] See, eg, Crime and Corruption Commission, *Investigation Keller: An investigation report into allegations relating to the former Chief of Staff to The Honourable Annastacia Palaszczuk MP, Premier of Queensland and Minister for Trade* (Report, 23 September 2020) 11; Crime and Corruption Commission, *An investigation into allegations relating to the appointment of a school principal* (Report, 2 July 2020) 10; Crime and Corruption Commission, *Investigation Arista, a report concerning an investigation into the Queensland Police Service's 50/50 gender equity recruitment strategy* (May 2021) 14.
[65] Cf 'Operations Manual MM03 – Matter reports and publications', attached in Crime and Corruption Commission, second submission, dated 18 April 2024, annexure 8; 'Operations Manual MM03 – Matter reports and publications', attached in Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (1 April 2022).
[66] See 'Operations Manual MM03 – Matter reports and publications', 3, attached in Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (1 April 2022).
[67] 'Operations Manual MM03 – Matter reports and publications', 4, attached in Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (1 April 2022).
[68] See 'Operating Model Governance Arrangements', attached in Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (1 April 2022) attachment B.
[69] Gerald Edward (Tony) Fitzgerald and Alan Wilson, *Commission of Inquiry relating to the Crime and Corruption Commission* (Report, 9 August 2022) 52.
[70] See 'Operations Manual MM03 – Matter reports and publications', 4, attached in Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (1 April 2022).
[71] See 'Operations Manual MM03 – Matter reports and publications', 4, attached in Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (1 April 2022); 'Operational Framework' 23, attached in Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and

Corruption Commission (1 April 2022) attachment C; 'Operating Model Governance Arrangements' app A, attached in Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (1 April 2022) attachment B.

[72] See 'Operations Manual MM03 – Matter reports and publications', 5–6, attached in Crime and Corruption Commission, Submission to the Commission of Inquiry relating to the Crime and Corruption Commission (1 April 2022).

[73] This process was not included in the 'Operations Manual MM03 – Matter reports and publications' policy document until April 2023. However, events in the *Carne* litigation suggest the practice pre-dated the amendment: see, eg, *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 367–70 [89].

[74] See 'Operations Manual MM03 – Matter reports and publications' 7, attached in Crime and Corruption Commission, second submission, dated 18 April 2024, annexure 8.

# Chapter 4: Legislation in other Australian jurisdictions: a comparison

The terms of reference direct attention to the legislation, operations, practices, and procedures of other Australian jurisdictions relating to public reporting on corruption.[1] However, it is necessary to set out something of the broader framework in which the anti-corruption bodies or officers in those jurisdictions operate, because to concentrate solely on their public reporting powers without an appreciation of just what is being reported there, and the legislative context in which that happens, would be misleading. The differences and similarities between jurisdictions must be understood before there can be any useful consideration of what might be drawn from their example for application in this State.

## 4.1 Legislative objects, purposes, and associated functions

The objects or purposes of the legislation in each State, Territory, and at the federal level vary in many respects. The functions that each jurisdiction bestows upon its anti-corruption body or officer differ accordingly. There are, however, some similarities. Many jurisdictions, for example, have objects, purposes, and functions concerned with public education and the exposure of corruption. Queensland is a notable exception in both respects.

### 4.1.1 Queensland

The objects of the *Crime and Corruption Act 2001* (as they relate to the Crime and Corruption Commission's corruption functions) are "to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector".[2] To achieve this, the Act provides for the Commission's "corruption functions" in s 33:

> (1) The commission has the following functions for corruption (the ***corruption functions***)—
>
> (a) to raise standards of integrity and conduct in units of public administration;
>
> (b) to ensure a complaint about, or information or matter involving, corruption is dealt with in an appropriate way, having regard to the principles set out in section 34.
>
> (2) The commission's ***corruption functions*** also include—
>
> (a) investigating and otherwise dealing with—
>
> (i) conduct liable to allow, encourage or cause corrupt conduct; and

(ii) conduct connected with corrupt conduct; and

(b) investigating whether corrupt conduct or conduct mentioned in paragraph (a)(i) or (ii) may have happened, may be happening or may happen.

The principles for performing those functions, set out in s 34, include the following:

**Public interest**

- the commission has an overriding responsibility to promote public confidence—
  - in the integrity of units of public administration and
  - if corruption does happen within a unit of public administration, in the way it is dealt with
- the commission should exercise its power to deal with particular cases of corruption when it is appropriate having primary regard to the following—
  - the capacity of, and the resources available to, a unit of public administration to effectively deal with the corruption
  - the nature and seriousness of the corruption, particularly if there is reason to believe that corruption is prevalent or systemic within a unit of public administration
  - any likely increase in public confidence in having the corruption dealt with by the commission directly.[3]

Without limiting how the Commission may perform its corruption functions, s 35(1) of the Act outlines some of the ways the corruption functions may be executed, and relevantly includes:

(a) expeditiously assessing complaints about, or information or matters (also ***complaints***) involving, corruption made or notified to it;

(b) referring complaints about corruption within a unit of public administration to a relevant public official to be dealt with by the public official;

...

(e) dealing with complaints about corrupt conduct, by itself or in cooperation with a unit of public administration;

(f) investigating and otherwise dealing with, on its own initiative—

(i) the incidence, or particular cases, of corruption throughout the State; or

(ii) the matters mentioned in section 33(2);

...

(h) when conducting or monitoring investigations, gathering evidence for or ensuring evidence is gathered for—

(i) the prosecution of persons for offences; or

(ii) disciplinary proceedings against persons;

...

(j) providing advice and recommendations to a unit of public administration about dealing with complaints about corruption in an appropriate way.

The Commission must, when dealing with a complaint about corruption, focus on more serious cases of corrupt conduct and cases of systemic corrupt conduct within a unit of public administration.[4]

The Commission also has the function of helping to prevent major crime and corruption.[5] In performing this function, the Commission may, generally speaking: analyse intelligence, the results of its investigations, and systems used by units of public administration;[6] use information gathered from any source in support of its function;[7] provide information, consult with, and make recommendations to, units of public administration;[8] provide information relevant to its function to the general community;[9] provide advice and training to units of public administration;[10] and report on ways to prevent corruption.[11] It must also ensure it has regard to its prevention function in performing all other functions.[12]

"Corruption" is defined in the *Crime and Corruption Act*, as meaning "corrupt conduct" (not surprisingly) and "police misconduct".[13] Generally speaking, "police misconduct" refers to conduct of a less serious nature (for example, conduct that "is disgraceful, improper or unbecoming a police officer"),[14] which is primarily the responsibility of the Commissioner of Police to deal with.[15] It is most unlikely to be the subject of a Commission investigation, much less to be the subject of a report, so this Report has focused upon "corrupt conduct".[16]

### 4.1.2 Commonwealth

The *National Anti-Corruption Commission Act 2022* (Cth) established the National Anti-Corruption Commission and office of the National Anti-Corruption Commissioner.[17] The Commissioner has detection, investigation, referral, oversight, and education

functions.[18] Relevantly for present purposes, the Commissioner's functions extend to reporting on corruption investigations and public inquiries, and reporting and making recommendations to the Minister about legislative or administrative reform relating to any matter dealt with by the Act.[19]

### 4.1.3 New South Wales

The *Independent Commission Against Corruption Act 1988* (NSW) seeks to promote the integrity and accountability of public administration by establishing an Independent Commission Against Corruption and conferring powers on that body.[20] One of the Commission's principal functions is to communicate the results of its investigations to appropriate authorities.[21] Its other principal functions include educating public officials and the public, fostering public support in combating corruption and the good repute of public administration, and making recommendations relating to the results of its investigations.[22] In exercising its functions, the Commission must regard protecting the public interest and preventing breaches of public trust as its paramount concerns.[23]

### 4.1.4 Australian Capital Territory

The objects of the *Integrity Commission Act 2018* (ACT) include, among other things, investigating and exposing corrupt conduct, and educating public officials and the community.[24] Notably, the Act is also one of only two in Australian jurisdictions with objects that expressly reference a need to balance the competing public interests in "exposing corruption in public administration" and "avoiding undue prejudice to a person's reputation".[25] The functions of the Integrity Commission—established by s 19—expressly include publishing "information about investigations conducted by the commission, including lessons learned".[26]

### 4.1.5 Victoria

As is the case for most of the Acts already mentioned, the objects of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) include the identification, investigation, exposure, prevention of, and education about, corrupt conduct (and, in this case, police personnel misconduct).[27] As might be expected, the Independent Broad-based Anti-corruption Commission has complementary identification, exposure, investigation and referral, and education and prevention functions.[28] The scope of those functions extends to activities including the making of recommendations to the public sector, providing information and educative services to the community, and publishing information on ways to prevent corrupt conduct.[29]

### 4.1.6 Northern Territory

The objects of the *Independent Commissioner Against Corruption Act 2017* (NT) include: preventing or minimising improper conduct; improving public confidence that improper conduct will be detected and dealt with appropriately; and providing mechanisms to deal with improper conduct.[30] These are achieved, in part, by

establishing the office of the Independent Commissioner Against Corruption,[31] whose functions for preventing, detecting and responding to "improper conduct" include developing and delivering education and training, advice, reports, information and recommendations, and making public comment.[32]

### 4.1.7 South Australia

South Australia is the second jurisdiction with legislative objects expressly seeking to balance public interests, this time in exposing corruption, misconduct, or maladministration, and avoiding undue prejudice to a person's reputation.[33] However, the provision is arguably more nuanced than that in the Australian Capital Territory Act; in that it recognises that the balance may weigh differently for each of corruption, misconduct, and maladministration.[34] The other primary objects of the *Independent Commission Against Corruption Act 2012* (SA) relevantly include the identification, investigation, prevention and minimisation of corruption (including by referral, education and evaluation of practices, policies and procedures).[35] The functions of the Independent Commission Against Corruption are directed to those same matters.[36]

### 4.1.8 Western Australia

Similarly to Queensland's Act, the purposes of the *Corruption, Crime and Misconduct Act 2003* (WA) include "to improve continuously the integrity of, and to reduce the incidence of misconduct in the public sector".[37] The purposes are "to be achieved, primarily by establishing ... the Corruption and Crime Commission".[38] Relevantly, the Commission's "serious misconduct" function is "to ensure that an allegation about, or information or matter involving, serious misconduct is dealt with in an appropriate way".[39] It performs that function in a number of ways, including: by investigating and referring allegations, making recommendations and furnishing reports on the outcomes of investigations, and reporting on ways to prevent and combat "serious misconduct".[40]

### 4.1.9 Tasmania

The object of the *Integrity Commission Act 2009* (Tas) is "to promote and enhance standards of ethical conduct by public officers by the establishment of an Integrity Commission".[41] The objectives of the Integrity Commission are to: improve the standard of conduct, propriety and ethics in public authorities; enhance public confidence that misconduct will be investigated and dealt with; and "enhance ... ethical conduct by adopting a strong, educative, preventative and advisory role".[42] These objectives are achieved, broadly speaking, by: educating public officers and the public; assisting public authorities to deal with misconduct; dealing with serious misconduct or misconduct by designated public officers; and "making findings and recommendations in relation to its investigations and inquiries".[43] Similarly to Queensland's legislation, the Act does not speak of "exposing" relevant conduct.

## 4.2 What is corrupt conduct?

Reference to the statutory definition of "corrupt conduct" (or equivalent behaviour), in each jurisdiction is critical. Generally, the definitions determine whether the body or officer in question can investigate, refer, or take other action in relation to particular conduct. In each case, the definition focuses on public administration; that is, the defined conduct must always have some nexus with a public body, official, or function. But the scope of what constitutes the conduct in question otherwise varies considerably. Some definitions are broad, while others are narrow, or introduce a "high threshold", for example, because they are only concerned with criminal behaviour.

### 4.2.1 Queensland

The *Crime and Corruption Act* is, relevantly, directed to "corrupt conduct", defined in s 15. The definition specifies two categories of behaviour which may be "corrupt conduct". The first is where a person's conduct, regardless of whether they hold or held an appointment:

- adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of a unit of public administration or person holding an appointment, and
- it results, or could result, directly or indirectly, in the performance of functions or the exercise of powers in a way that is not honest or impartial, or involves a breach of trust or misuse of information or material acquired in connection with the performance of functions or exercise of powers of a person holding an appointment, and
- would, if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person's services.[44]

The second category of "corrupt conduct" is where a person's conduct, regardless of whether they hold or held an appointment:

- impairs, or could impair, public confidence in public administration, and
- involves, or could involve:
    - collusive tendering
    - fraud relating to an application for a licence, permit or authority under an Act of a specified type
    - dishonestly obtaining or helping someone dishonestly obtain a benefit from the payment or application of public funds or disposition of State assets

- evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue, or
- fraudulently obtaining or retaining an appointment, and

- would, if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for terminating the persons services.[45]

As will be apparent, in each case, behaviour cannot be "corrupt conduct" unless it "would, if proved, be … a criminal offence … or … a disciplinary breach providing reasonable grounds for terminating the person's services".[46]

### 4.2.2 Commonwealth

The *National Anti-Corruption Commission Act* is similarly concerned with "corrupt conduct". And, like that in the *Crime and Corruption Act*, the definition in question captures various behaviours which: do or could adversely affect the honest or impartial exercise of public powers, functions, or duties; constitute or involve a breach of public trust or abuse of public office; or involve misuse of specific information or documents.[47] However, unlike Queensland's, the Commonwealth's definition of corrupt conduct does not require the conduct in question to constitute a criminal offence or reasonable basis for terminating a person's employment before it is classified as "corrupt conduct".[48]

### 4.2.3 New South Wales

The *Independent Commission Against Corruption Act* is likewise concerned with "corrupt conduct". Like Queensland's, the Act operates so that the behaviours specified in the legislation must meet certain thresholds before they can be considered "corrupt conduct".[49] In each case, the conduct must constitute a criminal offence,[50] constitute or involve a disciplinary offence as defined,[51] be reasonable grounds for termination,[52] or in the case of a Minister, Parliamentary Secretary or Member of Parliament, involve "a substantial breach of an applicable code of conduct".[53]

### 4.2.4 Australian Capital Territory

The *Integrity Commission Act* is again directed to "corrupt conduct".[54] And, once again, in addition to its falling within one of several specified categories,[55] the conduct in question must constitute a criminal offence, serious disciplinary offence, or grounds for terminating the services of a public official.[56] In this case, "serious disciplinary offence" includes any serious misconduct, or other matter that does or may constitute grounds for termination or significant employment penalty.[57] "Public official" includes a Member of the Legislative Assembly and their staff.[58] It is worth noting that, as with most jurisdictions,[59] the Integrity Commission must prioritise investigating more serious behaviours,[60] in this case, "serious corrupt conduct" and "systemic corrupt conduct".[61]

### 4.2.5 Victoria

The Independent Broad-based Anti-corruption Commission is likewise concerned with "corrupt conduct" (and police conduct),[62] and must prioritise serious or systemic corrupt conduct.[63] To amount to "corrupt conduct" under the *Independent Broad-based Anti-corruption Commission Act*, the conduct must be of a type specified in one of ss 4(1)(a)–(e) and must constitute a "relevant offence".[64] (The behaviours in ss 4(1)(a)–(e) include, for example, conduct "that adversely affects the honest performance by a public officer or public body or his or her or its functions …")[65] "Relevant offence" means an indictable offence against an Act or a specified common law offence.[66]

### 4.2.6 Northern Territory

The *Independent Commissioner Against Corruption Act* is directed to "improper conduct".[67] That term in turn encapsulates "corrupt conduct", other defined conduct, offences against the Act, and related secondary conduct.[68] "Corrupt conduct" is once again behaviour falling into one of several categories, being (broadly) conduct engaged in by: a public officer or body;[69] a public body, Minister, Member of the Legislative Assembly or local councillor;[70] or any person.[71] It is unnecessary to expand upon the nature of the conduct falling within each category except to note that it is, on the whole, capable of capturing conduct which might not constitute a criminal offence or provide a basis for terminating a person's employment.[72]

### 4.2.7 South Australia

The *Independent Commission Against Corruption Act* speaks of "corruption in public administration", "misconduct" and "maladministration".[73] However, the functions of the Independent Commission Against Corruption generally concern the first of those (and otherwise its function is referring suspected misconduct, maladministration and offences falling outside "corruption in public office" to other entities).[74] To be "corruption in public administration", conduct must be a specified criminal offence or related secondary act.[75] Consequently, the South Australian Commission is primarily concerned with conduct that is more serious than that captured by the various "corrupt conduct" definitions in other jurisdictions.

### 4.2.8 Western Australia

The *Corruption, Crime and Misconduct Act* uses the terminology "misconduct" and "serious misconduct".[76] "Misconduct" consists of the behaviours identified in ss 4(a)–(d) of the Act, which are, paraphrased, where a public officer: corruptly acts or fails to act in the performance of their functions; takes advantage of their position to obtain a benefit or cause detriment; or commits an offence punishable by two or more years imprisonment while acting or purporting to act in their official capacity.[77] Section 4(d) specifies a host of further behaviours engaged in by a public officer, each of which must constitute or be capable of constituting a disciplinary offence providing grounds for termination.[78] The distinction between the paragraphs of s 4 is relevant because the

relevant functions of the Corruption, Crime and Misconduct Commission concern "serious misconduct",[79] meaning conduct described in ss 4(a)–(c) of the Act or police misconduct.[80]

### 4.2.9 Tasmania

Tasmania's Act also uses the terminology "misconduct" or "serious misconduct" by public officers.[81] In general terms, "misconduct" captures conduct or attempted conduct that is or involves: a breach of an applicable code of conduct; dishonest or improper performance of a function or exercise of power; misuse of specified information, material or public resources; or which adversely affects or could adversely affect the honest and proper performance of functions or exercise of powers.[82] "Serious misconduct" is misconduct that could, if proved, be a crime or an offence of a serious nature, or which provides reasonable grounds for termination.[83]

## 4.3 Investigation reports

All jurisdictions provide for the making of a report in relation to an investigation. The time or stage at which that can or should occur, the circumstances under which it may or must be done, and the persons or bodies to whom a report's contents are permitted or required to be published, vary considerably.

### 4.3.1 Queensland

In Queensland, the only provision which permits the Commission to report on a corruption investigation is s 49 of the *Crime and Corruption Act*.[84] The Commission may report on an investigation if it decides that prosecution proceedings or disciplinary action should be considered.[85] Such a report can only be provided to one of a designated list of recipients, for example, a prosecuting authority (for the purpose of any proceedings the authority considers warranted).[86] If the Commission decides that prosecution proceedings for an offence under s 57 of the *Criminal Code* should be considered ("False evidence before Parliament"), it must report to the Attorney-General.[87] A report of the type just mentioned "must contain, or be accompanied by, all relevant information known to the Commission" that falls within ss 49(4)(a)–(d).

The only other circumstance in which the Commission may report on a corruption investigation arises where the Parliamentary Crime and Corruption Committee directs it to investigate a matter falling within its corruption functions. In that case, the Act requires that the Commission report the results of its investigation to the Committee.[88]

### 4.3.2 Commonwealth

Part 8 of the *National Anti-Corruption Commission Act* is concerned with reporting on corruption investigations.[89] Under s 149(1) of the Act, the National Anti-Corruption Commissioner must prepare a report after completing a corruption investigation. The report must set out: the Commissioner's findings or opinions on corruption issues;[90] a

summary of the evidence and other material on which the findings or opinions are based;[91] any recommendations that the Commissioner thinks fit to make;[92] and, if recommendations are made, the reasons for those recommendations.[93]

If the Commissioner forms the opinion that a person whose conduct has been investigated has engaged in corrupt conduct of a serious or systemic nature, the report must include a statement to that effect.[94] Likewise, if the Commissioner's opinion is that a person has not engaged in corrupt conduct, that must be set out in the report.[95] The Commissioner may also—where satisfied that it is appropriate and practicable to do so—include a statement to avoid damage to the reputation of a person who gave evidence at a hearing and is not the subject of any relevant findings or opinions.[96]

Information which otherwise must be incorporated is instead to be excluded if it is information (or the content of a document) the disclosure of which the Attorney-General has certified would be against the public interest,[97] or which the Commissioner is satisfied is "sensitive information".[98] Where information is excluded on those bases, a "protected information" report must be prepared setting out the information and reasons for excluding it from the investigation report.[99]

A copy of the investigation report must be given to a variety of persons including the Prime Minister, head of an agency, Australian Public Service Commissioner, President of the Senate, or Speaker of the House of Representatives as the circumstances dictate.[100] Any protected information report must be given to a Minister, or the Prime Minister, as required, and may be given to other persons only in limited circumstances.[101]

### 4.3.3 New South Wales

In New South Wales, investigation reports may be prepared "in relation to any matter that has been or is the subject of an investigation".[102] Such reports must be prepared in relation to a matter referred by both Houses of Parliament and in relation to investigations conducted as a public inquiry, unless the Houses direct otherwise.[103]

The Independent Commission Against Corruption is permitted to include statements as to its findings, opinions and recommendations, and reasons for those.[104] Particular provision is made in relation to recommendations concerning local government and planning authorities, and Aboriginal Land Councils.[105] The Commission may not include findings or opinions that conduct is "corrupt conduct" unless it is "serious".[106] However, it may include them about conduct that may be "corrupt conduct" under the *Independent Commission Against Corruption Act* if it is not described that way.[107]

For each "affected person",[108] there must be a statement as to whether the Commission is of the opinion that consideration should be given to obtaining advice about: prosecution of the person for a specified criminal offence; taking action for a specified

disciplinary offence; or action for their dismissal.[109] As in most Australian jurisdictions, the Act prohibits inclusion in a report of:

- a finding or opinion that a person is guilty of or has committed, is committing or is about to commit a criminal or disciplinary offence[110]
- a recommendation or an opinion that a person be prosecuted for a criminal or disciplinary offence[111]
- information that would identify a person who is not the subject of an adverse finding unless satisfied it is necessary to disclose it in the public interest, doing so will not cause unreasonable damage to the person's reputation, safety or wellbeing, and the report states that the person is not the subject of any adverse finding.[112]

All reports regarding the subject of an investigation referred by both Houses of Parliament or in which a public inquiry has been conducted must be given to the Presiding Officer of each House of Parliament.[113]

### 4.3.4 Australian Capital Territory

The ACT Integrity Commission is one of the more recently established anti-corruption bodies in Australia.[114] No doubt for that reason, no "investigation report" prepared under s 182 of the *Integrity Commission Act* appears to have been tabled in the Legislative Assembly of the Australian Capital Territory. Notwithstanding, the requirements for such a report under the Act are relatively clear. After completing an investigation, the Integrity Commission must prepare a report of the investigation.[115] The report may include findings, opinions, recommendations, and reasons for those.[116] However, the Commission must not include in a report:

- a finding or opinion that a person is guilty of or has committed, is committing or is about to commit an offence, or has engaged in, is engaging in, or is about to engage in, conduct that would be reasonable grounds for termination action[117]
- a recommendation or opinion that a person should be prosecuted for an offence or be subject to termination action[118]
- a finding that a person has engaged in, is engaging in, or is about to engage in, corrupt conduct, unless it is serious corrupt conduct or systemic corrupt conduct[119] (Although, as in New South Wales, the Commission may include findings or opinions about conduct that may be corrupt conduct if it is not described in that way.[120])

- information that would compromise another investigation under the Act or a criminal investigation, proceeding, or other legal proceeding known to the Commission[121]
- information that would identify a person who is not the subject of an adverse comment or opinion, unless the Commission is satisfied that it is necessary or desirable to disclose it in the public interest, and that it will not cause unreasonable damage to the person's reputation, safety or wellbeing, and the report states that the person is not the subject of any adverse comment or opinion[122]
- information the Commission considers would, if disclosed, be on balance contrary to the public interest (having regard to specified factors including unreasonable infringement on rights under the *Human Rights Act 2004* (ACT)),[123] unless it is satisfied the substance of the information is public knowledge.[124]

If the Legislative Assembly is sitting when the Commission completes an investigation report, the Commission must give the report to the Speaker,[125] otherwise the Commission must give a copy to the Speaker for each member of the Legislative Assembly.[126]

For completeness, it is worth highlighting that while no investigation report has been published in the Legislative Assembly to date, the Commission has published several "special reports" pursuant to s 206 of the Act. It may prepare such reports at any time and in any matter relating to the exercise of the Commission's functions. These reports are subject to substantially the same restrictions as those outlined above.[127]

### 4.3.5 Victoria

As in Queensland, the *Independent Broad-based Anti-corruption Commission Act* does not refer to the "preparation" of an investigation report. Instead, s 162 (entitled "Special reports") empowers the Independent Broad-based Anti-Corruption Commission to "cause a report to be transmitted to each House of Parliament" at any time.[128] Such a report may be "on any matter relating to the performance of its duties and functions".[129] Information, findings, comments, and opinions that cannot be contained in the report include:

- information that would prejudice any relevant criminal investigation, proceeding or legal proceeding of which the Commission is aware[130]
- a statement as to a finding or opinion that a specified person is guilty of, has committed, is committing, or is about to commit, a criminal or disciplinary offence[131]

- a recommendation that a stated person be, or opinion that the person should be, prosecuted for a criminal or disciplinary offence,[132] and
- information that would identify any person not the subject of an adverse finding, unless the Commission is satisfied it is necessary or desirable to do so in the public interest and it will not cause unreasonable damage to the person's reputation, safety or wellbeing, and the report states the person is not the subject of any adverse comment or opinion.[133]

### 4.3.6 Northern Territory

Where the Independent Commissioner Against Corruption has held a public inquiry, they are obliged to make an investigation report; the decision to make an investigation report is otherwise discretionary.[134] The report is to be made to the authority responsible for the public body or public officer whose conduct is the subject of the investigation.[135]

The report may include as much information as the Commissioner deems appropriate, and findings as to whether a person has engaged in, is engaging in or is about to engage in, improper conduct, and whether an allegation has been referred, or warrants referral to, a referral entity.[136] It must not include a finding that a person has committed, is committing or is about to commit, an offence or a breach of discipline, or a finding in relation to the prospects of success of any current or future prosecution or disciplinary action.[137]

Where the report is being made to the Speaker or Deputy Speaker, it must not name or identify any person other than a Member of the Legislative Assembly in relation to a matter that amounts to no more than misconduct or unsatisfactory conduct, unless it gives rise to a suspicion of systemic misconduct or unsatisfactory misconduct, or other exceptional circumstances exist that make it appropriate to do so.[138]

Where an investigation report is being made to the Speaker or Deputy Speaker (such that it will subsequently be tabled and publicly available) or is to be published by the Commissioner under s 50A of the *Independent Commissioner Against Corruption Act*, the report must not contain coerced evidence, unless the material is already in the public domain.[139] Reports made to a responsible body other than the Speaker or Deputy Speaker have no such requirements, unless it is proposed to publish the report under s 50A of the Act.

### 4.3.7 South Australia

The Independent Commission Against Corruption in South Australia may prepare a report setting out findings or recommendations after completing an investigation in respect of matters raising potential issues of corruption in public administration.[140] However, that must not occur until all criminal proceedings arising from the

investigation are complete, or the Commission is satisfied that no criminal proceedings will be commenced (in which case the report must not identify any person involved in the investigation).[141] Any such report must not include findings or suggestions of criminal or civil liability, nor findings that, if proved to the requisite standard by a court, would constitute a criminal offence or civil wrong.[142] A copy of the report must in some cases be provided to the authority responsible for any public officer to whom the report relates, the Minister responsible for the authority, and in all cases be given to the Attorney-General, President of the Legislative Council and the Speaker of the House of Assembly.[143]

### 4.3.8 Western Australia

The Corruption and Crime Commission may at any time prepare a report on any matter that has been the subject of an investigation or any "received matter" as defined.[144] Such a report may include statements as to any of the Commission's assessments, opinions and recommendations, and the reasons for those.[145] However the Commission must not publish or report a finding that a person is guilty of or has committed, is committing or is about to commit a criminal or disciplinary offence.[146] The Commission may cause the report to be laid before each House of Parliament or, where a House is not sitting, provide a copy of the report to the Clerk of that House.[147]

### 4.3.9 Tasmania

Tasmania's legislation is like that in Queensland in this respect: there are no express publication provisions regarding Integrity Commission investigation reports. When the Commission completes an investigation, the investigator must make a report of their findings for the chief executive officer,[148] who must incorporate it into a report to the Board of the Commission with submissions or comments and recommendations for further action.[149] The Board may then dismiss the complaint or refer the report of the investigation and any information obtained in the conduct of the investigation to any of the following:

- the principal officer of the relevant public authority for action
- an appropriate integrity entity for action
- an appropriate Parliamentary integrity entity
- the Commissioner of Police or Director of Public Prosecutions for action
- the responsible Minister
- any other person whom the Board considers appropriate.[150]

If the Board refers the matter, it may make recommendations as to the appropriate action to be taken.[151] A person to whom the Board refers a report must notify it of any action taken in relation to the report in such time and manner as the Board requires.[152]

Rather than refer the report, the Board may recommend to the Premier that a commission of inquiry be established, require further investigation, or determine that an inquiry be undertaken by an Integrity Tribunal.[153] If the Board determines that an inquiry should be undertaken by an Integrity Tribunal, at the conclusion of the inquiry the Tribunal may make a finding that misconduct or serious misconduct has occurred, and make such a report as it considers appropriate.[154] The Integrity Tribunal may publish, in such manner as it thinks fit, its determination.[155]

### Table 1: Investigation reports upon conclusion of an investigation

| | Mandatory | Discretionary | Pre-conditions |
|---|---|---|---|
| **Qld** | Yes – s 57 cases – to the Attorney-General* | Yes (otherwise) | Where prosecution proceedings or disciplinary proceedings should be considered |
| | Yes | - | Where directed by the Parliamentary Crime and Corruption Commission to investigate a matter |
| **Cth** | Yes | - | - |
| **NSW** | Yes – where public hearing or as directed by the houses of Parliament | Yes (otherwise) | - |
| **ACT** | Yes | - | - |
| **Vic** | - | Yes | - |
| **NT** | Where public inquiry held | Yes (otherwise) | - |
| **SA** | - | Yes | All criminal proceedings arising from the investigation must be complete, or the Commission must be satisfied that no criminal proceedings will be commenced |
| **WA** | - | Yes | - |
| **Tas** | Yes | Yes – Integrity Tribunal only | - |

**where the commission decides that prosecution proceedings under s 57 Criminal Code should be considered.*

## 4.4 Publishing of reports

The legislation in each Australian jurisdiction provides a mechanism by which an anti-corruption body or officer's reports may be tabled in Parliament. The way that occurs is different in every instance, but there are many similarities. Notably, in most jurisdictions other than Queensland, the body or officer in question can either table any investigation report directly or provide it to the Speaker or Clerk for tabling. The position is slightly different at the federal level and in the Northern Territory, where only particular reports must be tabled; other reports may be tabled at the relevant Minister's discretion.

### 4.4.1 Commonwealth

Where an investigation report is given to the Prime Minister or Minister, and one or more public hearings were held during the investigation, the Prime Minister or Minister must table the report in each House of Parliament within 15 sitting days of its receipt.[156] For reports on investigations that did not involve a public hearing, the Minister or Prime Minister may table the report in accordance with the usual parliamentary procedures. The National Anti-Corruption Commissioner may also publish the whole or part of an investigation report if it has been given to the Minister or Prime Minister and the Commissioner is satisfied it is in the public interest to do so, whether or not it has been tabled.[157] Limitations exist, however, where a report has not been tabled in Parliament, and more than three months have passed since it was provided to the Prime Minister or Minister.[158] In those circumstances, the report must not include any opinion, finding or recommendation expressly or impliedly critical of a Commonwealth agency, a State or Territory government entity or any other person, unless the relevant agency, entity, or person has been given a statement setting out the opinion, finding or recommendation, and given an opportunity to respond to it and its proposed publication.[159]

### 4.4.2 New South Wales

If the Independent Commission Against Corruption has prepared a report, it must be furnished to the Presiding Officer of each House of Parliament.[160] Where a matter has been referred by both Houses of Parliament (and the Commission is directed to report), or a public inquiry has been held, provision of the report must occur as soon as possible after the Commission's involvement in the matter concludes.[161] A report furnished to the Presiding Officer of a House of Parliament must be laid before the House within 15 sitting days of its receipt, and may include a recommendation it be made public without delay.[162] If such a recommendation is included, the Presiding Officer may make the report public whether or not the House is in session or the report has been laid before it,[163] in which case the report attracts the same privileges and immunities as if it had been laid before the House.[164]

### 4.4.3 Australian Capital Territory

Where an investigation report is provided to the Speaker of the Legislative Assembly, and the Assembly is sitting, the Speaker must present the report the next sitting day.[165] If the Legislative Assembly is not sitting, the Speaker must arrange for a copy of the report to be given to each member of the Assembly,[166] and present the report to the Assembly on the next sitting day.[167] The report is taken to have been presented on the day the Integrity Commission gives it to the Speaker,[168] and publication is taken to have been ordered.[169] The Commission must then publish the investigation report on its website as soon as practicable.[170] Special reports are published in the same way.[171] Where the Commission has published an investigation report containing a finding or opinion that a person has engaged in, is engaging in, or is about to engage in, corrupt conduct, or a comment or opinion which is adverse to a person, it must also publish the outcome of any prosecution or termination action against that person on its website.[172]

### 4.4.4 Victoria

The Independent Broad-based Anti-corruption Commission may at any time provide a report on its performance of its functions to each House of Parliament,[173] and the Clerk of each House must lay it before the House on the day it is received, or the next sitting day.[174] If neither House is sitting, the Commission must give a day's notice of intention to provide the report on a specified date to the Clerk of each House, provide the report accordingly, and publish it on the Commission website.[175] The Clerk must then notify each member of the House of the notice, give each member a copy of the report as soon as practicable after it is received, and cause it to be laid before the House on the next sitting day.[176] A report provided in this way is taken to have been published under the order or authority of the Houses of Parliament.[177]

### 4.4.5 Northern Territory

If the Independent Commissioner Against Corruption makes an investigation report concerning conduct of a Minister or Member of the Legislative Assembly to the Speaker or Deputy Speaker, it must be tabled on the next sitting day after it is received.[178] There is no requirement to table investigation reports in any other case, though it may be tabled by a Member of the Legislative Assembly under the usual parliamentary procedures.[179] As a result of recent amendments,[180] the Commissioner may publish an investigation report not provided to the Speaker or Deputy Speaker, if the Commissioner is of the opinion it is appropriate to do so.[181] A report published in this way must not name or identify any person in relation to a matter if the conduct in question amounts to no more than misconduct or unsatisfactory conduct, unless the conduct gives rise to a suspicion of systemic misconduct or unsatisfactory conduct, or other exceptional circumstances exist that make it appropriate to name or otherwise identify the person.[182] An investigation report published in either of the ways above must not contain coerced evidence, unless it is already in the public domain.[183]

### 4.4.6 South Australia

An investigation report must be provided to the Attorney-General, President of the Legislative Council and the Speaker of the House of Assembly.[184] (The report must also be provided to the public authority responsible for any public officer to whom the report relates and to the Minster responsible for that public authority.[185]) The President and Speaker must lay the investigation report before their respective Houses on the first sitting day 28 days (or a shorter number of days approved by the Attorney-General) after it is received.[186]

### 4.4.7 Western Australia

The Corruption and Crime Commission may cause a report to be laid before each House of Parliament.[187] Where a House is not sitting, the Commission may transmit a copy of the report to the Clerk of that House,[188] and it is then to be regarded as having been laid before that House.[189] However, if the Commission considers it appropriate to do so, it may provide the report to the relevant Minister, or another Minister, or the Standing Committee instead of having it laid before each House of Parliament.[190]

### 4.4.8 Tasmania

To date, the Integrity Commission has relied on s 11(3) of the *Integrity Commission Act* to present investigation reports to Parliament for publication; it allows the Commission at any time, to lay before each House of Parliament a report on any matter arising in connection with the performance of its functions or exercise of its powers. It may also at any time provide a report to the Joint Committee which monitors it on the performance of its functions or exercise of its powers relating to an investigation or inquiry.[191]

### Table 2: Circumstances where publication of an investigation report is mandatory

| | Circumstance | Relevant recipient | Tabled* | Independent publication |
|---|---|---|---|---|
| **Qld** | Where directed by the Parliamentary Crime and Corruption Committee to investigate a matter falling within the Commission's corruption function | Parliamentary Crime and Corruption Committee, or Speaker, where directed | Next sitting day | |
| **Cth** | Where report is required to be provided to the Prime Minister or the Minister; and a public hearing has been held | Prime Minister or Minister | 15 sitting days | Yes – discretionary |
| **NSW** | Where a public inquiry has been conducted, or on | Presiding Officer of each | 15 sitting days | |

| | Circumstance | Relevant recipient | Tabled* | Independent publication |
|---|---|---|---|---|
| | matters referred by the Commission as directed | House of Parliament | | |
| **ACT** | After completing an investigation | Speaker | Next sitting day | Must publish on the Commission's website after giving report to the Speaker |
| **Vic** | Where a report is prepared and transmitted to each House of Parliament, the Clerk of each House must table on the day received or the next sitting day | | | Must publish on the Commission's website after giving a report to the Clerk |
| **NT** | Where the conduct relates to a Minister or a Member of the Legislative Assembly, or the Speaker | Speaker or Deputy Speaker | Next sitting day | Yes – discretionary |
| **SA** | Where a report is prepared, in any case it must be provided to the Attorney-General, President of the Legislative Council, and the Speaker of the House of the Assembly | | First sitting day after 28 days, or such shorter number of days as the Attorney-General approves | |
| **WA** | The Commission may cause a report to be laid before each House of Parliament | | | |
| **Tas** | A report may be laid before each House of Parliament | | | The Integrity Tribunal may publish in such a manner as it thinks fit, its determination |

**where Houses of Parliament are sitting.*

## 4.5 Reporting to convey recommendations

Separate from other reporting powers, some jurisdictions provide their anti-corruption agencies with a specific power to make recommendations to public bodies, which may be followed up and published if the anti-corruption body is not satisfied with the response of the public body. In Queensland, the Crime and Corruption Commission can make recommendations arising from corruption investigations to units of public

administration without preparing a report in the exercise of its prevention functions,[192] but it has no specific power to publish those recommendations to the world at large.

### 4.5.1 Australian Capital Territory

The Integrity Commission may make private recommendations at any time about a matter arising from an investigation to the relevant person responsible, such as the head of a public sector entity for matters involving a public sector entity.[193] The recommendation must state the action the Commission considers should be taken,[194] and may require a response from the recipient within a stated reasonable time detailing whether they have taken, or intend to take, the action recommended, or the reasons for not taking or intending to take the action.[195] The Commission may make the private recommendation public if it does not receive the response within the stated time, or if it considers the recipient has failed to take appropriate action.[196] How the recommendation is to be made public is not the subject of any specific provision.

### 4.5.2 Victoria

The Independent Broad-based Anti-corruption Commission may make recommendations at any time in relation to a matter arising from an investigation about any action it considers should be taken, to the relevant principal officer, responsible minister, and/or the Premier.[197] However, where the recommendation is not contained in a report it must be made privately.[198] The Commission may require the recipient to provide a report within a reasonable time stating whether or not they have taken, or intend to take, the action recommended, or the reasons for not doing so.[199] Specific provisions apply where the request is made to the Chief Commissioner of Police.[200]

The Commission may make a recommendation public if it considers there has been a failure to take appropriate action in relation to the recommendation.[201] It may be made public by inclusion in a special report provided under s 162 or in an annual report pursuant to s 165, subject to the requirements of those provisions, which include procedural fairness in relation to adverse material and the inclusion of any response in the report.[202]

A private member's Bill is currently before the Victorian Parliament, which seeks to expand the Commission's power to publish a recommendation not contained in a report.[203] If passed, the Bill would empower the Commission to publish a recommendation not contained in a report, but only insofar as it related to matters of an institutional nature and did not contain a comment or opinion adverse to anyone.[204] Any publication of the recommendations would need to be accompanied by a statement of the reasons why publication was in the public interest.[205]

### 4.5.3 Northern Territory

The Northern Territory Independent Commissioner Against Corruption may, at any time, make recommendations to a public body or officer in relation to improper conduct, if

the Commissioner considers the recommendations are within the functions of the body or officer to implement or progress.[206] If those recommendations relate to an investigation, the Commissioner must identify the investigation to which they relate, and provide information to assist the recipient to understand why the recommendations have been made and what they are intended to achieve.[207]

The Commissioner may request the public body or officer to advise the steps taken or proposed to be taken to implement the recommendations, or if no steps or only some steps have been or will be taken, the reasons for that.[208] If not satisfied adequate steps have been taken within a reasonable time, the Commissioner may give the recommendations and any comments made by the public body or officer to the responsible Minister, and thereafter make a report concerning the recommendations to the "ICAC Minister" (the Minister administering the *Independent Commissioner Against Corruption Act*).[209] That report may contain as much information as the Independent Commissioner Against Corruption considers appropriate, and must contain a fair representation of any reasons provided by the public body, officer, or responsible Minister.[210] The report must not contain any coerced evidence, unless it is already in the public domain.[211] The ICAC Minister must table a copy of the report in the Legislative Assembly within six sitting days of receiving the report.[212]

### 4.5.4 South Australia

The Independent Commission Against Corruption may make recommendations to an inquiry agency or public authority in response to issues observed in in the course of an investigation.[213] The Commission may recommend changing or reviewing practices, policies or procedures, or conducting or participating in educational programs.[214] Where it has decided to make recommendations, the Commission must prepare a report containing those recommendations and provide a copy to the President of the Legislative Council and the Speaker of the House of Assembly,[215] who must lay it before their respective Houses the first sitting day after its receipt.[216]

Where the Commission is not satisfied with the agency or authority's compliance with the recommendations, it may give the agency or authority an opportunity to comment on the grounds of its dissatisfaction.[217] If not satisfied with the response, the Independent Commission Against Corruption may submit a report to the responsible Minister setting out the grounds for its dissatisfaction and any comments from the agency or authority.[218]

If the Minister responsible does not within 21 days provide comments which satisfy the Commission, it may provide a report setting out the grounds of its dissatisfaction to the President of the Legislative Council and the Speaker of the House of Assembly,[219] who must table it.[220]

## 4.6 Publishing statements

The Commonwealth, Northern Territory and South Australia are the only jurisdictions whose corruption bodies or officers have express power to make public statements.[221] However, beyond that general similarity, the powers in each differ in several respects. It is worth noting that notwithstanding the lack of express powers elsewhere, corruption bodies or officers in most Australian jurisdictions make public statements about their investigations, apparently relying on an implied power to do so.[222]

### 4.6.1 Commonwealth

The National Anti-Corruption Commissioner may make a public statement about a corruption issue at any time (whether or not they deal with the issue), including where they are satisfied it is appropriate and practicable to do so to avoid damage to a person's reputation.[223] Such statements are subject to limitations, and must not:

- include an opinion or finding about whether a person engaged in corrupt conduct, unless that information is contained in a report prepared under specified parts of the *National Anti-Corruption Commission Act*[224]
- divulge information, or the content of a document the disclosure of which the Attorney-General has certified as being contrary to the public interest or information which the Commissioner is satisfied is "sensitive information" as defined[225]
- be made unless the head of each Commonwealth agency or State or Territory government entity to which the information in the statement relates has been consulted about whether the information is "sensitive information".[226]

No statement can include an opinion, finding or recommendation critical of a Commonwealth agency, State or Territory government entity, the Commission, or any person unless the procedural fairness processes in s 231 have been complied with.[227]

### 4.6.2 Northern Territory

The Independent Commissioner Against Corruption may make public statements in relation to a matter they are dealing with or have dealt with, including a matter that has been referred to a referral entity,[228] for any of the following purposes:

- to provide information about action taken or that may be taken by the Commissioner in relation to a matter
- to indicate that it would be inappropriate to comment on a matter
- to refuse to confirm or deny anything in relation to a matter
- to seek evidence in relation to a matter in the course of preliminary inquiries into, or an investigation of, the matter

- to provide information about a referral, including the outcome of the referral
- to address public misconception about a person or issue of which the Commissioner has particular knowledge
- to request the Legislative Assembly to authorise the publication, or disclosure to the Commissioner, of information or an item that is or may be the subject of parliamentary privilege.[229]

Such a statement may be made in a manner determined by the Commissioner, to the public at large, a section of the public, or a particular person or body.[230] However, the Commissioner cannot issue a public statement that:

- expresses an opinion as to whether a person has committed, is committing or is about to commit a breach of discipline
- comments on the prospects of success of any current or future prosecution or disciplinary action or
- names or identifies any person (other than a Member of the Legislative Assembly) in relation to a matter where conduct amounts to no more than misconduct or unsatisfactory conduct unless exceptional circumstances exist, or it is suspected there is systemic misconduct or unsatisfactory conduct.[231] ("Exceptional circumstances" is not defined.)

### 4.6.3 South Australia

Following amendments in 2021,[232] the Independent Commission Against Corruption is generally prohibited from making any public statement that discloses (or contains information from which it could be inferred) that a matter is, is proposed to be, or was the subject of a complaint or report, or is being or is proposed to be investigated.[233] The terms of the prohibition remain broadly the same once an investigation is completed, if the matter has been referred to any law enforcement agency, inquiry agency or public authority (except where the statement is in a report that complies with s 42).[234]

The prohibition is relaxed in any other case where an investigation has concluded; the Commission may then make a public statement if satisfied that no criminal or penalty proceedings, or disciplinary action will be commenced.[235] It bears noting that, before making any public statement in a matter in which no criminal or penalty proceeding, or disciplinary action, will be commenced, the Commission must have regard to:

- any benefit that might be derived from making the statement
- whether the statement is necessary to allay public concern or to prevent or minimise the risk of prejudice to a person's reputation

- the risk of prejudicing the reputation of a person by making the statement
- if an allegation against a person has been made public and, in the opinion of the Commissioner after an investigation, the person is not implicated in corruption in public administration—whether the statement would redress prejudice caused to the person's reputation as a result of the allegation being public, and
- whether the person has requested that the Commission make the statement.[236]

As will be seen in chapter 6, this list of factors proved influential in the design of a similar power to make public statements in Papua New Guinea.

In all circumstances, a public statement must not include findings or suggestions of criminal or civil liability, or findings that would, if proved to the requisite standard, constitute a criminal offence or civil wrong.[237]

## 4.7 Procedural fairness for adverse comments or opinions

All jurisdictions have legislated procedural fairness requirements. As will be seen, many of those are far more stringent than s 71A of the *Crime and Corruption Act*.

### 4.7.1 Commonwealth

If an investigation report will include an opinion, finding or recommendation that is critical (expressly or impliedly) of a Commonwealth agency, State or Territory government entity, or another person, a statement setting out the opinion, finding or recommendation must be provided, with a reasonable opportunity to respond.[238] "Within a reasonable period" is not defined. If the opinion or finding is that a person has engaged in corrupt conduct, any response to the finding or opinion must be included in the investigation report by way of a summary of the substance of the response, if requested.[239] An exception arises for information (or the content of a document) the disclosure of which the Attorney-General has certified would be against the public interest, or which the Commissioner is satisfied is "sensitive information".[240]

There are additional restrictions where the Commissioner is of the opinion that a person has not engaged in corrupt conduct. In that case, the investigation report must not contain any information in a response that would identify that person, unless the Commissioner is satisfied that it is necessary to do so in the public interest and it will not cause unreasonable damage to the reputation, safety or wellbeing of the person, and the report includes a statement that, in the Commissioner's opinion, the person has not engaged in corrupt conduct.[241]

### 4.7.2 New South Wales

The Independent Commission Against Corruption is not authorised to include an adverse finding against a person in a report under s 74 unless it has given the person a reasonable opportunity to respond, and, if they request it, a summary of the substance

of their response disputing the adverse finding is included in the report.[242] The report must not include information in that response which would identify a person who is not the subject of an adverse finding, unless the Commission is satisfied that it is necessary to do so in the public interest and it will not cause unreasonable damage to the reputation, safety or well-being of that person, and a statement is included that the person identified is not the subject of any adverse finding.[243]

### 4.7.3 Australian Capital Territory

Irrespective of whether the report provides an adverse comment or opinion, a person or public sector entity to whom the report, or part of it, relates, must be given a draft of the report, or the relevant part of it,[244] and they may respond with written comment within six weeks (or any longer time the Integrity Commission specifies).[245] The Commission may also give all or part of the report to anyone else it considers has a direct interest in the report.[246] Any comment received must be considered in preparing the investigation report, and may be included as an attachment.[247] The Commission may amend the report in response to the comments, but if it is not satisfied amendment is appropriate, it must tell the person affected in writing, prior to publication, that it will be published unamended.[248] Special reports are subject to the same procedure.[249]

### 4.7.4 Victoria

Where a report includes adverse findings, comments or opinions against a person or public body, the Independent Broad-based Anti-corruption Commission must first provide the person or body a reasonable opportunity to respond to the adverse material, not merely the adverse finding or comment,[250] and fairly set out each element of the response in its report.[251] Additionally, persons who are subject to comment or opinion within a report which is not adverse, must be provided with relevant material in relation to which the Commission intends to name that person.[252]

### 4.7.5 Northern Territory

Where the Independent Commissioner Against Corruption proposes to make an adverse finding about a person or body in an investigation report, a reasonable opportunity to respond to the adverse material must be provided, and a fair representation of the response outlined in the report.[253]

### 4.7.6 South Australia

In South Australia, an investigation report must not be prepared until all criminal proceedings arising from an investigation are complete or the Independent Commission Against Corruption is satisfied that no criminal proceedings will be commenced (in which case it must not identify any person involved in the investigation).[254] The Commission is obliged to provide a copy of a report setting out findings or recommendations resulting from completed investigations to the public authority responsible for any public officer to whom the report relates, and to the Minister

responsible for that public authority.[255] However there is no legislated process regarding the making of submissions by a person affected by the report or to what extent those submissions are to be reflected in the report.

### 4.7.7 Western Australia

Before the Corruption and Crime Commission can report on a matter adverse to a person or body in an investigation report, it must give the person or body a reasonable opportunity to make representations to it concerning those matters.[256] There is no requirement that any submissions received be summarised or included in the final report.

### 4.7.8 Tasmania

Section 56 of the *Integrity Commission Act* provides that before finalising any report for submission to the Board, the chief executive officer may, if it is considered appropriate, give a draft of the report to the principal officer of the relevant public authority, the public officer the subject of the investigation, and any other person who in the chief executive officer's opinion has a special interest in the report, providing directions as to written submissions or comments.[257] If any submissions or comments are received, they, or a fair summary of them, must be included in the report.[258] There are no provisions governing a procedural fairness process for the Integrity Tribunal.[259] The Act, unusually, specifies that a determination of the Integrity Tribunal under s 78 is a reviewable matter under the *Judicial Review Act 2000* (Tas).[260] This is unusual not because review is available, but in because its availability is spelt out in the legislation governing the Commission.

## 4.8 Reputational repair

### 4.8.1 Australian Capital Territory

Section 204 of the *Integrity Commission Act* requires the Integrity Commission to make reputational repair protocols about how the Commission is to deal with damage to a person's reputation in circumstances where the Commission makes an adverse finding or comment in a report, and subsequently a referral does not lead to a prosecution, a prosecution is discontinued, the person is acquitted, a conviction is quashed on appeal, or the person is otherwise cleared of wrongdoing.

As required by s 204, the Integrity Commission has published the *Integrity Commission Reputational Repair Protocols 2020* (ACT). The protocols state that upon becoming aware of any of the circumstances set out in s 204 occurring, the Commission will assess the circumstances and determine whether reputational repair measures are required, including the nature and extent of any measures.[261] The redress measures may take the form of a letter or publication, addressed to a person or entity, and may include a public notice on the Commission's website.[262] The letter or public notice may, for example, state that one of the circumstances set out in s 204 occurred, that the

Commission "considers that it is possible that the person or entity has suffered reputational damage", and the "measures which the Commission considers are required to address such damage".[263]

Because the Commission has not yet published an investigation report, and the special reports published have not contained adverse comments, opinions or findings, there has been no occasion for putting the protocol measures into effect.

### 4.8.2 South Australia

Schedule 4 of the *Independent Commission Against Corruption Act* provides for an Inspector who, among other things, is required to conduct regular reviews into the operation of the Independent Commission Against Corruption, as well as reviews in relation to relevant complaints received by the Inspector.[264]

In conducting an annual review, the Inspector must consider whether the powers under the Act were exercised in an appropriate manner, including whether there was any evidence of unreasonable invasions of privacy,[265] or undue prejudice to the reputation of any person was caused.[266]

If the Inspector finds that the Commission caused undue prejudice to the reputation of any person, the Inspector may publish any statement or material that the Inspector thinks will help alleviate that prejudice, or recommend the payment of compensation to the person.[267]

Commissions in other jurisdictions are subject to oversight by similar office holders,[268] at the direction of a parliamentary committee, however the South Australian Inspector is unique in being required to specifically consider the Commission's impact on privacy and reputation.

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1 Terms of reference, [6](h).
2 *Crime and Corruption Act 2001*, s 4(1)(b).
3 *Crime and Corruption Act 2001*, s 34(d).
4 *Crime and Corruption Act 2001*, s 35(3).
5 *Crime and Corruption Act 2001*, s 23.
6 *Crime and Corruption Act 2001*, ss 24(a)–(c).
7 *Crime and Corruption Act 2001*, s 24(d).
8 *Crime and Corruption Act 2001*, s 24(e).
9 *Crime and Corruption Act 2001*, s 24(f).
10 *Crime and Corruption Act 2001*, s 24(h).
11 *Crime and Corruption Act 2001*, s 24(i).
12 *Crime and Corruption Act 2001*, s 24(g).
13 *Crime and Corruption Act 2001*, sch 2 (definition of "corruption").
14 *Crime and Corruption Act 2001*, sch 2 (definition of "police misconduct").
15 *Crime and Corruption Act 2001*, s 41. The Commission maintains a monitoring role and may review or audit the way the Commissioner of Police has dealt with police misconduct or assume responsibility for and complete an investigation into that conduct: see s 47(1)(b)–(c).

[16] See *Crime and Corruption Act 2001*, s 15.
[17] *National Anti-Corruption Commission Act 2022* (Cth) ss 16, 20(1).
[18] *National Anti-Corruption Commission Act 2022* (Cth) ss 17(a)–(c), (e), (f), (h).
[19] *National Anti-Corruption Commission Act 2022* (Cth) ss 17(d), (j).
[20] *Independent Commission Against Corruption Act 1988* (NSW) s 2A.
[21] *Independent Commission Against Corruption Act 1988* (NSW) s 13(1)(c).
[22] *Independent Commission Against Corruption Act 1988* (NSW) ss 13(1)(h)–(j), (3)(b).
[23] *Independent Commission Against Corruption Act 1988* (NSW) s 12.
[24] *Integrity Commission Act 2018* (ACT) ss 6(a), (f).
[25] *Integrity Commission Act 2018* (ACT) s 6(c). The other jurisdiction being South Australia, discussed at [4.1.7].
[26] *Integrity Commission Act 2018* (ACT) s 23(1)(d).
[27] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ss 8(a)(i)–(ii), (b)(i)–(ii), (c).
[28] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ss 15(2)(a)–(b), (3)(d), (5).
[29] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ss 15(6)(b), (d), (f).
[30] *Independent Commissioner Against Corruption Act 2017* (NT) s 3(1).
[31] *Independent Commissioner Against Corruption Act 2017* (NT) s 3(2)(a). See also s 17.
[32] *Independent Commissioner Against Corruption Act 2017* (NT) ss 18(1)(c)(i), (iii), (v).
[33] *Independent Commission Against Corruption Act 2012* (SA) s 3(1)(c).
[34] *Independent Commission Against Corruption Act 2012* (SA) s 3(1)(c).
[35] *Independent Commission Against Corruption Act 2012* (SA) ss 3(1)(a)(i)–(ii).
[36] *Independent Commission Against Corruption Act 2012* (SA) ss 7(1)(a)–(c).
[37] *Corruption, Crime and Misconduct Act 2003* (WA) s 7A(b).
[38] *Corruption, Crime and Misconduct Act 2003* (WA) s 7B(1). See also s 8(1).
[39] *Corruption, Crime and Misconduct Act 2003* (WA) s 18(1).
[40] *Corruption, Crime and Misconduct Act 2003* (WA) ss 18(2)(c), (f), (4)(e).
[41] *Integrity Commission Act 2009* (Tas) s 3(1).
[42] *Integrity Commission Act 2009* (Tas) s 3(2).
[43] *Integrity Commission Act 2009* (Tas) s 3(3).
[44] *Crime and Corruption Act 2001*, s 15(1).
[45] *Crime and Corruption Act 2001*, s 15(2).
[46] *Crime and Corruption Act 2001*, ss 15(1)(c), (2)(c).
[47] *National Anti-Corruption Act 2022* (Cth) s 8(1).
[48] See *National Anti-Corruption Commission Act 2022* (Cth) s 8.
[49] See, eg, *Independent Commission Against Corruption Act 1988* (NSW) ss 8(1)–(2A), 9(1).
[50] *Independent Commission Against Corruption Act 1988* (NSW) ss 9(1)(a), (3).
[51] *Independent Commission Against Corruption Act 1988* (NSW) ss 9(1)(b), (3).
[52] *Independent Commission Against Corruption Act 1988* (NSW) s 9(1)(c).
[53] *Independent Commission Against Corruption Act 1988* (NSW) ss 9(1)(d), (3).
[54] See *Integrity Commission Act 2018* (ACT) s 9.
[55] See *Integrity Commission Act 2018* (ACT) ss 9(1)(b)(i)–(vi).
[56] *Integrity Commission Act 2018* (ACT) s 9(1)(a).
[57] *Integrity Commission Act 2018* (ACT) s 9(3) (definition of "serious disciplinary offence"). "Serious misconduct" for the purposes of s 9 is "serious misconduct" within the meaning of *Fair Work Regulations 2009* (Cth) s 1.07: s 9(3) (definition of "serious misconduct").
[58] *Integrity Commission Act 2018* (ACT) ss 12(1)(b)(i)–(ii).
[59] Including Queensland, New South Wales, Victoria, and the Commonwealth.
[60] *Integrity Commission Act 2018* (ACT) ss 6(b), 23(2).
[61] See *Integrity Commission Act 2018* (ACT) ss 10–11.
[62] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ss 4, 5.
[63] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 15(1A).
[64] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 4(1).

[65] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 4(1)(a).
[66] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 3 (definition of "relevant offence").
[67] See *Independent Commissioner Against Corruption Act 2017* (NT) s 9.
[68] *Independent Commissioner Against Corruption Act 2017* (NT) ss 9(1)–(2).
[69] *Independent Commissioner Against Corruption Act 2017* (NT) ss 10(1)–(2).
[70] *Independent Commissioner Against Corruption Act 2017* (NT) s 10(3).
[71] *Independent Commissioner Against Corruption Act 2017* (NT) s 10(5).
[72] See, eg, *Independent Commissioner Against Corruption Act 2017* (NT) s 10(4)(c).
[73] See, eg, *Independent Commission Against Corruption Act 2012* (SA) s 5.
[74] *Independent Commission Against Corruption Act 2012* (SA) s 7(1).
[75] *Independent Commission Against Corruption Act 2012* (SA) s 5(1).
[76] See *Corruption, Crime and Misconduct Act 2003* (WA) ss 3(1), 4.
[77] *Corruption, Crime and Misconduct Act 2003* (WA) ss 4(a)–(c).
[78] *Corruption, Crime and Misconduct Act 2003* (WA) s 9(d).
[79] See *Corruption, Crime and Misconduct Act 2003* (WA) s 18.
[80] *Corruption, Crime and Misconduct Act 2003* (WA) ss 3(1) (definition of "serious misconduct").
[81] See, eg, *Integrity Commission Act 2009* (Tas) s 4(1).
[82] *Integrity Commission Act 2009* (Tas) s 4(1) (definition of "misconduct").
[83] *Integrity Commission Act 2009* (Tas) s 4(1) (definitions of "serious misconduct").
[84] *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 748–9 [68].
[85] *Crime and Corruption Act 2001*, s 49(1).
[86] See *Crime and Corruption Act 2001*, s 49(2).
[87] *Crime and Corruption Act 2001*, s 49(3).
[88] *Crime and Corruption Act 2001,* s 294.
[89] The term "corruption investigation" is defined in s 41(2) of the *National Anti-Corruption Commission Act 2022* (Cth).
[90] *National Anti-Corruption Commission Act 2022* (Cth) s 149(2)(a). "Corruption issue" is defined in s 9(1) of the *National Anti-Corruption Commission Act 2022* (Cth).
[91] *National Anti-Corruption Commission Act 2022* (Cth) s 149(2)(b).
[92] *National Anti-Corruption Commission Act 2022* (Cth) s 149(2)(c).
[93] *National Anti-Corruption Commission Act 2022* (Cth) s 149(2)(d).
[94] *National Anti-Corruption Commission Act 2022* (Cth) s 149(3).
[95] *National Anti-Corruption Commission Act 2022* (Cth) s 149(4).
[96] *National Anti-Corruption Commission Act 2022* (Cth) s 149(5).
[97] *National Anti-Corruption Commission Act 2022* (Cth) ss 149(2), 151(1)(a), 235(1).
[98] *National Anti-Corruption Commission Act 2022* (Cth) ss 149(2), 151(1)(b). See also s 227(3). Before including information in the report, the Commissioner must consult with the head of each Commonwealth agency or State or Territory government entity to which information relates about whether it is "sensitive information" in accordance with *National Anti-Corruption Commission Act 2022* (Cth) s 151(2).
[99] *National Anti-Corruption Commission Act 2022* (Cth) ss 151–2.
[100] Cf *National Anti-Corruption Commission Act 2022* (Cth) ss 154(1)–(4).
[101] Cf *National Anti-Corruption Commission Act 2022* (Cth) ss 154(1)–(2), (3)(b), (5)–(6).
[102] *Independent Commission Against Corruption Act 1988* (NSW) s 74(1).
[103] *Independent Commission Against Corruption Act 1988* (NSW) ss 74(2)–(3).
[104] *Independent Commission Against Corruption Act 1988* (NSW) s 74A(1).
[105] *Independent Commission Against Corruption Act 1988* (NSW) ss 74C–74D.
[106] *Independent Commission Against Corruption Act* 1988 (NSW) s 74BA(1).
[107] *Independent Commission Against Corruption Act 1988* (NSW) s 74BA(2).
[108] See *Independent Commission Against Corruption Act 1988* (NSW) s 74A(3).
[109] *Independent Commission Against Corruption Act 1988* (NSW) ss 74A(2).

[110] *Independent Commission Against Corruption Act 1988* (NSW) s 74B(1)(a)
[111] *Independent Commission Against Corruption Act 1988* (NSW) s 74B(1)(b).
[112] *Independent Commission Against Corruption Act 1988* (NSW) s 79A(2).
[113] *Independent Commission Against Corruption Act 1988* (NSW) ss 74A(2)–(4).
[114] Most provisions in the *Integrity Commission Act 2018* (ACT) commenced on 1 July 2019.
[115] *Integrity Commission Act 2018* (ACT) s 182(1).
[116] *Integrity Commission Act 2018* (ACT) s 182(2).
[117] *Integrity Commission Act 2018* (ACT) s 183(1)(a).
[118] *Integrity Commission Act 2018* (ACT) s 183(1)(b).
[119] *Integrity Commission Act 2018* (ACT) s 184(1). See also s 183(2).
[120] *Integrity Commission Act 2018* (ACT) s 184(2).
[121] *Integrity Commission Act 2018* (ACT) s 185.
[122] *Integrity Commission Act 2018* (ACT) s 186.
[123] See *Integrity Commission Act 2018* (ACT) ss 187(1)–(2).
[124] *Integrity Commission Act 2018* (ACT) s 187(3).
[125] *Integrity Commission Act 2018* (ACT) s 189(1)(a).
[126] *Integrity Commission Act 2018* (ACT) s 189(2)(a).
[127] Cf *Integrity Commission Act 2018* (ACT) ss 184–187 against ss 207–211.
[128] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(1).
[129] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(1).
[130] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(5).
[131] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(6)(a).
[132] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(6)(b).
[133] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(7).
[134] *Independent Commissioner Against Corruption Act 2017* (NT) ss 50(1)–(1A).
[135] *Independent Commissioner Against Corruption Act 2017* (NT) s 50(1).
[136] *Independent Commissioner Against Corruption Act 2017* (NT) s 50(3).
[137] *Independent Commissioner Against Corruption Act 2017* (NT) s 50(4).
[138] *Independent Commissioner Against Corruption Act 2017* (NT) s 50(6A).
[139] *Independent Commissioner Against Corruption Act 2017* (NT) s 59(2).
[140] *Independent Commission Against Corruption Act 2012* (SA) s 42(1).
[141] *Independent Commission Against Corruption Act 2012* (SA) s 42(1a)(a).
[142] *Independent Commission Against Corruption Act 2012* (SA) s 42(1a)(b).
[143] *Independent Commission Against Corruption Act 2012* (SA) s 42(2).
[144] *Corruption, Crime and Misconduct Act 2003* (WA) ss 3 (definition of "received matter"), 84(1)–(2).
[145] *Corruption, Crime and Misconduct Act 2003* (WA) s 84(3).
[146] *Corruption, Crime and Misconduct Act 2003* (WA) s 217A(2).
[147] *Corruption, Crime and Misconduct Act 2003* (WA) ss 84(4), 93(1).
[148] *Integrity Commission Act 2009* (Tas) s 55(1).
[149] *Integrity Commission Act 2009* (Tas) ss 55(2), 57.
[150] *Integrity Commission Act 2009* (Tas) s 58(2)(b).
[151] *Integrity Commission Act 2009* (Tas) s 58(3).
[152] *Integrity Commission Act 2009* (Tas) s 58(4).
[153] *Integrity Commission Act 2009* (Tas) ss 58(c)–(e).
[154] *Integrity Commission Act 2009* (Tas) ss 78(2)(b), (d).
[155] *Integrity Commission Act 2009* (Tas) s 78(8).
[156] *National Anti-Corruption Commission Act 2022* (Cth) s 155.
[157] *National Anti-Corruption Commission Act 2022* (Cth) s 156(1).
[158] *National Anti-Corruption Commission Act 2022* (Cth) s 157(1).
[159] *National Anti-Corruption Commission Act 2022* (Cth) s 157(2).
[160] *Independent Commission Against Corruption Act 1988* (NSW) s 74(4).

[161] *Independent Commission Against Corruption Act 1988* (NSW) s 74(7). The Commission may defer making a report under s 74 of the Act if satisfied it is desirable to do so in the public interest, except in relation to a matter referred by both Houses of Parliament: s 74(8).
[162] *Independent Commission Against Corruption Act 1988* (NSW) ss 78(1), (2).
[163] *Independent Commission Against Corruption Act 1988* (NSW) s 78(3).
[164] *Independent Commission Against Corruption Act 1988* (NSW) s 78(4).
[165] *Integrity Commission Act 2018* (ACT) s 189(1)(b).
[166] *Integrity Commission Act 2018* (ACT) s 189(2)(c).
[167] *Integrity Commission Act 2018* (ACT) s 189(2)(d)(i). However, where the next sitting day is the first meeting of the Legislative Assembly after a general election of members of the Assembly, the report is to be presented by the Speaker on the second sitting day after the election: s 189(2)(d)(ii).
[168] *Integrity Commission Act 2018* (ACT) s 189(2)(b).
[169] *Integrity Commission Act 2018* (ACT) s 189(e).
[170] *Integrity Commission Act 2018* (ACT) s 190(1).
[171] *Integrity Commission Act 2018* (ACT) ss 213–14.
[172] *Integrity Commission Act 2018* (ACT) s 203.
[173] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(1)
[174] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(10).
[175] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(11). Where a report is published by the Commission in this way, the publication of the report is privileged, and provisions of ss 73 and 74 of the *Constitution Act 1975* (Vic) and any other enactment or rule of law relating to the publication of the proceedings of the Parliament apply to and in relation to the publication of the report as if it were a document to which those sections applied and had been published by the Government Printer under the authority of the Parliament: s 162(14).
[176] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(12).
[177] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(13).
[178] *Independent Commissioner Against Corruption 2017* (NT) s 50(6).
[179] Noting that where the Independent Commissioner Against Corruption has made a report on a referral and the Minister to whom the report is made either provides a written response or does not provide a written response within a reasonable time, and the Commissioner is not satisfied with the Minister's response (if any), it has discretion as to whether it makes a report on the referral to the Assembly Committee (or the Speaker where there is no Assembly Committee), and such report on the referral must be tabled in the Legislative Assembly within 6 sitting days of receipt: see *Independent Commissioner Against Corruption 2017* (NT) ss 53–4.
[180] The publishing power in s 50A was inserted by the *Independent Commissioner Against Corruption Amendment Act 2023* (NT) s 17, which commenced on 14 November 2023.
[181] *Independent Commissioner Against Corruption Act 2017* (NT) ss 50A(1), (3).
[182] *Independent Commissioner Against Corruption Act 2017* (NT) s 50A(2).
[183] *Independent Commissioner Against Corruption Act 2017* (NT) s 59(2).
[184] *Independent Commission Against Corruption Act 2012* (SA) s 42(2)(b).
[185] *Independent Commission Against Corruption Act 2012* (SA) s 42(2)(a).
[186] *Independent Commission Against Corruption Act 2012* (SA) s 42(3).
[187] *Corruption, Crime and Misconduct act 2003* (WA) s 84(4).
[188] *Corruption, Crime and Misconduct Act 2003* (WA) s 93(1).
[189] *Corruption, Crime and Misconduct Act 2003* (WA) s 93(3).
[190] *Corruption, Crime and Misconduct Act 2003* (WA) s 89.
[191] *Integrity Commission Act 2009* (Tas) s 11(4).
[192] *Crime and Corruption Act 2001*, s 24(e). See also s 64; *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 748 [62].
[193] *Integrity Commission Act 2018* (ACT) s 179(1).
[194] *Integrity Commission Act 2018* (ACT) s 179(2).
[195] *Integrity Commission Act 2018* (ACT) s 180.

[196] *Integrity Commission Act 2018* (ACT) s 181.
[197] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 159(1).
[198] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 159(2).
[199] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 159(6).
[200] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ss 160–1.
[201] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 159(5).
[202] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ss 159(5), 162, 165.
[203] Independent Broad-based Anti-corruption Commission Amendment (Public Recommendations) Bill 2023 (Vic).
[204] Independent Broad-based Anti-corruption Commission Amendment (Public Recommendations) Bill 2023 (Vic) cl 3. The accompanying Human Rights Statement of Compatibility for the Bill asserts that because the published recommendation must not contain an adverse comment or opinion, it does not impose a limitation on the right to privacy within the *Charter of Human Rights and Responsibilities 2006* (Vic): Victoria, *Parliamentary Debates*, Legislative Council, 16 August 2023, 2495–6 (David Davis).
[205] Independent Broad-based Anti-corruption Commission Amendment (Public Recommendations) Bill 2023 (Vic) cl 3.
[206] *Independent Commissioner Against Corruption Act 2017* (NT) s 56(1).
[207] *Independent Commissioner Against Corruption Act 2017* (NT) s 56(3).
[208] *Independent Commissioner Against Corruption Act 2017* (NT) s 57(1).
[209] *Independent Commissioner Against Corruption Act 2017* (NT) ss 57(2), 58.
[210] *Independent Commissioner Against Corruption Act 2017* (NT) s 58(4).
[211] *Independent Commissioner Against Corruption Act 2017* (NT) ss 59(1)(e), (2).
[212] *Independent Commissioner Against Corruption Act 2017* (NT) s 58(5).
[213] *Independent Commission Against Corruption Act 2012* (SA) s 41(1).
[214] *Independent Commission Against Corruption Act 2012* (SA) s 41(1).
[215] *Independent Commission Against Corruption Act 2012* (SA) s 41(2).
[216] *Independent Commission Against Corruption Act 2012* (SA) s 41(3).
[217] *Independent Commission Against Corruption Act 2012* (SA) s 41(4).
[218] *Independent Commission Against Corruption Act 2012* (SA) s 41(5).
[219] *Independent Commission Against Corruption Act 2012* (SA) s 41(6).
[220] *Independent Commission Against Corruption Act 2012* (SA) s 41(7).
[221] *National Anti-Corruption Commission Act 2022* (Cth) s 48; *Independent Commissioner Against Corruption Act 2017* (NT) s 55; *Independent Commission Against Corruption Act 2012* (SA) s 25.
[222] Cf *Independent Commission Against Corruption Act 1988* (NSW) s 19(1); *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 16; *Corruption, Crime and Misconduct Act 2003* (WA) s 136; *Integrity Commission Act 2009* (Tas) s 8(2); *Crime and Corruption Act 2001*, s 174(1).
[223] *National Anti-Corruption Commission Act 2022* (Cth) ss 48(1)–(2).
[224] *National Anti-Corruption Commission Act 2022* (Cth) ss 48(3), 230(4).
[225] *National Anti-Corruption Commission Act 2022* (Cth) ss 48(3), 230(5)(a)–(b). See also ss 227(3), 235.
[226] *National Anti-Corruption Commission Act 2022* (Cth) ss 48(3), 230(6). See also s 227(3).
[227] See *National Anti-Corruption Commission Act 2022* (Cth) ss 48(3), 231.
[228] As defined in *Independent Commissioner Against Corruption Act 2017* (NT) s 25.
[229] *Independent Commissioner Against Corruption Act 2017* (NT) ss 55(1)–(2).
[230] *Independent Commissioner Against Corruption Act 2017* (NT) s 55(3).
[231] *Independent Commissioner Against Corruption Act 2017* (NT) s 55(4). Subsections 55(4)–(6) were inserted by the *Independent Commissioner Against Corruption Amendment Act 2023* (NT), and came into effect on 14 November 2023. Before this, s 55 consisted of sub-ss 55(1)–(3) only.
[232] See chapter 5 at [5.5] and chapter 7 at [7.5] for more on South Australia's legislative changes.
[233] *Independent Commission Against Corruption Act 2012* (SA) ss 25(1)–(2).
[234] *Independent Commission Against Corruption Act 2012* (SA) s 25(3)(a).
[235] *Independent Commission Against Corruption Act 2012* (SA) s 25(3)(b).

[236] *Independent Commission Against Corruption Act 2012* (SA) s 25(4).
[237] *Independent Commission Against Corruption Act 2012* (SA) s 25(5)(b).
[238] *National Anti-Corruption Commission Act 2022* (Cth) s 153(1).
[239] *National Anti-Corruption Commission Act 2022* (Cth) s 153(3).
[240] *National Anti-Corruption Commission Act 2022* (Cth) ss 151(1), 153(4).
[241] *National Anti-Corruption Commission Act 2022* (Cth) s 153(5).
[242] *Independent Commission Against Corruption Act 1988* (NSW) s 79A(1).
[243] *Independent Commission Against Corruption Act 1988* (NSW) s 79A(2).
[244] *Integrity Commission Act 2018* (ACT) s 188(2).
[245] *Integrity Commission Act 2018* (ACT) s 188(5).
[246] *Integrity Commission Act 2018* (ACT) s 188(3).
[247] *Integrity Commission Act 2018* (ACT) s 188(6).
[248] *Integrity Commission Act 2018* (ACT) ss 188(7)–(8).
[249] *Integrity Commission Act 2018* (ACT) s 212.
[250] See *AB v Independent Broad-based Anti-corruption Commission* (2024) 98 ALJR 532.
[251] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ss 162(2)–(3).
[252] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(4).
[253] *Independent Commissioner Against Corruption 2017* (NT) s 50(2).
[254] *Independent Commission Against Corruption Act 2012* (SA) s 42(1a).
[255] *Independent Commission Against Corruption Act 2012* (SA) s 42(2)(a).
[256] *Corruption, Crime and Misconduct Act 2003* (WA) s 86.
[257] *Integrity Commission Act 2009* (Tas) ss 56(1), (3).
[258] *Integrity Commission Act 2009* (Tas) s 56(4).
[259] See, eg, *Integrity Commission Act 2009* (Tas) s 69, where the Integrity Tribunal may determine its own procedure in conducting an inquiry, and s 78, relating to the determination of the Integrity Tribunal, and that the Tribunal may make such report as it considers appropriate.
[260] *Integrity Commission Act 2009* (Tas) s 79.
[261] ACT Integrity Commission, *Integrity Commission Reputational Repair Protocols 2020* (NI2020-594, 10 September 2020) cls 3.2(1)–(3).
[262] ACT Integrity Commission, *Integrity Commission Reputational Repair Protocols 2020* (NI2020-594, 10 September 2020) cls 3.2(3)–(4).
[263] ACT Integrity Commission, *Integrity Commission Reputational Repair Protocols 2020* (NI2020-594, 10 September 2020) cl 3.2(5).
[264] *Independent Commission Against Corruption Act 2012* (SA) sch 4, s 2.
[265] *Independent Commission Against Corruption Act 2012* (SA) sch 4, s 9(1)(a)(i)(A).
[266] *Independent Commission Against Corruption Act 2012* (SA) sch 4, s 9(1)(a)(i)(B).
[267] *Independent Commission Against Corruption Act 2012* (SA) sch 4, s 9(6).
[268] *National Anti-Corruption Commission Act 2022* (Cth) ss 182–184; *Integrity Commission Act 2018* (ACT) ss 225–228; *Independent Commission Against Corruption Act 1988* (NSW) ss 57A–57C; *Independent Commissioner Against Corruption Act 2017* (NT) ss 134–138; *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ss 170–170A; *Corruption, Crime and Misconduct Act 2003* (WA) ss 188, 195–196.

# Chapter 5: Practice in other Australian jurisdictions

Each Australian anti-corruption agency was invited to participate in a discussion with officers of the Review team, and their available publications were examined. Representatives of integrity bodies from the Australian Capital Territory, Victoria, the Northern Territory, South Australia and Western Australia, as well as the Law Enforcement Conduct Commission of New South Wales were interviewed.[1] Those consultations provided some insight into the practical implementation of participating bodies' processes and procedures, not always evident on the face of publicly available material.

## 5.1 Law Enforcement Conduct Commission (NSW)

The Law Enforcement Conduct Commission of New South Wales handles complaints about serious misconduct or serious maladministration involving the State's Police Force and Crime Commission, and publishes reports on its investigations.

Consistently with its published reports, the Commission takes the view that individual officers should not ordinarily be named, and it has developed and published a guideline for its approach to identifying information, including the use of pseudonyms when publicly reporting and the exercise of the power to make non-publication orders in respect of witness evidence in Commission reports.[2] The Commission considers that in most cases misconduct can be exposed without naming individuals or providing significantly identifying particulars.[3] A deterrent effect can be achieved by reporting on the conduct involved, the seniority of the officer, and the outcome of the investigation.[4] There are obvious challenges, though, when—for example—a small workforce size or location, or intensive public attention, make it difficult to disguise the subject of the investigation; which may necessitate a significantly re-written report for publication.[5]

The decision as to whether to make a public report, particularly in cases where there is no evidence to suggest wrongdoing, involves a number of factors, including consideration of the "end goal", or purpose, of publication, which is not simply to present a review of the process.[6] The Commission prefers to be measured and circumspect in public statements, changing to a more emphatic tone to highlight the seriousness of particularly egregious conduct.[7]

## 5.2 Australian Capital Territory

The Integrity Commission is still relatively new in its practice, having become operational in December 2019. At the time of this Review, the Commission had not published an investigation report in relation to a matter not referred to it by a

Parliamentary Committee, and had only published one special report pursuant to s 206 of the *Integrity Commission Act 2018* (ACT). As a result, it has not had cause to implement its Reputational Repair Protocols.[8]

The Commission is subject to limitations in publishing information, including that it may not identify a person against whom it has made no adverse comment unless necessary or desirable in the public interest,[9] and it may not say that a person has engaged in corrupt conduct unless it is serious or systemic.[10] It noted the considerable effort it takes to frame a report describing the harm caused by corrupt conduct without, in the process, identifying individuals not the subject of adverse comment, or suggesting that the conduct is corrupt. The Commission uses pseudonyms, but recognises that there may be problems, for example, where it reports on an investigation concerning an area of industry which is not large. Despite the Commission's best efforts, the smallest piece of information may suffice to enable those within the industry, as opposed to members of the public in general, to identify the person in question.[11]

While the Commission has, on occasion, made media statements, its general policy is to neither confirm nor deny that it has received an allegation of corrupt conduct or whether a matter is being investigated.[12] It only departs from that general rule in exceptional circumstances. A recent example is a media release issued to confirm an assessment of corruption allegations to determine whether an investigation should proceed, noting the particular importance of the issues involved, the publicity already given to the subject matter, and the conclusion of related legal proceedings.[13]

## 5.3 Victoria

The statutory power of the Independent Broad-based Anti-corruption Commission to deliver a special report to Parliament is broad, permitting it to report on the performance of any of its duties or functions at any time.[14]

The Commission is currently in the process of developing a reporting and external communications framework to better support the development of special reports and other publications.[15] Through cross-organisational working groups, consideration will be given to a range of matters including the objectives of the publication, the intended audience and prevention outcomes. The cross-organisational working groups will provide a recommendation to a governance committee outlining the proposed approach to public reporting.[16]

Public reporting, the Commission says, is not the only mechanism available to it to build public confidence and trust; it can also do so by producing summaries, not necessarily based on special reports, which can equally fulfil the Commission's objectives to prevent and expose corrupt conduct or police misconduct.[17] For example, the Commission produced investigation summaries in respect of Operation Lynd[18] and Operation Wingan,[19] both of which involved allegations of excessive use of force by

Victoria Police officers. (In the former case, a Deputy Commissioner of the Commission appeared on a podcast to speak about the investigation process and outcome and address community concerns.[20])

On the question of whether a special report should be limited to findings of corrupt conduct, the Commission representatives explained, it may on occasion be important to release a report, statement, or media release where there are no findings of corrupt conduct, particularly in circumstances where not to do so would have a more detrimental effect or it is important that the community be made aware that corruption or misconduct did not occur.[21]

The Commission takes a cautious approach to the production of special reports and it is required to provide procedural fairness to witnesses. As required by legislation, draft reports are provided both to individuals subject to adverse comment or opinion and identified persons subject to non-adverse comments or opinion, who may provide submissions for consideration.[22] The way the Commission reflects a submission in the final special report varies, and may be by:

- addressing the submission within the text or as a footnote at the relevant part of the report
- including a detailed summary of the submission at the conclusion of the report with an analysis as to whether the Commission accepts, rejects, or qualifies the submission, and
- annexing the full submission to the report.

## 5.4 Northern Territory

Though the Independent Commissioner Against Corruption is one of the more recently established domestic integrity entities and office-holders, there is a number of published investigation reports which the Review team has been able to consider,[23] and the Commissioner made himself available for an informal discussion.

While the Commissioner is able to hold public inquiries, he has not yet exercised that power. Before holding a public inquiry, the Commissioner must take into account the public interest, which includes those factors outlined in sch 1 to the *Independent Commissioner Against Corruption Act 2017* (NT).[24] However, while an aspect of public interest is the public's ability to observe the Commission's processes (and thus that it is acting fairly and impartially), that consideration should not, the Commissioner emphasised, overwhelm other legislated considerations.[25]

The same public interest considerations apply to the publication of a report. While there is a benefit if the public becomes better informed as a result of a report,[26] the Commissioner did not regard demonstrating the extent and worth of his organisation's activities as a primary justification for reporting. He mentioned the difficulty in

separating the concepts of "identifying" and "naming" when publicly reporting.[27] The distinction is often not meaningful, particularly, as representatives of other Commissions observed, in a small jurisdiction or a small industry. The risk the Commissioner perceived in his jurisdiction was that reference to a person's role, even without naming the entity in which they worked, could still suffice to identify them.

The Commissioner considered that reports intended to provide exculpation should be produced sparingly, with their content kept to the minimum required for the purpose. While the functions of prevention and education could generally be fulfilled without divulging details of an investigation, those details were sometimes necessary to provide context to recommendations and to outline what those recommendations were intended to achieve.[28] The recommendations process, however, often took place in private consultation with the relevant agency to ensure that the recommendations made were workable.[29] This reflected the Commissioner's experience that often the subject behaviour amounted to little more than undesirable public service practices, in which case his preference was to work with the relevant agency rather than to release an investigative report or make a public statement.[30]

The Commissioner's report on Operation Crimen[31] provides detail of how he gives effect to the procedural fairness requirements (in s 50(2) of the *Independent Commissioner Against Corruption Act 2017* (NT)) in relation to investigation reports.[32] Comprehensive submissions by counsel assisting the Commissioner about the evidence, the findings open on the evidence, and relevant possible recommendations are circulated to the parties along with notification as to whether adverse findings are being considered.[33] Submissions may be invited from individuals, irrespective of whether adverse findings are being considered.[34] This enables the Commissioner to approach the drafting of any report with the benefit of a range of views on the evidence.[35]

## 5.5 South Australia

The *Independent Commission Against Corruption Act 2012* (SA) is particularly prescriptive, with prohibitions on identifying any person involved in the investigation or making any findings or suggestions of criminal or civil liability.[36] The legislation underwent substantial amendment by the *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* (SA), which included narrowing the definition of corruption for the purposes of the Act, conferring responsibility for misconduct and maladministration matters on the Ombudsman, and further restricting the Commission's ability to make public statements.[37]

The Commission's current practice when commencing a corruption investigation is to embed members of its legal and prevention teams in the investigation team, to maintain awareness of possible prevention strategies and legal issues stemming from

the investigation and to inform considerations as to the best course of action at the conclusion of the investigation; including whether to report.[38]

The Commission will invariably engage with agencies about corruption risks identified in its investigations, and measures which might mitigate those risks and, in appropriate circumstances, it will also exercise its report-making powers. It sees this kind of direct engagement with an agency where risk is observed as part of its corruption prevention function.[39]

If there is to be an investigation report, the Commission complies with the requirements of procedural fairness while drafting its report, including ensuring interested parties are put on notice and given a chance to be heard about any aspect of the report which might affect their reputation or other interests.[40] In deciding whether to prepare an investigation report, which will be tabled, the Commission will consider a number of factors, including whether the investigation involved systemic issues the revelation of which would be of interest and value to the broader public sector and the community.[41]

In contrast to earlier Commission reports, its more recently published investigation reports do not lay out the evidence; avoid, where possible, naming departments; and are tightly and succinctly written.

According to the Commission's representatives, the prohibitions on identifying any person involved in the investigation or suggesting any criminal or civil liability,[42] make crafting a report which conveys the story challenging, but it is not impossible. The investigation reports published since 2021 demonstrate it is feasible.[43]

So effectively are the Commission's reports de-identified, that any subject of investigation litigating or agitating issues in the media would effectively be exposing themselves.[44] The only litigation involving the Commission that the Review team has been able to identify concerned whether the Commission was obliged to accord natural justice to a witness when making directions about publication of evidence; it did not involve the publication of a report.[45]

## 5.6 Western Australia

Representatives of the Corruption and Crime Commission were interviewed. They advised that the Commission began its considerations of whether to report and, if so, whether the report should be tabled, from the outset of an investigation. While it has no formal guidelines to assist in deciding whether to report, the Commission will generally take into account the seriousness of the alleged conduct and whether an opinion of serious misconduct has been formed; whether systemic issues have been revealed; the seniority of the person involved; whether the issue has been reported on previously; and whether the issue is one which ought to be highlighted.[46] Where a public hearing

has been held, the Commission would typically report; though the decision as to whether a public hearing is to be held is itself the subject of considerable debate during the investigation process.[47] Although there is no issue as to the breadth of the Commission's reporting powers, some consideration is being given to whether there would be utility in identifying, in each investigation report, pursuant to which of its functions and objectives it was reporting.

The Commission would not typically seek to publish a report where there was no conclusion of serious misconduct or a significant risk of serious misconduct occurring; it would not publish an exculpatory report unless the matter was in the public domain. Reports provided to an agency are designed to elicit change and would typically not be tabled unless the implementation of recommendations was unsatisfactory.[48]

The Commission identifies persons subject who are the subject of an opinion of serious misconduct in a report, but the Commissioner makes every effort to protect from disclosure the identity of those who may have been caught in the periphery of the conduct.[49] Whether to report, whether to table the report, and whether those investigated are identified are all subject to procedural fairness processes.[50]

The Review team examined a number of recent investigation reports published by the Corruption and Crime Commission, which confirmed that where adverse comment is likely to be made against a person or organisation, or a person is to be adversely named, a draft of the report is provided to them. Any responses are considered and where appropriate are incorporated; if their substance is accepted, the report is amended.[51] The incorporation of submissions may take different forms:

- integration of the submissions into the body of the report as additional evidence, or as a factor considered in reaching its conclusions
- inclusion in the report of direct quotations from the submissions, or
- dealing with the submissions separately, at the conclusion of the report.

Published reports vary in length, but are generally succinct summaries of the issues and evidence, and typically name or identify only those central to the conduct.[52]

The Commission publishes a guide to misconduct hearings which outlines the powers and processes of the Commission, though that is currently subject to review.[53] The Commission interprets its obligations under the *Work Health and Safety Act 2020* (WA) and *Work Health and Safety (General) Regulations 2022* (WA) broadly, as extending to the welfare of witnesses appearing before it.[54] (As that is national uniform legislation, those obligations may also apply in Queensland under the *Work Health and Safety Act 2011*.)

The Commission takes a conservative approach in relation to media statements. The starting position is not to comment on a matter prior to an investigation being

concluded. Even then, a media statement would ordinarily be made only where a report was being tabled, and it would be brief.[55] There were some exceptions, depending on whether a matter had already been subject to extensive media reporting, whether there was a high level of public attention to it, and the degree of seriousness of the incident in question.[56] The Commission officers also advised that the Commission has begun including a statement at the end of each media statement that an opinion that serious misconduct has occurred is not, and is not to be taken as, a finding or opinion that a particular person is guilty of or has committed a criminal offence or a disciplinary offence.[57]

## 5.7 Commonwealth

The National Anti-Corruption Commission did not participate in discussions with the Review team, possibly because it was so recently established, but it did respond to some questions asked of it. The Commission replaced the Australian Commission for Law Enforcement Integrity on 1 July 2023 and will publish its first annual report at the end of the 2023–24 financial year. It has not yet published any investigation reports, though it does have a number of investigations underway.[58] Its predecessor, the Australian Commission for Law Enforcement Integrity, furnished 22 investigation reports to the Attorney-General during 2022–23, with 11 published.[59] There is currently insufficient information available as to the practices and procedures adopted by the Commission to provide any insight for the Review.

## 5.8 New South Wales Independent Commission Against Corruption

The Independent Commission Against Corruption did not make itself available for discussions with the Review team. While it publishes some policy documents on its website, none relate to considerations governing reporting or publishing statements. It does publish an "Information for Witnesses" document,[60] which contains information about its witness welfare and protection measures and supports. From the Commission's reports published between 2019 and 2024, this much can be said:

- For the preparation of a report, Counsel Assisting prepares submissions on evidence and possible findings and recommendations, which are provided to the parties for comment or response. The Commission allows between 40 and 90 days for the receipt of submissions, and may provide an opportunity for further submissions and responses.
- Submissions contending that the report should not be made public, or that an individual should not be named or included, will be considered. Where the submissions are rejected, the report will explain the content of the submissions and the reasons for rejecting them.

## 5.9 Tasmania

The Tasmanian Integrity Commission did not take part in discussions with the Review team. The Review team considered publications on the Commission's website, including information sheets pertaining to procedural fairness for subjects of an investigation, investigation summaries and investigation reports. It is evident that the reports, or summary reports, which the Commission tables in Parliament are rarely a full recitation of the detailed evidence and witness statements upon which the Commission investigator's factual findings are based.[61] Indeed, a report surrounding the conduct of a property developer and local councillor is only 16 pages in length, and names no individuals other than the then councillor and a property developer.[62]

Another example is a report on an investigation into misconduct by public officers in the Tasmanian Health Service, which is a 44-page summary report based on a 262-page investigator's report.[63] Reports are anonymised where the Commission considers that to be in the public interest, but in this particular case it was not considered feasible to anonymise the report completely, given the location of the service and the nature of the issues involved.[64] In further considering the format of the report, the Commission took into account the fact that the matter being investigated represented a continuation of problems identified in previous investigations, and the involvement of a relatively senior public officer.[65]

In other cases, reports have been fully de-identified. An example of this is a report on systemic misconduct recruitment risks arising from a specific investigation into a particular council, which did not identify the council in question.[66] In its Annual Report for 2022–2023, the Integrity Commission noted that in determining whether to table a report:

> the Board considers the personal welfare, privacy and reputational concerns of the individuals involved, and whether those concerns outweigh the public interest in publishing the matter, including any potential educative or preventative value.[67]

The Review team has not been able to identify litigation against the Commission arising out of its investigations. This may be attributable to a number of factors, including the scarcity of identification details within its published reports. Another factor may be that the legislation provides for findings of misconduct or serious misconduct to be made only by an Integrity Tribunal,[68] which the Board of the Integrity Commission may convene to conduct an inquiry.[69] The Integrity Tribunal has only been formed once as far as the Review team can ascertain; in relation to Investigation Cuvier. Though the Tribunal is empowered to hold public inquiries, this inquiry was conducted in private. The Chief Commissioner, who chairs the Board of the Integrity Commission and

presides over Tribunal inquiries, has received final submissions from all parties and is preparing a report on the inquiry.[70]

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1 The National Anti-Corruption Commission, the New South Wales Independent Commission Against Corruption and the Tasmanian Integrity Commission did not take up the invitation.

2 Conversation with Anina Johnson, Commissioner, New South Wales Law Enforcement Conduct Commission (the Review, 11 March 2024); Law Enforcement Conduct Commission, *Guidelines on the use of pseudonyms and non-publication orders in Commission reports* (Guideline, November 2023) <https://www.lecc.nsw.gov.au/pdf-files/guidelines-on-the-use-of-pseudonyms-and-non-publication-orders-in-commission-reports-november-2023.pdf>.

3 Conversation with Anina Johnson, Commissioner, New South Wales Law Enforcement Conduct Commission (the Review, 11 March 2024).

4 Conversation with Anina Johnson, Commissioner, New South Wales Law Enforcement Conduct Commission (the Review, 11 March 2024).

5 Conversation with Anina Johnson, Commissioner, New South Wales Law Enforcement Conduct Commission (the Review, 11 March 2024).

6 Conversation with Anina Johnson, Commissioner, New South Wales Law Enforcement Conduct Commission (the Review, 11 March 2024).

7 Conversation with Anina Johnson, Commissioner, New South Wales Law Enforcement Conduct Commission (the Review, 11 March 2024).

8 *Integrity Commission Act 2018* (ACT) s 204; ACT Integrity Commission, *Integrity Commission Reputational Repair Protocols 2020* (NI2020-594, 10 September 2020).

9 *Integrity Commission Act 2018* (ACT) s 186.

10 *Integrity Commission Act 2018* (ACT) s 184.

11 Conversation with Judy Lind, Chief Executive Officer, ACT Integrity Commission (the Review, 6 March 2024).

12 Australian Capital Territory Integrity Commission, *ACT Integrity Commission Media Policy* (Web Page) < https://www.integrity.act.gov.au/__data/assets/pdf_file/0020/2302931/ACT-Integrity-Commission-Media-Policy-2023.pdf>.

13 Australian Capital Territory Integrity Commission, 'Integrity Commission Confirms it is assessing allegations into the conduct of the Hon Walter Sofronoff KC' (Media Alert, 5 April 2024) <https://www.integrity.act.gov.au/__data/assets/pdf_file/0005/2428754/Media-Alert-5-April-2024.pdf>.

14 *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162.

15 Conversation with Stacey Killackey, Executive Director (Legal, Assessment & Review, and Compliance), Dr Linda Timothy, Executive Director (Prevention & Communication) and Megan O'Halloran, Director (Communication & Engagement), Independent Broad-based Anti-corruption Commission (Vic) (the Review, 22 March 2024).

16 Conversation with Stacey Killackey, Executive Director (Legal, Assessment & Review, and Compliance), Dr Linda Timothy, Executive Director (Prevention & Communication) and Megan O'Halloran, Director (Communication & Engagement), Independent Broad-based Anti-corruption Commission (Vic) (the Review, 22 March 2024).

17 Conversation with Stacey Killackey, Executive Director (Legal, Assessment & Review, and Compliance), Dr Linda Timothy, Executive Director (Prevention & Communication) and Megan O'Halloran, Director (Communication & Engagement), Independent Broad-based Anti-corruption Commission (Vic) (the Review, 22 March 2024). See, eg, Independent Broad-based Anti-corruption Commission Victoria, *IBAC's independent oversight of Victoria Police – 2021 (infographic)* (Web Page) <https://www.ibac.vic.gov.au/publications-and-resources/article/ibac%27s-independent-oversight-of-victoria-police-2021-%28infographic%29>; Independent Broad-based Anti-corruption Commission Victoria, *IBAC's independent oversight of Victoria Police – 2022 (infographic)* (Web Page) <https://www.ibac.vic.gov.au/police-oversight-infographic-2022>.

[18] Independent Broad-based Anti-corruption Commission (Vic), *Outcome of IBAC's investigation into the conduct of Victoria Police officers at the Hares and Hyenas bookstore in Fitzroy in May 2019* (Media Release, 16 April 2020) <https://www.ibac.vic.gov.au/article/outcome-of-ibac%27s-investigation-into-the-conduct-of-victoria-police-officers-at-the-hares-hyenas-bookstore-in-fitzroy-in-may-2019>.

[19] Independent Broad-based Anti-corruption Commission (Vic), *Investigation Summary: Operation Wingan* (Media Release, 16 July 2021) <https://www.ibac.vic.gov.au/operation-wingan>.

[20] 'IBAC respond to Hares & Hyenas incident', *Saturday Magazine* (Joy Media, 16 May 2020) <https://joy.org.au/saturdaymagazine/2020/05/ibac/>.

[21] Conversation with Stacey Killackey, Executive Director (Legal, Assessment & Review, and Compliance), Dr Linda Timothy, Executive Director (Prevention & Communication) and Megan O'Halloran, Director (Communication & Engagement), Independent Broad-based Anti-corruption Commission (Vic) (the Review, 22 March 2024).

[22] See, eg, Independent Broad-based Anti-corruption Commission Victoria, *Operation Sandon Special Report* (27 July 2023) appendix A.

[23] All reports except one report thus far were published during the tenure of the inaugural Commissioner. The current Commissioner was appointed to the role on 6 July 2021: Office of the Independent Commissioner Against Corruption (NT), 'Commissioner Michael Riches commences as NT ICAC' (Media Release, 6 July 2021) <https://icac.nt.gov.au/__data/assets/pdf_file/0010/1177750/Media-release-2021-07-06,-Commissioner-Riches-commences-as-NT-ICAC.pdf>.

[24] Conversation with Michael Riches, Commissioner, and Naomi Loudon, Deputy Commissioner, Independent Commissioner Against Corruption (NT) (the Review, 18 March 2024).

[25] Conversation with Michael Riches, Commissioner, and Naomi Loudon, Deputy Commissioner, Independent Commissioner Against Corruption (NT) (the Review, 18 March 2024).

[26] Conversation with Michael Riches, Commissioner, and Naomi Loudon, Deputy Commissioner, Independent Commissioner Against Corruption (NT) (the Review, 18 March 2024).

[27] Conversation with Michael Riches, Commissioner, and Naomi Loudon, Deputy Commissioner, Independent Commissioner Against Corruption (NT) (the Review, 18 March 2024).

[28] Conversation with Michael Riches, Commissioner, and Naomi Loudon, Deputy Commissioner, Independent Commissioner Against Corruption (NT) (the Review, 18 March 2024).

[29] Conversation with Michael Riches, Commissioner, and Naomi Loudon, Deputy Commissioner, Independent Commissioner Against Corruption (NT) (the Review, 18 March 2024).

[30] Conversation with Michael Riches, Commissioner, and Naomi Loudon, Deputy Commissioner, Independent Commissioner Against Corruption (NT) (the Review, 18 March 2024).

[31] It is to be noted that this report was published prior to legislative amendments in October 2023 which inserted s 50A and enabled the Independent Commissioner Against Corruption to publish an investigation report of its own volition.

[32] *Independent Commissioner Against Corruption Act 2017* (NT) s 50(2); Office of the Independent Commissioner Against Corruption (NT), *Investigation Report: Operation Crimen* (May 2023) 11.

[33] Office of the Independent Commissioner Against Corruption (NT), *Investigation Report: Operation Crimen* (May 2023) 11.

[34] Office of the Independent Commissioner Against Corruption (NT), *Investigation Report: Operation Crimen* (May 2023) 11.

[35] Office of the Independent Commissioner Against Corruption (NT), *Investigation Report: Operation Crimen* (May 2023) 12.

[36] *Independent Commission Against Corruption Act 2012* (SA) s 42(1a).

[37] *Independent Commission Against Corruption Act 2012* (SA) s 25. This included a name change from the Independent Commissioner Against Corruption to the Independent Commission Against Corruption. Prior to the amendments the Commissioner was permitted to make public statements at any time, if in the Commissioner's opinion it is appropriate to do so in the public interest, having regard to the benefits to an investigation, the risk of prejudicing the reputation of a person, whether a

statement is necessary to allay public concern or to prevent or minimise the risk of prejudice to reputation, whether a statement would address prejudice to reputation as a result of an allegation having been made public, the risk of adversely affecting a prosecution, and whether any person has requested the statement be made.

[38] Conversation with Julie-Anne Burgess, Chief Executive Officer, Independent Commission Against Corruption (SA) (the Review, 25 March 2024).

[39] Conversation with Julie-Anne Burgess, Chief Executive Officer, Independent Commission Against Corruption (SA) (the Review, 25 March 2024).

[40] Conversation with Julie-Anne Burgess, Chief Executive Officer, Independent Commission Against Corruption (SA) (the Review, 25 March 2024). There is no legislative requirement to provide a copy of the report or material to an interested party.

[41] Conversation with Julie-Anne Burgess, Chief Executive Officer, Independent Commission Against Corruption (SA) (the Review, 25 March 2024).

[42] *Independent Commission Against Corruption Act 2012* (SA) s 42(1a).

[43] Ann Vanstone, Commissioner, Independent Commission Against Corruption (SA), *Integrity Trade-off* (August 2023)*; An update on Troubling Ambiguity; Governance in SA Health* (July 2023); Ann Vanstone, Commissioner, Independent Commission Against Corruption (SA), *Yes Minister: Corruption risks associated with unsolicited proposals* (February 2023); Ann Vanstone, Commissioner, Independent Commission Against Corruption (SA), *Buy Now, Lie Later: Corruption risks in the management of government issued purchase cards* (October 2022); Ann Vanstone, Commissioner, Independent Commission Against Corruption (SA), *Received or Deceived? Managing and monitoring the conduct of government contractors* (May 2022).

[44] Conversation with Julie-Anne Burgess, Chief Executive Officer, Independent Commission Against Corruption (SA) (the Review, 25 March 2024).

[45] *C v Independent Commissioner Against Corruption* (2020) 136 SASR 215.

[46] Conversation with Emma Johnson, Chief Executive Officer and Kirsten Nelson, Executive Director (Legal Services), Corruption and Crime Commission (WA) (the Review, 17 April 2024).

[47] Conversation with Emma Johnson, Chief Executive Officer and Kirsten Nelson, Executive Director (Legal Services), Corruption and Crime Commission (WA) (the Review, 17 April 2024).

[48] Conversation with Emma Johnson, Chief Executive Officer and Kirsten Nelson, Executive Director (Legal Services), Corruption and Crime Commission (WA) (the Review, 17 April 2024).

[49] Conversation with Emma Johnson, Chief Executive Officer and Kirsten Nelson, Executive Director (Legal Services), Corruption and Crime Commission (WA) (the Review, 17 April 2024).

[50] Conversation with Emma Johnson, Chief Executive Officer and Kirsten Nelson, Executive Director (Legal Services), Corruption and Crime Commission (WA) (the Review, 17 April 2024).

[51] See, eg, Corruption and Crime Commission (WA), *A report on Murdoch University's governance and oversight of farm management* (23 June 2022); Corruption and Crime Commission (WA), *Report on misconduct by a senior biomedical engineer at Sir Charles Gardner Hospital* (23 January 2024); Corruption and Crime Commission (WA), *Misconduct risks in electorate allowances for Members of Parliament* (Report, 17 December 2017).

[52] Corruption and Crime Commission (WA), *A report on Murdoch University's governance and oversight of farm management* (23 June 2022); Corruption and Crime Commission (WA), *Report on misconduct by a senior biomedical engineer at Sir Charles Gardner Hospital* (23 January 2024); Crime and Corruption Commission (WA), *Exposing corruption in Department of Communities* (Report, 16 November 2021).

[53] Corruption and Crime Commission (WA), *The Bench Book: A guide to Corruption and Crime Commission serious misconduct examinations* <https://www.ccc.wa.gov.au/investigations/bench-book>; Conversation with Emma Johnson, Chief Executive Officer and Kirsten Nelson, Executive Director (Legal Services), Corruption and Crime Commission (WA) (the Review, 17 April 2024).

[54] Conversation with Emma Johnson, Chief Executive Officer and Kirsten Nelson, Executive Director (Legal Services), Corruption and Crime Commission (WA) (the Review, 17 April 2024).

[55] Conversation with Emma Johnson, Chief Executive Officer and Kirsten Nelson, Executive Director (Legal Services), Corruption and Crime Commission (WA) (the Review, 17 April 2024).
[56] Corruption and Crime Commission (WA), 'Statement from the Corruption and Crime Commission regarding incident at Casuarina Prison' (Media Release, 20 October 2023) <https://www.ccc.wa.gov.au/media/media-releases/2023>.
[57] Conversation with Emma Johnson, Chief Executive Officer and Kirsten Nelson, Executive Director (Legal Services), Corruption and Crime Commission (WA) (the Review, 17 April 2024). See, eg, Corruption and Crime Commission (WA), 'Devious behaviours provide timely reminder of misconduct risks' (Media Release, 23 January 2024).
[58] Email from Philip Reed, Chief Executive Officer, National Anti-Corruption Commission to the Review, 4 March 2024.
[59] Australian Commission for Law Enforcement Integrity, *Annual Report 2022–23* (6 November 2023) 23–31.
[60] Independent Commission Against Corruption (NSW), *Information for Witnesses* (October 2023).
[61] Noting that the investigator and Integrity Commission is only able to make factual findings, and that misconduct findings may only be made by an Integrity Tribunal.
[62] Integrity Commission (Tas), *Report of the Integrity Commission No 1 of 2022: A summary report of own-motion Investigations Fisher, into any misconduct committed by Derwent Valley Council Councillor Paul Belcher relating to his relationship with a property developer* (29 September 2022).
[63] Integrity Commission (Tas), *Report of the Integrity Commission No 1 of 2020: A summary report of an own-motion investigation into misconduct by public officers in the Tasmanian Health Service, North West Region arising from intelligence received by the Commission and risk factors evident in past investigations* (25 August 2020) 1.
[64] Integrity Commission (Tas), *Report of the Integrity Commission No 1 of 2020: A summary report of an own-motion investigation into misconduct by public officers in the Tasmanian Health Service, North West Region arising from intelligence received by the Commission and risk factors evident in past investigations* (25 August 2020) iii.
[65] Integrity Commission (Tas), *Report of the Integrity Commission No 1 of 2020: A summary report of an own-motion investigation into misconduct by public officers in the Tasmanian Health Service, North West Region arising from intelligence received by the Commission and risk factors evident in past investigations* (25 August 2020) iii.
[66] Integrity Commission (Tas), *Report of the Integrity Commission No 1 of 2023, A report on systemic misconduct risks in recruiting local government employees in Tasmania, as identified in an investigation into alleged misconduct in 8 recruitments at a council* (28 February 2023).
[67] Integrity Commission (Tas), *Integrity Commission annual Report 2022–23* (Annual Report, 19 October 2023) 30.
[68] That is a power given to the Integrity Tribunal pursuant to *Integrity Commission Act 2009* (Tas) s 78(2).
[69] *Integrity Commission Act 2009* (Tas) s 60.
[70] Integrity Commission (Tas), *Integrity Tribunals – Active Inquiries* (Web Page) <https://www.integrity.tas.gov.au/investigating/integrity-tribunals/active-inquiries>.

# Chapter 6: Legislation and practice in overseas jurisdictions

The terms of reference require me to have regard to the legislation, operation, practices and procedures relating to public reporting on corruption in overseas jurisdictions.[1] In its submissions, the Crime and Corruption Commission identified five jurisdictions that have anti-corruption bodies bearing some resemblance to the Commission: Hong Kong, Quebec in Canada, Papua New Guinea, New Zealand and the United Kingdom.[2]

A variety of reporting powers exists in those jurisdictions. However, in Hong Kong and Quebec, the anti-corruption bodies tend to avoid reporting or making public statements about an investigation before a person is charged or convicted. There are protections for privacy and the presumption of innocence in each of those jurisdictions that encourage that approach. Papua New Guinea has similar protections, but it remains to be seen how the anti-corruption body there will operate in practice, since it has only recently been established. The Serious Fraud Offices in New Zealand and the United Kingdom do not have reporting powers.

The Review team undertook a review of several other overseas jurisdictions' corruption systems, but most had vastly different mechanisms for receiving, investigating, and reporting on corruption matters.

## 6.1 Hong Kong

Following a commission of inquiry into corruption in 1973,[3] Hong Kong's Independent Commission Against Corruption was established in 1974,[4] and has served as a model for permanent anti-corruption bodies elsewhere, including in Australia.[5]

Under the *Independent Commission Against Corruption Ordinance* (Hong Kong), the Commissioner has duties to investigate complaints of corrupt practices,[6] and is invested with "extraordinary" powers to carry out the investigation, including coercive powers not ordinarily available in a police investigation.[7]

When it comes to public servants, principal officials and the judiciary, the Commissioner is required to investigate any conduct "connected with or conducive to" corrupt practices, and report on the outcome of the investigation to the Chief Executive of Hong Kong.[8] Similarly to s 49 of the *Crime and Corruption Act 2001*, the Ordinance does not provide for those reports to be published to a wider audience.

Otherwise, the Commissioner's only reporting power arises from a requirement to provide an annual report for tabling every year,[9] which is then also available on the Commission's website. The contents are largely statistical and rarely contain details of

specific cases.[10] Where cases are provided as an example in an annual report, the circumstances of each case are summarised briefly, and while organisations or businesses may be named, individuals typically are not, with position titles or pseudonyms preferred. This is also true for other reports available on the Commission's website (for which the source of reporting power is not clear).[11]

The Commissioner does not have an express power to issue public statements. The Commission's press releases, while numerous, largely relate to the laying of charges or conveying the outcome of a prosecution and provide a very brief factual summary of the conduct involved.[12] That may be because there are restrictions on disclosing the identity of a person who is the subject of a bribery investigation unless (among other restrictions) warrants have been issued for the person's arrest, or they have been arrested.[13] The courts in Hong Kong have also indicated that statements by investigating agencies that imply a person is guilty may infringe the right to be presumed innocent in article 87 of the Basic Law.[14] (As will be seen later, in chapter 9, in the Queensland context, s 32 of the *Human Rights Act 2019* protects the right to be presumed innocent.)

The Commissioner has community engagement functions which include duties to "educate the public against the evils of corruption" and to "enlist and foster public support in combatting corruption".[15] This wider remit explains the Commission's involvement in producing a long-running television mini-series,[16] television commercials,[17] a range of interactive webpages and comics based on significant cases in Hong Kong's anti-corruption history,[18] youth programs,[19] and resources for young people at different educational stages.[20]

## 6.2 Quebec, Canada

The Province of Quebec in Canada is another jurisdiction that has established a specific anti-corruption body bearing some resemblance to the Crime and Corruption Commission. Following a political scandal about the awarding of public contracts in the construction industry,[21] in 2011, the Quebec Parliament passed the *Anti-Corruption Act*, which established the office of the Anti-Corruption Commissioner.[22] Since 2018, the Commissioner and others have also comprised a specialised anti-corruption police force,[23] which in turn forms part of the Permanent Anti-Corruption Unit.[24] That Unit is subject to oversight by a committee appointed by the Quebec Parliament.[25]

The purpose of the *Anti-Corruption Act* is to strengthen actions to prevent and fight corruption in the public sector, including in contractual matters, and to enhance public confidence in the public procurement process and public institutions.[26] The concept in the Quebec legislation which is the equivalent of "corrupt conduct" is a "wrongdoing", which is defined as a contravention of a law, pertaining to—among other things—corruption, breach of trust, malfeasance, collusion, fraud or influence peddling in the exercise of a public sector entity's functions.[27]

The Commissioner's functions include receiving, recording and examining disclosures of wrongdoing; ordering examinations to detect wrongdoing; making recommendations on measures to prevent and fight corruption; and assuming an educative and preventative role in the fight against corruption.[28]

The Commissioner's investigative powers are not as extensive as those of the Queensland Commission. In order to investigate disclosures of wrongdoing, the Commissioner is given wide powers to carry out audits and require people to give certain information.[29] However, the privilege against self-incrimination is not expressly abrogated.[30] If an investigation turns into a penal or criminal investigation (presumably once a person becomes a suspect), the Commissioner is required to inform the Director of Criminal and Penal Prosecutions and request advice on the course of action to take.[31] The Director decides whether a prosecution should be commenced.[32]

The Commissioner and the Permanent Anti-Corruption Unit are subject to privacy protection laws,[33] and are also required to handle certain information and documents "in keeping with the constitutional requirements regarding privacy".[34] (By contrast, in Queensland, there is a carveout from the *Information Privacy Act 2009* for documents containing personal information arising out of a complaint or the investigation of a complaint by the Crime and Corruption Commission.[35] However, as chapter 9 explains, the right to privacy is protected by s 25 of the *Human Rights Act*.)

The Commissioner has two reporting powers: one direct to the public and one by tabling. As to the first, the Commissioner is to report to the public at least twice each year "on the status of the Commissioner's activities". Those reports may include any recommendations the Commissioner has made to the relevant Minister or a public sector entity on measures to prevent and fight corruption. Aside from reports on the status of the Commissioner's activities, the Commissioner may also report to the public on any other matter within their authority if they consider the matter "important enough to warrant it".[36]

The Commissioner is also required to provide an annual management report to the relevant Minister, who tables it in the Quebec Parliament. Within 15 days of the report's being tabled, the Commissioner must present it to the public.[37] In practice, the Commissioner appears to combine the two forms of report into one, with each annual management report including a section on the status of the Commissioner's activities. The 2022–23 annual report of the Anti-Corruption Commissioner reveals that more than 430 reports of wrongdoing were received, with 231 criminal and penal charges, and 35 convictions occurring in that year.[38]

The Commissioner does not have an express power to make public statements. Media releases published on the Commissioner's website tend to relate to matters where there has been a charge, conviction or fine. The Commissioner neither confirms nor

denies that an investigation is being conducted, so as not to compromise the collection of information, to protect the integrity of the evidence and the safety and reputation of those involved.[39] On occasion communiqués extend slightly further, for example by advising that the Commissioner has closed an investigation after obtaining legal advice.[40]

A recent communiqué acknowledged that property searches carried out by the Commissioner had not been conducted appropriately and that this had had a "regrettable impact" on the professional integrity and personal lives of the individuals whose houses had been searched.[41] The original investigation was itself controversial; it concerned a former premier of the Province and the financing of his political party. Information about the investigation was leaked to journalists who then identified the former premier as a person of interest in media articles. Despite a lengthy investigation spanning years, no criminal charges resulted. In April 2023, the Superior Court of Quebec ruled that the leaks had violated information privacy laws. (Revealing that a person is being investigated reveals personal information, which can only be disclosed under Quebec's privacy laws with the person's consent.[42]) Accordingly, the judge awarded compensatory and punitive damages,[43] on the basis that the disclosure to the journalist had violated the former Premier's right to privacy.[44]

### 6.2.1 Anti-corruption agencies at the federal level in Canada

At the federal level, the Royal Canadian Mounted Police has primary responsibility for investigating corruption.[45] However, Canada also has the Office of the Public Sector Integrity Commissioner, which investigates "wrongdoings" in the public sector, such as misuse of public funds or assets, gross mismanagement, or serious breaches of a code of conduct.[46] The concept of wrongdoings appears to cover what might be considered disciplinary matters and is broader than the concept of corrupt conduct.

The Office is established by the *Public Servants Disclosure Protection Act*.[47] The Commissioner has duties to investigate disclosures of wrongdoings, but only if no other body is dealing with the matter, for the purpose of bringing the existence of wrongdoings to the attention of chief executives and making recommendations concerning corrective measures to be taken by them.[48] The Commissioner is required to afford procedural fairness and protect the identity of all people involved, including the person alleged to be responsible for the wrongdoing.[49]

The Commissioner has powers to report to the chief executive and the responsible Minister.[50] In addition, the Commissioner must prepare an annual report and case reports, and may prepare special reports, which are to be tabled in Parliament.[51] Case reports set out the results of investigations and typically include adverse findings against an agency, rather than individuals,[52] though there are examples of senior public servants being named in case reports.[53]

## 6.3 Papua New Guinea

After many years in the making,[54] the Papua New Guinea Independent Commission Against Corruption has recently commenced operation. The Papua New Guinean Constitution was amended in 2014 to provide that there must be an Independent Commission Against Corruption,[55] the purpose of which is to contribute to "preventing, reducing and combating corrupt conduct".[56] Further details were to be set out in an Organic Law, but it took some years for such a law to be passed. An interim Commission was established in 2018 to develop internal policies and procedures pending the enactment of the *Organic Law on the Independent Commission Against Corruption 2020* (Papua New Guinea). The first Commissioners were only sworn in on 4 July 2023.[57]

Like the Queensland Commission, the Papua New Guinea Commission has the functions of investigating corruption[58] using extraordinary investigative powers,[59] and referring the outcome of the investigation to other agencies,[60] as well as research and prevention functions.[61] In addition, the Papua New Guinea Commission is itself empowered to prosecute indictable offences related to corruption.[62]

The Commission has two reporting powers. Section 33(g) provides that the Commission may "publish recommendations, research, reports, policies or guidelines and provide such material to other agencies and bodies". Given that the remainder of s 33 is largely directed to research and education, it is not clear that this provides a power to report on the outcome of an investigation into a particular matter.[63]

Otherwise, s 220H of the Constitution and s 111 of the Organic Law require the Commission to provide an annual report to the Speaker for tabling by 31 March each year. Again, it is not evident that the annual report provides an opportunity for reporting on individual investigations. The contents that have been prescribed for annual reports mainly concern statistical information, though under s 111(m) of the Organic Law, the annual reports are also to include "such other matters relating to its functions as the Commission determines to be in the public interest". The Review team was unable to locate any annual reports or any reports in relation to investigations—none appear on the Commission's website—so it remains to be seen how these reporting powers will operate in practice.

The Commission also has an express power to make public statements. Section 52 of the Organic Law provides that the Commission may make a public statement "about a complaint or investigation concerning alleged or suspected corrupt conduct" if the Commission considers it appropriate to do so in the public interest.[64] In determining whether it would be in the public interest, the Commission is to have regard to a list of considerations very similar to those set out in s 25(4) of the *Independent Commission*

*Against Corruption Act 2012* (SA).[65] Those considerations include the risk of prejudicing a person's reputation or a fair trial.

In that connection, s 1 of the Organic Law sets out the legislature's view that the Organic Law imposes a justified limit on various rights protected by the Constitution, including the right to privacy.[66] In 2022, the Organic Law was the subject of a constitutional challenge on the basis that it infringed various human rights, but that aspect of the challenge was later withdrawn.[67]

It should also be pointed out that the power to make public statements in s 52 of the Organic Law is expressed to be "subject to other laws". Without knowing what other laws may apply, the scope of the power is unclear. In any event, at this early stage in the life of the Commission, it is not yet known how the power to make public statements will operate in practice.

## 6.4 New Zealand and the United Kingdom

New Zealand and the United Kingdom both have a Serious Fraud Office. However, an examination of their functions provides no insight into what the Crime and Corruption Commission's reporting powers should be.

The Serious Fraud Office in the United Kingdom was established in 1987 as a specialist prosecuting authority for cases of complex fraud, bribery and corruption.[68] Rather than operating as an independent agency, the Serious Fraud Office sits under the superintendence of the Attorney-General.[69] The *Criminal Justice Act 1987* (UK) c 38 confers investigative powers on the Director that are not ordinarily available in an investigation.[70] However, the Act does not provide the Serious Fraud Office with any reporting powers.[71]

The Serious Fraud Office in New Zealand was set up in 1990, "[l]argely in response to white-collar crime revealed after the stock market crash of 1987",[72] and is the country's lead law enforcement agency for investigating and prosecuting serious fraud, including corruption.[73] Unlike the Crime and Corruption Commission, it is a department rather than an independent body.[74] The *Serious Fraud Office Act 1990* (NZ) confers extraordinary investigative powers on the Serious Fraud Office, but does not confer any powers to report or make public statements. As a department, the Serious Fraud Office prepares annual reports at a level of generality that renders them innocuous, so far as harm to reputation or privacy is concerned.[75]

## 6.5 Other jurisdictions

Otherwise, the Review team focused on anti-corruption agencies in countries perceived as having the lowest levels of corruption. Denmark, Finland, Norway and Sweden all rank in the top six "cleanest" countries on the Transparency International corruption perceptions index.[76] However, in those countries, corruption-related offences are

investigated and prosecuted in the same way as any other offences.[77] There are dedicated police and prosecution units,[78] or dedicated agencies that combine police and prosecution functions,[79] but—like the Serious Fraud Offices in the United Kingdom and New Zealand—those agencies investigate corruption for the purpose of bringing prosecutions, not for the purpose of reporting to the public. They are not comparable to the Crime and Corruption Commission.

At the supranational level, the European Commission established the European Anti-Fraud Office in 1999.[80] It is responsible for carrying out "administrative investigations" into corruption affecting the European Union's financial interests.[81] Investigations are to be carried out respecting the presumption of innocence, self-incrimination privilege and procedural fairness.[82]

The European Anti-Fraud Office is required to maintain the confidentiality of information obtained in the course of an investigation.[83] That is reinforced by the *Charter of Fundamental Rights of the European Union*, which requires the Office to exercise its powers in a way that respects the human rights enshrined in the Charter, including the rights to privacy and protection of personal data.[84]

Following an investigation, the European Anti-Fraud Office is required to prepare a report and provide it to specified European Union institutions and national authorities depending on the subject of the investigation. The report may include recommendations concerning criminal investigations, financial recoveries, or other disciplinary and administrative measures.[85] There is no power to publish those reports to the world at large. The Director-General of the European Anti-Fraud Office is also required to report regularly to the European Parliament and other European bodies on the findings of investigations, action taken, and the problems encountered; however, such reports must respect the confidentiality of the investigations and the rights of the people involved.[86]

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1 Terms of reference, [6](h).

2 Crime and Corruption Commission, second submission, dated 18 April 2023, 3–4 and annexure 1.

3 Ian Scott and Ting Gong, *Corruption Prevention and Governance in Hong Kong* (Routledge, 2019) 31–4. For a summary of the Commission's operations in the most recent review under the *United Nations Convention Against Corruption*, see: Secretariat, Conference of the States Parties to the United Nations Convention against Corruption, *Executive summary*, Implementation Review Group, 8th sess, Agenda Item 2, UN Doc CAC/COSP/IRG/I/4/1/Add.49 (17 November 2016) 18.

4 *Independent Commission Against Corruption Ordinance* (Hong Kong) cap 204, s 3.

5 Neil Laurie, 'Mount Erebus to Ann Street: Forty years of judicial supervision of ad hoc and permanent commissions of inquiry and the intersection with parliamentary privilege and doctrines of mutual respect' (2023) 38(2) *Australasian Parliamentary Review* 73, 75.

6 *Independent Commission Against Corruption Ordinance* (Hong Kong) cap 204, s 12(a). Under s 12(b), the Commissioner also has a duty to investigate various alleged or suspected offences, including offences under the *Prevention of Bribery Ordinance* (Hong Kong) cap 201and the *Elections (Corrupt and Illegal Conduct) Ordinance* (Hong Kong) cap 554.

[7] *A v Commissioner of the Independent Commission Against Corruption* (2012) 15 HKCFAR 362, 370 [2]. See *Prevention of Bribery Ordinance* (Hong Kong) cap 201, ss 13–17C.
[8] *Independent Commission Against Corruption Ordinance* (Hong Kong) cap 204, s 12(c).
[9] *Independent Commission Against Corruption Ordinance* (Hong Kong) cap 204, s 17.
[10] See, eg, Independent Commission Against Corruption (Hong Kong), *Annual Report 2021* (Annual Report, 2021) 37–8, where case examples are limited to a de-identified sentence or two, briefly describing the conduct and a prosecution outcome.
[11] See, eg, Independent Commission Against Corruption (Hong Kong), *Operations Department Biennial Review 2017-2018* (Review Report, December 2019).
[12] See Independent Commission Against Corruption (Hong Kong), *Press Releases* (Web Page) <https://www.icac.org.hk/en/p/press/index.html>.
[13] *Prevention of Bribery Ordinance* Hong Kong) cap 201, s 30.
[14] *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, art 87(2). See *Yeung Chung Ming v Commissioner of Police* (2008) 11 HKCFAR 513, 526 [23].
[15] *Independent Commission Against Corruption Ordinance* (Hong Kong) cap 204, ss 12(g)–(h).
[16] *ICAC Investigators* (Asia Television, Independent Commission Against Corruption (Hong Kong), Radio Television Hong Kong, Rediffusion Television and Television Broadcasts, 1975–2022). These are available at <https://www.icac.org.hk/en/icac-highlights/drama/index.html>.
[17] These are available at Independent Commission Against Corruption (Hong Kong), *TV Commercials* (Web Page, 11 April 2024) <https://www.icac.org.hk/en/icac-highlights/tv-commercials/api/index.html>.
[18] These are available at Independent Commission Against Corruption (Hong Kong), *Landmark Cases* (Web Page, 19 February 2024) <https://www.icac.org.hk/en/about/history/case/index.html>.
[19] Independent Commission Against Corruption (Hong Kong), *iTeen Base Camp* (Web Page, 28 June 2020) <https://iteencamp.icac.hk>.
[20] Independent Commission Against Corruption (Hong Kong), *Youth* (Web Page, 20 February 2024) <https://iteencamp.icac.hk/>.
[21] Sarah Chaster, 'Public Procurement and the Charbonneau Commission: Challenges in Preventing and Controlling Corruption' (2018) 23 *Appeal* 121, 128.
[22] *Anti-Corruption Act*, CQLR, c L-6.1, s 4.
[23] *Anti-Corruption Act*, CQLR, c L-6.1, s 8.4.
[24] *Anti-Corruption Act*, CQLR, c L-6.1, s 8.6.
[25] *Anti-Corruption Act*, CQLR, c L-6.1, ss 35.2–35.7.
[26] *Anti-Corruption Act*, CQLR, c L-6.1, s 1.
[27] *Anti-Corruption Act*, CQLR, c L-6.1, s 2.
[28] *Anti-Corruption Act*, CQLR, c L-6.1, s 9.
[29] Eg, *Anti-Corruption Act*, CQLR, c L-6.1, s 13.1.
[30] Cf *Crime and Corruption Act 2001*, s 197. Note, in Canada, protection against self-incrimination in ss 7 and 11 of the *Canadian Charter of Rights and Freedoms* is only engaged when the predominant purpose of seeking the information is to incriminate the person; prior to that point, investigators can require a person to answer self-incriminating questions without engaging those constitutional rights: *British Columbia Securities Commission v Branch* [1995] 2 SCR 3, 27–8 [35]. If self-incrimination privilege is abrogated, direct and derivative use immunity must be provided by way of compensation in order to avoid breaching rights protected by the Charter: *R v S (RJ)* [1995] 1 SCR 451, 561 [191], 566 [204]; *British Columbia Securities Commission v Branch* [1995] 2 SCR 3, 13 [2]; *Re Application under s 83.28 of the Criminal Code* [2004] 2 SCR 248, 282–4 [70]–[73].
[31] *Anti-Corruption Act*, CQLR, c L-6.1, s 18.
[32] Permanent Anticorruption Unit, *Les étapes d'une enquête criminel* [*Steps in a Criminal Investigation*] (Web Page, 2024) <https://upac.gouv.qc.ca/enquete/etapes-enquete-criminelle>.
[33] *Act respecting access to documents held by public bodies and the protection of personal information*, CQLR, c A-2.1.

[34] *Anti-Corruption Act*, CQLR, c L-6.1, ss 16.1, 17. This appears to be a reference to constitutional requirements at the federal level as well as quasi-constitutional requirements at the provincial level: *Charest v Attorney-General (Quebec)* [2023] QCCS 1050, [63]. At the federal level, the *Canadian Charter of Rights and Freedoms* protects aspects of privacy through other rights, but not the right to privacy as such: eg, the right against unreasonable search and seizure in s 8. See *Hunter v Southam Inc* [1984] 2 SCR 145, 159–60. At the provincial level, s 5 of the Quebec *Charter of Human Rights and Freedoms*, CQLR, c C-12 protects the right to privacy in terms.

[35] *Information Privacy Act 2009*, s 16, sch 1, s 3.

[36] *Anti-Corruption Act*, CQLR, c L-6.1, s 22.

[37] *Anti-Corruption Act*, CQLR, c L-6.1, s 25.

[38] Anti-Corruption Commissioner, *Rapport annuel de gestion 2022-2023 incluant le rapport d'activité* de l'UPAC *[Annual management report 2022-2023 including the report on the activities of UPAC]* (2023) 23–4 <https://upac.gouv.qc.ca/fileadmin/contenu/Decouvrir_lUPAC/Documentation/Rapports_annuels_de_gestion/RAG_Commissaire_lutte_contre_corruption_WEB-V5.pdf>.

[39] Permanent Anti-Corruption Unit, *Foire aux Questions* [*Frequently Asked Questions*] (Web Page, 2024) <https://upac.gouv.qc.ca/faq>.

[40] Permanent Anti-Corruption Unit, 'Le commissarie à la lute contre la corruption met fin à l'enquête MÂCHURER [Anti-Corruption Commission ends investigation CHEW]' (Communiqué, February 28 2022) <https://upac.gouv.qc.ca/actualites>.

[41] Permanent Anti-Corruption Unit, 'Communiqué' (Communiqué, 5 March 2024) <https://upac.gouv.qc.ca/actualites>.

[42] *Charest v Attorney-General (Quebec)* [2023] QCCS 1050, [23]–[31].

[43] *Charest v Attorney-General (Quebec)* [2023] QCCS 1050, [43], [85].

[44] *Charest v Attorney-General (Quebec)* [2023] QCCS 1050, [63].

[45] See Secretariat, Conference of the States Parties to the United Nations Convention against Corruption, *Executive summary*, Implementation Review Group, 5th sess, Provisional Agenda Item 2, UN Doc CAC/COSP/IRG/I/3/1/Add.8 (13 February 2014) 3, 8.

[46] *Public Servants Disclosure Protection Act*, SC 2005, c 46, s 8.

[47] *Public Servants Disclosure Protection Act*, SC 2005, c 46, s 39.

[48] *Public Servants Disclosure Protection Act*, SC 2005, c 46, ss 22–23, 26,

[49] *Public Servants Disclosure Protection Act*, SC 2005, c 46, ss 22(d)–(e).

[50] *Public Servants Disclosure Protection Act*, SC 2005, c 46, ss 36–37.

[51] *Public Servants Disclosure Protection Act*, SC 2005, c 46, s 38.

[52] Eg, Office of the Public Sector Integrity Commissioner of Canada, *Findings of the Public Sector Integrity Commissioner in the Matter of an Investigation into a Disclosure of Wrongdoing Department of National Defence* (Case Report, September 2023) <https://psic-ispc.gc.ca/sites/default/files/2023-09/psic_case_report_-_dnd_sep_2023_en.pdf>.

[53] Eg, Office of the Public Sector Integrity Commissioner of Canada, *Findings of the Public Sector Integrity Commissioner in the Matter of an Investigation into a Disclosure of Wrongdoing Correctional Service of Canada* (Case Report, March 2018) <https://psic-ispc.gc.ca/sites/default/files/2019-03/case_report_csc_march_2018_en.pdf>.

[54] For the broader context and background to the Commission, see: Grant Walton and Husnia Hushang, 'Boom and bust? Political will and anti-corruption in Papua New Guinea' (2020) 7 *Asia and the Pacific Policy Studies* 187, 190–1, 195–6.

[55] *Constitution of the Independent State of Papua New Guinea* (Papua New Guinea) s 220B. Sections 220A–220H were inserted by *Constitutional Amendment (No. 40) (Independent Commission Against Corruption) Law 2014* (Papua New Guinea) s 1.

[56] *Constitution of the Independent State of Papua New Guinea* (Papua New Guinea) s 220C.

[57] Papua New Guinea Independent Commission Against Corruption, *History of the Independent Commission Against Corruption (ICAC)* (Web Page) <https://www.icac.gov.pg/history/>; Papua New

Guinea Independent Commission Against Corruption, *Papua New Guinea ICAC Update 2021* (Press release, 15 December 2021) <https://www.icac.gov.pg/papua-new-guinea-icac-update-2021/>.

58 *Constitution of the Independent State of Papua New Guinea* (Papua New Guinea) ss 220D(a)–(b); *Organic Law on the Independent Commission Against Corruption 2020* (Papua New Guinea) s 34(1)(a).

59 Eg, *Organic Law on the Independent Commission Against Corruption 2020* (Papua New Guinea) ss 54–55, 58–59, 70. On the constitutional validity of these provisions abrogating self-incrimination privilege, see: *Special Reference by the Ombudsman Commission Pursuant to Constitution, Section 19(1)* [2022] PGSC 106; SC2292, [134].

60 *Constitution of the Independent State of Papua New Guinea* (Papua New Guinea) ss 220D(d), (f). The Commission may also refer the complaint to another agency to investigate: *Organic Law on the Independent Commission Against Corruption 2020* (Papua New Guinea) ss 37, 51.

61 *Constitution of the Independent State of Papua New Guinea* (Papua New Guinea) s 220D(h); *Organic Law on the Independent Commission Against Corruption 2020* (Papua New Guinea) s 33.

62 *Constitution of the Independent State of Papua New Guinea* (Papua New Guinea) s 220D(g); *Organic Law on the Independent Commission Against Corruption 2020* (Papua New Guinea) ss 34(1)(b), 100–102.

63 On the other hand, s 33 is expressed to be "without limiting" the Commission's powers, and the Crime and Corruption Commission pointed out in submissions to the Review that there is a "co-operation" between the powers in s 33 and the powers to investigate in s 34: Crime and Corruption Commission, second submission, dated 18 April 2024, 4.

64 In a constitutional challenge, the inclusion of s 52 in the challenge was treated as an error: *Special Reference by the Ombudsman Commission Pursuant to Constitution, Section 19(1)* [2022] PGSC 106; SC2292, [115].

65 Save that, in South Australia, following amendments in 2021, the considerations are relevant to a much narrower discretion to issue a public statement, only once the investigation has concluded and provided the matter has not been referred to another agency. Section 52 of the Organic Law, enacted in 2020, reflects the position in South Australia prior to the 2021 amendment introduced by *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* (SA) s 24.

66 *Constitution of the Independent State of Papua New Guinea* (Papua New Guinea) s 49. The statement in s 1 of the Organic Law is required by s 38 of the Constitution.

67 *Special Reference by the Ombudsman Commission Pursuant to Constitution, Section 19(1)* [2022] PGSC 106; SC2292, [112].

68 *Criminal Justice Act 1987* (UK) c 38, s 1(1). See also: Serious Fraud Office (United Kingdom), *About us* (Web Page, 10 May 2024) <https://www.sfo.gov.uk/about-us/>. There are also many other agencies that deal with corruption-related matters in the United Kingdom: see Secretariat, Conference of the States Parties to the United Nations Convention against Corruption, *Executive summary*, Implementation Review Group, 4th sess, Provisional agenda item 2, CAC/COSP/IRG/I/2/1/Add.12 (22 March 2013) 2 [1.2].

69 *Criminal Justice Act 1987* (UK) c 38, s 1(2).

70 *Criminal Justice Act 1987* (UK) c 38, s 2.

71 The Crime and Corruption Commission drew attention to s 11, which places restrictions on the reporting of a "preparatory hearing" ordered by a court in preparation for complex fraud cases: Crime and Corruption Commission, second submission, dated 18 April 2024, annexure 1. However, that restriction on media reporting is not a restriction on any reporting powers of the Serious Fraud Office.

72 Robert Gregory, 'Governmental Corruption and Social Change in New Zealand: Using Scenarios, 1950–2020' (2006) 14(2) *Asian Journal of Political Science* 117, 126.

73 Serious Fraud Office (New Zealand), *Who we are* (Web Page, 10 May 2024) <https://sfo.govt.nz/about-us/who-we-are>. Other agencies that deal with corruption-related matters include the Ministry of Justice, the Financial Intelligence Unit, and the Organised Financial Crime Agency of New Zealand: see Secretariat, Conference of the States Parties to the United Nations Convention against

Corruption, *Executive summary*, Implementation Review Group, 8th sess, Agenda Item 2, UN Doc CAC/COSP/IRG/I/4/1/Add.58 (4 July 2017) 2, 6.

74 *Public Service Act 2020* (NZ) sch 2, pt 1.

75 Eg, Serious Fraud Office, *Annual Report 2022–2023* (2023) <https://sfo.govt.nz/assets/Uploads/SFO-Annual-Report-2022-23-FINAL.pdf>.

76 Transparency International, *Corruption Perceptions Index* (Web Page, 2023) <https://www.transparency.org/en/cpi/2023>.

77 In respect of Finland: Secretariat, Conference of the States Parties to the United Nations Convention against Corruption, *Executive summary*, Implementation Review Group, 2nd sess, Provisional Agenda Item 2, s CAC/COSP/IRG/I/1/1 (7 June 2011) 5.

78 In Sweden and Denmark: Secretariat, Conference of the States Parties to the United Nations Convention against Corruption, *Executive summary*, Implementation Review Group, 5th sess, Provisional agenda item 2, UN Doc CAC/COSP/IRG/I/3/1/Add.13 (28 May 2014) 7; Secretariat, Conference of the States Parties to the United Nations Convention against Corruption, *Executive summary*, Implementation Review Group, 7th sess, Agenda item 2, UN Doc CAC/COSP/IRG/I/4/1/Add.43 (6 September 2016) 7.

79 In Norway: Secretariat, Conference of the States Parties to the United Nations Convention against Corruption, *Executive summary*, Implementation Review Group, 5th sess, Agenda Item 2, UN Doc CAC/COSP/IRG/I/2/1/Add.25 (10 December 2013) 7.

80 *Commission decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF)* [1999] OJ L 136/20, art 1.

81 *Commission decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF)* [1999] OJ L 136/20, art 2(1); *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2023 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999* [2013] OJ L 281/1, arts 1(4), 3–4. See also European Anti-Fraud Office, *What we do* (Web Page, 2023) <https://anti-fraud.ec.europa.eu/about-us/what-we-do_en>.

82 *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2023 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999* [2013] OJ L 281/1, art 9.

83 *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2023 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999* [2013] OJ L 281/1, art 10.

84 *Charter of Fundamental Rights of the European Union* [2012] OJ C 326/393, arts 7–8, 51. See also Jan FH Inghelram, 'Fundamental Rights, the European Anti-Fraud Office (OLAF) and a European Public Prosecutor's Office (EPPO): Some Selected Issues' (2012) 95(1) *Critical Quarterly for Legislation and Law* 67, 67–8.

85 *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2023 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999* [2013] OJ L 281/1, art 11.

86 *Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2023 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999* [2013] OJ L 281/1, art 17(4).

# Chapter 7: Legislation and practice in other jurisdictions: a note of caution

## 7.1 The approach to other jurisdictions' models of reporting and statement-making

The Chairperson of the Crime and Corruption Commission, Mr Barbour, at a public hearing in relation to the Private Member's Bill, argued that the power to report publicly on corruption investigations was "clearly set out in the provisions of every other anti-corruption agency across the country and the new national body". If that were not remedied, Queensland would be an outlier.[1] That is true; every other Australian jurisdiction does provide its anti-corruption commission with public reporting powers to a greater or lesser degree. But while there may be good reasons for the Queensland Commission to similarly have reporting powers, it cannot be assumed that the powers given in other jurisdictions can simply be replicated here.

In later chapters I refer extensively to provisions of legislation in other jurisdictions and the use that I have been able to make of those examples will become clearer. But it is a patchwork use. This chapter briefly explains why there is no model of public reporting or public statement perfect for application in Queensland to be found elsewhere, and why circumspection is needed in considering what can be drawn from the legislation of other jurisdictions.

That is for a number of reasons: because the objects of legislation governing anti-corruption bodies and other jurisdictions are different from those applying in Queensland; because the legislated functions of other anti-corruption bodies are in some instances different; because the models for producing reports and statements in certain other jurisdictions are so untested as to require some caution; and because the experience in other jurisdictions does not always encourage the adoption of their approach.

As well, events in some other jurisdictions, although not always directly related to reporting, provide a cautionary note, by illustrating the controversy and potential for human damage which may accompany an anti-corruption commission's exercise of its functions.

## 7.2 Purposes and powers

The powers which the Commission can exercise and the purposes for which they are to be exercised are in some instances significantly different from those of anti-corruption bodies in other jurisdictions. One has to be cautious, therefore, before relying on

legislative powers and practices in relation to reporting in those other jurisdictions as an example of what might be done here.

I should also point out here that in this Review I was specifically not asked to examine issues concerning the provisions of the *Crime and Corruption Act 2001* or the Commission's powers more generally than in relation to public reporting and statements on corruption matters. That means that my recommendations are made within the bounds of the existing purposes of the *Crime and Corruption Act*, and the functions of the Commission as prescribed by the Act, other than in relation to reporting; because, plainly enough, whatever public reporting or statement power is conferred on the Commission in relation to corruption investigations, it cannot extend to matters which are not within those purposes and functions. That makes it all the more important to understand how the legislative setting in which the Queensland Commission operates differs from those in which the anti-corruption bodies of other States carry out their functions.

The *Crime and Corruption Act*'s purpose relating to corruption, set out in s 4(b), is "to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector". That purpose is to be achieved primarily (s 5) by the establishment of the Crime and Corruption Commission, which is to investigate cases of corrupt conduct, particularly more serious ones, and to increase the capacity of units of public administration to deal with corruption effectively and appropriately. Notably, the Act's purposes, unlike the objects of equivalent legislation in New South Wales,[2] Victoria,[3] the Australian Capital Territory[4] and South Australia,[5] do not include the exposing of corruption.[6]

It is consistent with that difference of purpose that where the *Independent Commission Against Corruption Act 1988* (NSW) gives the New South Wales Commission a discretion to hold a public inquiry if it considers it is in the public interest to do, the considerations for which include "the benefit of exposing to the public, and making it aware of, corrupt conduct",[7] the Queensland Commission, in contrast, may only hold a hearing in relation to a corruption investigation in public if it considers that closing the hearing to the public would either be unfair to an individual or contrary to the public interest.[8]

As to powers, it is highly significant that the investigative conclusions available to anti-corruption bodies in other States (and hence on what, and how, they can report) are different from those available to the Commission. The Commission does not have any power to make findings of corruption. Section 49 makes it quite clear that the Commission's power to draw conclusions in the context of a corruption investigation does not extend beyond the conclusion, on the evidence it has gathered during its investigation, "that prosecution proceedings or disciplinary action should be considered". As the Court of Appeal observed in *Carne*, its role "is to investigate, and

not to adjudicate upon the merits of the complaint";[9] "it is not the Commission's function to adjudicate upon allegations of corruption".[10]

In contrast, the National Anti-Corruption Commission,[11] the Australian Capital Territory Integrity Commission[12] and the New South Wales Independent Commission Against Corruption[13] are permitted to make findings about corruption (which for New South Wales must be serious, and in the Australian Capital Territory must be serious or systemic), while the Northern Territory Independent Commissioner Against Corruption may make findings relating to "improper conduct".[14]

On the other hand, s 50 of the *Crime and Corruption Act* gives the Commission a power not matched in any other jurisdiction, connected with the s 49 power of referral, to apply to an independent tribunal for disciplinary orders. If the Commission reports under s 49 to the chief executive officer of the relevant unit of public administration that there is a complaint involving corrupt conduct and there is evidence supporting a disciplinary proceeding for corrupt conduct against a police officer or employee or holder of an appointment, as the case may be, the Commission can apply to the Queensland Civil and Administrative Tribunal for an order against the person,[15] whether their employment or appointment is present or past.[16] The orders which can be made for a person who is presently employed or appointed are of a disciplinary nature, ranging from dismissal to a fine.[17] Where the person's appointment or employment has ended, the Tribunal may, if it finds corrupt conduct proved, make a "disciplinary declaration" of its finding and the order that it would have made had the employment or appointment not ended.[18]

It is a power that the Commission has seldom exercised, but as will be seen later, it can lead to a finding of corrupt conduct from an independent body, which may in some circumstances justify reporting.

Another variation is this: as can be seen from chapter 4, the definition of corrupt conduct is not consistent through the Australian jurisdictions, with the result that two of the other integrity bodies are generally concerned with a much narrower range of conduct. The *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) and the *Independent Commission Against Corruption Act 2012* (SA) include as an element of corrupt conduct that it must amount to a criminal offence; conduct which at the highest would result in termination of employment is not within the definition.[19] That means that the type of conduct for which reporting in Queensland is being considered may be of a much lower degree of seriousness than is likely to be the subject of public reporting or public statements in those States.

An extremely important aspect in which the position of Queensland's Commission differs from that of anti-corruption bodies in all other jurisdictions but Victoria[20] and the Australian Capital Territory[21] is that Queensland has human rights legislation which

must be taken into account in its performance of functions.[22] What that means for reporting and making public statements is explored in chapter 9.

Some of the other jurisdictions have unique features which do not necessarily recommend themselves. A feature of the Northern Territory legislation which the Queensland Commission urges against[23] is the requirement that an investigation report not contain inadmissible material except for the purposes of education and training, or disclosing systemic improper conduct, provided the material does not identify any individual.[24] That would include evidence obtained under compulsion; that is to say evidence which a witness can be required to give notwithstanding their claim of privilege against self-incrimination, but which cannot later be used in proceedings against them. The Commission makes the valid point that it would be odd if evidence could be elicited under compulsion in a public hearing, but could not be referred to in a public report because it was taken in that way.

## 7.3 Untested models

Another reason for caution in too readily assuming that legislation governing reporting and statement-making by anti-corruption bodies in other States might provide a model is that some of those bodies are relatively young and have not actually produced much in the way of investigation reports and public statements. The National Anti-Corruption Commission was established only in 2023, the Australian Capital Territory Integrity Commission in 2019. Both have yet to report on investigations. The legislation under which South Australia's Independent Commission Against Corruption operates has only recently undergone major change. Should there be disadvantages to that change, they may take time to emerge.

The Crime and Corruption Commission commended the general discretionary power of the Papua New Guinea Independent Commission Against Corruption to make public statements conferred by 52 of the *Organic Law on the Independent Commission Against Corruption 2020* (Papua New Guinea) as an example to be followed.[25] It is entirely reasonable to propose that the terms of that provision be considered for present purposes, but as was noted in chapter 6, the commissioners of the Independent Commission were appointed only in July 2023, and the Commission has yet to make a public statement in relation to any investigation under the provision.

A further matter relevant for comparison purposes is that the exercise of powers by anti-corruption bodies in other States has led to controversy and litigation, in some instances leading directly to a curtailment of their powers through the amendment of their governing legislation.

## 7.4 The New South Wales experience

The New South Wales Independent Commission Against Corruption has, to put it mildly, experienced some vicissitudes in relation to its exercise of the power to make findings and report on them. It was originally thought that the relevant legislation as enacted gave it powers to make findings of corrupt conduct; a misapprehension which, as I discuss in chapter 11, the High Court corrected in *Balog v Independent Commission Against Corruption*.[26] The Commission was subsequently granted the power to make and report findings and recommendations, but was found in *Independent Commission Against Corruption v Cunneen*[27] to have mistaken the extent of its power to investigate corrupt conduct. The recommendation of a review[28] commissioned because of that case led to legislative change restricting the Commission to making findings only in relation to serious corrupt conduct.[29]

The Parliamentary Committee which oversees the Independent Commission Against Corruption commenced an inquiry on 8 May 2020 into the reputational impact on individuals being adversely named in a Commission's investigation.[30] In its final report, delivered on 25 November 2021, the Committee, while finding that some reputational damage was an unavoidable consequence of the Commission's "work to investigate, expose and prevent corruption",[31] observed:

> The reputational impact experienced by people named in investigations of the [Independent Commission Against Corruption] can be serious. The Committee found that the nature of reputational impact is varied and includes economic, business, social and psychological effects. The impact can have negative and ongoing effects well after an investigation is finalised. This is heightened through media reports, which are readily available online and through social media.[32]

A submission provided to the Committee provides some illustration of how dramatic the impact of reporting can be, and how difficult it can be to reverse its effect should it prove wrong. It was from an individual who had succeeded in obtaining a declaration that the findings against him could not support a conclusion of corrupt conduct which the Commission had reported.[33] He complained that the Commission had used sensationalist language in press briefings which was repeated in news headlines.[34] On his account, he was asked to resign from boards and directorships, articles were published suggesting that funds he had donated to a charity were the proceeds of corruption, and he was forced to sell his majority interest in a business reliant on bank loans because of its financiers' concern about the corruption finding.[35] The declaration, he said, received far less media coverage than the original finding of corruption—almost none—so that very few people were aware that the finding had been wrongly made.[36] Meanwhile, he said, the Commission's finding remained on its website, with no

mention of the declaration he had obtained.[37] (The report in question is no longer available on the Commission's website, but may be requested.[38])

All of the developments I have described were attended by considerable controversy and public criticism of a kind liable to affect public confidence in the Independent Commission Against Corruption, albeit, one hopes, temporarily. That history is a lesson, however, in the need to grant powers cautiously and precisely.

## 7.5 The South Australian experience

The South Australian Independent Commission Against Corruption has been in existence for over a decade. It too has attracted controversy and criticism leading to the amendment of its governing legislation to restrict its powers.

In 2020, the South Australian Parliament established a Select Committee to inquire into and report on damage, harm or adverse outcomes resulting from investigations by South Australia's Anti-Corruption Commission where no adverse findings had resulted.[39] Its report was tabled on 30 November 2021, after consideration of a number of concluded investigations conducted by the Commission. Among them were three particular investigations. The first concerned a group of eight police officers against whom charges were brought, all of whom were acquitted or had their charges withdrawn.[40] The second was an investigation of two senior executives who were charged, only for a magistrate to rule that there was no case to answer;[41] a later ex officio indictment against one resulted in a nolle prosequi.[42] The third concerned an investigation in which a senior police officer was examined; three months later, when he was still waiting for notice of what findings might be contemplated against him, he took his own life.[43]

At the time of those investigations, s 25 of the *Independent Commission Against Corruption Act 2012* (SA) was broader in its scope, and permitted the Commissioner to make a public statement after having regard to six considerations. The Select Committee heard evidence from people who had been charged of the impact on them of public statements by the Commission and resulting media coverage. Police officers involved in the first investigation said that the Commissioner's statements in a press conference (which occurred prior to some of them being charged), left them feeling as though they had been deemed to be guilty from the first day.[44] A number of witnesses said that media reporting had created public scepticism about their innocence,[45] while one witness complained that when they were found not guilty, the media showed no interest, publishing nothing.[46] Witnesses gave accounts of difficulty in rebuilding their reputations despite prosecutions of them having failed or been abandoned, because of the lack of public acknowledgment that they had been cleared of the alleged conduct; some felt they were still treated with suspicion by colleagues.[47]

The three investigations were cited when the Chairperson of the Select Committee made the second reading speech for the Bill which became the *Independent Commissioner Against Corruption (CPIC Recommendations) Amendment Act 2021* (SA). That Act came into effect on 7 October 2021.[48] It changed the name of the principal Act from *Independent Commissioner Against Corruption Act* to *Independent Commission Against Corruption Act*, transferring the functions of the Commissioner to the Commission, a newly established corporate entity. The Office of the Inspector of the Independent Commission Against Corruption (which had previously existed in less powerful form under the title "Reviewer") was established; the Inspector's powers are described in chapter 4.

Importantly, s 25 of the Act was removed and replaced, with the new provision circumscribing the Commission's previously wide discretion to make public statements.[49] In particular it cannot now make any public statement from which it could be inferred that a matter is under investigation, and once an investigation is concluded, can still make no statement suggesting the existence of an investigation until it is clear that no criminal or disciplinary proceedings will be commenced.[50] The Act was also amended so that the Commission can no longer report on misconduct or maladministration (responsibility for those matters was transferred to the Ombudsman)[51] and it cannot include any findings or suggestions of civil or criminal liability in its reports.[52]

## 7.6 The Northern Territory experience

Public statements and reporting by the former Northern Territory Independent Commissioner Against Corruption were controversial. After an investigation of a grant which the Northern Territory government had made to the Darwin Turf Club, the Commissioner made a report and issued a public statement in substantially similar terms to the report.[53] The report and statement both resulted in several complaints from individuals and media organisations to the Inspector of the Independent Commissioner Against Corruption.[54] In his report dealing with some of those complaints, the Inspector found in respect of both the report and public statement that there had been failures to accord procedural fairness before an adverse finding was recorded.[55]

Of particular interest for present purposes, the Inspector said of a passage which appeared in both the report and public statement that it appeared to have resulted from a "siege mentality" about media criticism inside the office of the Independent Commissioner Against Corruption.[56] He went on to say, in observations which have some resonance in relation to questions of whether the Queensland Commission should, or needs to, be able to defend its investigative actions through reporting or statements:

> Such an attitude is inappropriate for a body such as the [Independent Commission Against Corruption]. Inevitably, such agencies will be criticised, sometimes severely and sometimes unfairly, in the media. It would be absurd to think that all such criticism will be fair or accurate. Much probably will not be. Agencies such as the [Commission] are, by their very nature, controversial and deal with controversial issues which must be the subject of report and debate in a democratic society. Such debate may not always be dispassionate and considered but sometimes angry and contentious. The media is where such reporting and debate must take place. Officers of such agencies may perceive such external criticism to be unfair and, indeed, on many occasions, it may be. But the best response to such criticism is to ensure that the agency carries out its significant investigative functions competently and fairly.[57]

The public statement provision (s 55 of the *Independent Commissioner Against Corruption Act 2017* (NT)) has been substantially amended since; the current provision is discussed in chapter 13.

## 7.7 The West Australian experience

The West Australian Corruption and Crime Commission has broad reporting powers: it can prepare a report at any time on any matter that has been the subject of an investigation, including offering its assessments and opinions,[58] although it must not include findings that someone is guilty of a criminal or disciplinary offence.[59] It has some history of contention concerning its investigative reports, arising between it and the Parliamentary Inspector who oversees it.

In 2009, the Commission acted on some recommendations by the Parliamentary Inspector concerning a public officer named in a report on a property development (it published an addendum, withdrew a recommendation for disciplinary action and retracted several adverse statements[60]). But it did not accept the Parliamentary Inspector's findings in relation to a second public officer that there was no justification for the Commission's finding that he was guilty of "misconduct", or for its recommendation that disciplinary action be considered against him.[61] It flatly rejected the Inspector's recommendation to publicly acknowledge error in its original opinion;[62] dismissing his views as a mere "difference of opinion" as to the interpretation of the evidence.[63]

More recently, the Inspector has again criticised the reporting of the Commission, finding omissions, factual inaccuracies, and material errors in a report which suggested that the individual concerned had engaged in tax evasion, in effect suggesting that he had committed a criminal offence.[64] This prompted the Inspector to write to the Commission and suggest a short supplementary report be tabled withdrawing the imputation of tax evasion, since the original report had had a "catastrophic effect on [its

subject's] professional and personal reputation";[65] a suggestion rejected by the Commission.[66] The Inspector did not find the Commission's response satisfactory:

> [T]he Commission nevertheless believed it is acceptable to speculate publicly that a person has "possibly" committed [a criminal] offence. This cannot be regarded as a responsible exercise of its power to report to the Parliament.[67]

Relevantly to the question of whether the Queensland Commission should have, as it contends, the power itself to have reports tabled rather than needing the direction of the Parliamentary Committee, the Inspector pointed out that the powers entrusted to the West Australian Commission came with need for caution in their exercise. The tabling of a report in Parliament, he said, converted the report to a public document:

> apt to be read by a great number of people, not all of whom will be familiar with the nuances of the Commission's jurisdiction and the different uses to which evidentiary material can be put. It is for this reason that great care must be taken in the preparation of such reports.[68]

## 7.8 Serious consequences

Finally, the experience of other jurisdictions shows that the threat of exposure of individuals' conduct, even if they are not the principal focus of an investigation, can be lethal. In 2019, a witness died on the eve of his compulsory examination in the New South Wales Independent Commission Against Corruption, revealing in a note his fears at the outcome of the investigation.[69] In its report, the Commission wrote that "[t]he circumstances of his death suggest he took his own life in contemplation of difficulties he would face trying to explain to the Commission his purported donations".[70]

In Victoria in 2018, the Inspectorate which oversees integrity bodies including the Independent Broad-based Anti-corruption Commission, released a special report after two incidents where the health and safety of witnesses subject to the Commission's coercive powers were seriously compromised.[71] One witness attempted suicide and the other was assessed by her psychologist as being at risk of self-harm.[72] In 2022, a councillor who believed (wrongly) that she was at risk of criminal proceedings took her own life while awaiting receipt of the Commission's draft report.[73] The Coroner noted her mental health had suffered during the course of her prolonged involvement in the investigation.[74] He made recommendations concerning witness welfare which the Commission has moved to implement.[75]

In South Australia, as already mentioned, a senior police officer who had been examined during an investigation took his own life while waiting for the draft findings for the investigation report, unaware that no findings of maladministration were to be made against him.[76] The Inspector of the Independent Commission Against Corruption noted that although the investigation had caused some prejudice to the officer's reputation, it was not undue, but the ordinary consequence of being a suspect of the investigation.[77]

However, the delay in provision of counsel's submissions and an unrealistic estimate of the time it would take to provide them had had a "profound negative impact" on the officer's state of mind.[78]

These examples do not concern any direct effect of reporting or public statements, but they do illustrate the devastating effects that the public exposure, or threat of exposure, of individuals' conduct, even where it falls far short of corruption, can have on them. The potential for catastrophic harm is not to be taken lightly when consideration is given to the conferral of powers on an anti-corruption body.

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1 Evidence to Community Safety and Legal Affairs Committee, Parliament of Queensland, Brisbane, 27 March 2024, 7 (Bruce Barbour).
2 *Independent Commission Against Corruption Act 1988* (NSW) s 2A(a)(i).
3 *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 8(a)(ii).
4 *Integrity Commission Act 2018* (ACT) s 6(a).
5 *Independent Commission Against Corruption Act 2012* (SA) ss 3(1)(b)–(c).
6 The Australian Capital Territory and South Australian provisions require the public interest in exposure to be balanced against the public interest in avoiding prejudice to reputations: *Integrity Commission Act 2018* (ACT) s 6(c); *Independent Commission Against Corruption Act 2012* (SA) s 3(1)(c).
7 *Independent Commission Against Corruption Act 1988* (NSW) ss 31(1)–(2).
8 *Crime and Corruption Act 2001,* s 177(2)(c).
9 *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 354 [34].
10 *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 360 [56].
11 *National Anti-Corruption Commission Act 2022* (Cth) ss 149(2)(a), (3).
12 *Integrity Commission Act 2018* (ACT) s 184(1).
13 *Independent Commission Against Corruption Act 1988* (NSW) ss 74B(2), 74BA(1).
14 *Independent Commissioner Against Corruption Act 2017* (NT) s 50(3)(b), (5).
15 *Crime and Corruption Act 2001,* ss 50(1)–(2).
16 *Crime and Corruption Act 2001,* s 50(3) (definition of "prescribed person", para (b)).
17 *Crime and Corruption Act 2001,* s 219I.
18 *Crime and Corruption Act 2001,* s 219IA.
19 *Independent Commission Against Corruption Act 2012* (SA) s 5(1) defines "corruption in public administration" as conduct that constitutes an offences against various Acts (s 5(1)(a)–(ba)), or is complicity in that conduct (ss 5(1)(d)(i)–(iii)) or conspiracy to commit the conduct (s 5(1)(d)(iv)); this later conduct is itself an offence. *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 4(1) defines "corrupt conduct" as various things "being conduct that would constitute a relevant offence".
20 *Charter of Human Rights and Responsibilities 2006* (Vic).
21 *Human Rights Act 2004* (ACT).
22 *Human Rights Act 2019*. Under s 58, it is unlawful for a public entity to act or make a decision in a way that is not compatible with human rights and, in making a decision, to fail to give proper consideration to a human right relevant to the decision. This necessitates the consideration of human rights by the Commission.
23 Crime and Corruption Commission, first submission, dated 12 March 2024, 23.
24 *Independent Commissioner Against Corruption Act 2017* (NT) s 59.
25 Crime and Corruption Commission, second submission, dated 18 April 2024, 4.
26 *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625.
27 *Independent Commission Against Corruption v Cunneen* (2015) 256 CLR 1.
28 Murray Gleeson and Bruce McClintock, *Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption* (Report, 30 July 2015) xii (recommendation 4).

[29] See *Independent Commission Against Corruption Amendment Act 2015* (NSW) sch 1, item 15, inserting s 74BA into the *Independent Commission Against Corruption Act 1988* (NSW).

[30] Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Reputational impact on an individual being adversely named in the ICAC's investigations* (Web Page) <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2595#tab-termsofreference>.

[31] Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Reputational impact on an individual being adversely named in the ICAC's investigations* (Report 4/57, 25 November 2021) vi (finding 6).

[32] Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Reputational impact on an individual being adversely named in the ICAC's investigations* (Report 4/57, 25 November 2021) iv.

[33] *Duncan v Independent Commission Against Corruption* (2014) 311 ALR 750, 796 [242].

[34] John Kinghorn, Submission No 3 to Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Reputational impact on an individual being adversely named in the ICAC's investigations* (12 June 2020) 2. Indeed, the Committee on the Independent Commission Against Corruption was concerned to hear allegations about previous ICAC Counsel Assisting cooperating with the media for headlines and conducting combative and emotionally charged public inquiries. The Committee noted it was dealing with concerns of reputational impact from investigations prior to amendments in 2016 which required procedural fairness and contributed to minimising unwarranted reputational damage: see Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Reputational impact on an individual being adversely named in the ICAC's investigations* (Report 4/57, 25 November 2021) 7–8.

[35] John Kinghorn, Submission No 3 to Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Reputational impact on an individual being adversely named in the ICAC's investigations* (12 June 2020) 3–4.

[36] John Kinghorn, Submission No 3 to Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Reputational impact on an individual being adversely named in the ICAC's investigations* (12 June 2020) 5.

[37] John Kinghorn, Submission No 3 to Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Reputational impact on an individual being adversely named in the ICAC's investigations* (12 June 2020) 5.

[38] Independent Commission Against Corruption (NSW), *Past Investigations – Pre 2014* (Web Page) <https://www.icac.nsw.gov.au/investigations/past-investigations/pre-2014>.

[39] This is the Legislative Council Select Committee on Damage, Harm or Adverse Outcomes Resulting from ICAC Investigations. Its work can be viewed at Parliament of South Australia, *Select Committee: Damage Harm or Adverse Outcomes resulting from ICAC Investigation* (Web Page) <parliament.sa.gov.au/Search/Result?type=committee&id=421>.

[40] Legislative Council Select Committee on Damage Harm or Adverse Outcomes Resulting From ICAC Investigations, Parliament of South Australia, *Report of the Select Committee on Damage, Harm or Adverse Outcomes Resulting From ICAC Investigations* (Final Report, 30 November 2021) 11–12 [5.1].

[41] Legislative Council Select Committee on Damage Harm or Adverse Outcomes Resulting From ICAC Investigations, Parliament of South Australia, *Report of the Select Committee on Damage, Harm or Adverse Outcomes Resulting From ICAC Investigations* (Final Report, 30 November 2021) 12 [5.3].

[42] See Legislative Council Select Committee on Damage Harm or Adverse Outcomes Resulting From ICAC Investigations, Parliament of South Australia, *Report of the Select Committee on Damage, Harm or Adverse Outcomes Resulting From ICAC Investigations* (Final Report, 30 November 2021) 13 [5.3]; Meagan Dillon, 'Abuse of public office charges dropped against former Renewal SA chief executive John Hanlon, *ABC News* (online, 9 November 2022) < https://www.abc.net.au/news/2022-11-09/charges-dropped-against-former-head-of-renewal-sa/101633070>.

[43] See Legislative Council Select Committee on Damage Harm or Adverse Outcomes Resulting From ICAC Investigations, Parliament of South Australia, *Report of the Select Committee on Damage, Harm or Adverse Outcomes Resulting From ICAC Investigations* (Final Report, 30 November 2021) 13 [5.5].

[44] Legislative Council Select Committee on Damage Harm or Adverse Outcomes Resulting From ICAC Investigations, Parliament of South Australia, *Report of the Select Committee on Damage, Harm or Adverse Outcomes Resulting From ICAC Investigations* (Final Report, 30 November 2021) 16 [6.1].
[45] Legislative Council Select Committee on Damage Harm or Adverse Outcomes Resulting From ICAC Investigations, Parliament of South Australia, *Report of the Select Committee on Damage, Harm or Adverse Outcomes Resulting From ICAC Investigations* (Final Report, 30 November 2021) 17 [6.1].
[46] Legislative Council Select Committee on Damage Harm or Adverse Outcomes Resulting From ICAC Investigations, Parliament of South Australia, *Report of the Select Committee on Damage, Harm or Adverse Outcomes Resulting From ICAC Investigations* (Final Report, 30 November 2021) 18 [6.1].
[47] Legislative Council Select Committee on Damage Harm or Adverse Outcomes Resulting From ICAC Investigations, Parliament of South Australia, *Report of the Select Committee on Damage, Harm or Adverse Outcomes Resulting From ICAC Investigations* (Final Report, 30 November 2021) 19 [6.2].
[48] South Australia, *Parliamentary Debates*, Legislative Council, 25 August 2021, 4011–12 (Frank Pangallo).
[49] *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* (SA) s 24, substituting *Independent Commissioner Against Corruption Act 2012* (SA) s 25.
[50] *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* (SA) s 24, substituting *Independent Commissioner Against Corruption Act 2012* (SA) s 25.
[51] *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* (SA) sch 1, pt 12, amending the *Ombudsman Act 1972* (SA).
[52] *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* (SA) s 39, substituting *Independent Commissioner Against Corruption Act 2012* (SA) ss 42(1), (1a)(b).
[53] Bruce McClintock, Inspector of the Independent Commissioner Against Corruption (NT), *Annual Report of Inspector Pursuant to section 137 of the Independent Commissioner Against Corruption Act 2017 of Evaluation of the Independent Commissioner Against Corruption pursuant to section 136 of the Act* (September 2022) 15 [31]. The Public Statement is no longer publicly available as a result of a decision of the current Commissioner: Michael Riches, Independent Commissioner Against Corruption (NT), 'Public Statement by Commissioner Riches' (19 July 2022) <https://icac.nt.gov.au/public-statements>.
[54] Bruce McClintock, Inspector of the Independent Commissioner Against Corruption (NT), *Annual Report of Inspector Pursuant to section 137 of the Independent Commissioner Against Corruption Act 2017 of Evaluation of the Independent Commissioner Against Corruption pursuant to section 136 of the Act* (September 2022) 15 [32].
[55] Bruce McClintock, Inspector of the Independent Commissioner Against Corruption (NT), *Report by the Inspector Pursuant to Section 140(3) of the Independent Commissioner Against Corruption Act 2017 into a Complaint by News Corp Australia, the Northern Territory News and Matt Williams* (14 December 2021) 3 [2]. It is noted that the *Independent Commissioner Against Corruption Act 2017* (NT) s 55 has been amended since the release of the subject public statement to provide for further limitations as to the content of a public statement: *Independent Commissioner Against Corruption Amendment Act 2023* (NT) s 20, inserting *Independent Commissioner Against Corruption Act 2017* (NT) s 55(4).
[56] Bruce McClintock, Inspector of the Independent Commissioner Against Corruption (NT), *Report by the Inspector Pursuant to Section 140(3) of the Independent Commissioner Against Corruption Act 2017 into a Complaint by News Corp Australia, the Northern Territory News and Matt Williams* (14 December 2021) 9 [33].
[57] Bruce McClintock, Inspector of the Independent Commissioner Against Corruption (NT), *Report by the Inspector Pursuant to Section 140(3) of the Independent Commissioner Against Corruption Act 2017 into a Complaint by News Corp Australia, the Northern Territory News and Matt Williams* (14 December 2021) 10 [33].
[58] *Corruption, Crime and Misconduct Act 2003* (WA) ss 84(1), (3).
[59] *Corruption, Crime and Misconduct Act 2003* (WA) s 217A(2).

[60] Corruption and Crime Commission, *Supplementary Report on the Investigation of Alleged Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup* (Addendum Report, 27 August 2009).
[61] Malcolm McCusker, Parliamentary Inspector of the Corruption and Crime Commission of Western Australia, *Report on the Corruption and Crime Commission's Findings of "Misconduct" by Mr Paul Frewer* (8 February 2008) 1 [1].
[62] Malcolm McCusker, Parliamentary Inspector of the Corruption and Crime Commission of Western Australia, *Report on the Corruption and Crime Commission's Findings of "Misconduct" by Mr Paul Frewer* (8 February 2008) 21 [49] <https://www.wa.gov.au/system/files/2020-12/PICCC-report-Paul-Frewer.pdf>.
[63] Malcolm McCusker, Parliamentary Inspector of the Corruption and Crime Commission of Western Australia, *Report on the Corruption and Crime Commission's Investigation and Finding of "Misconduct" by Mr Michael Allen* (7 March 2008) 4–5 [15] (executive summary and recommendations) <https://www.wa.gov.au/system/files/2020-12/PICCC-report-Allen.pdf>.
[64] Matthew Zilko, Parliamentary Inspector of the Corruption and Crime Commission of Western Australia, *Corrigendum; The Corruption and Crime Commission's 2019 Report on the WA Commissioner in Japan* (27 November 2023) 3 [8].
[66] Matthew Zilko, Parliamentary Inspector of the Corruption and Crime Commission of Western Australia, *Corrigendum; The Corruption and Crime Commission's 2019 Report on the WA Commissioner in Japan* (27 November 2023) 4 [18].
[67] Matthew Zilko, Parliamentary Inspector of the Corruption and Crime Commission of Western Australia, *Corrigendum; The Corruption and Crime Commission's 2019 Report on the WA Commissioner in Japan* (27 November 2023) 5 [22].
[68] Matthew Zilko, Parliamentary Inspector of the Corruption and Crime Commission of Western Australia, *Corrigendum; The Corruption and Crime Commission's 2019 Report on the WA Commissioner in Japan* (27 November 2023) 5 [23].
[69] Jamelle Welles and Nick Dole, 'Chinese billionaire Huang Xiangmo gave $100,000 to NSW Labor official, ICAC hears', *ABC News* (online, 26 August 2019) <https://www.abc.net.au/news/2019-08-26/icac-hears-huang-xiangmo-gave-100k-to-nsw-labor-official/11447622>.
[70] Peter Hall, Chief Commissioner, Independent Commission Against Corruption (NSW), *Investigation into political donations facilitated by Chinese Friends of Labor in 2015* (Investigation Report, February 2022) 10.
[71] Eamonn Moran, Inspector, Victorian Inspectorate, *Special Report: Welfare of witnesses in IBAC investigations* (October 2018) 3.
[72] Eamonn Moran, Inspector, Victorian Inspectorate, *Special Report: Welfare of witnesses in IBAC investigations* (October 2018) 3, 7.
[73] David Ryan, Coroner, Coroner's Court of Victoria, *Finding into death without inquest* (COR 2022 000357, 23 June 2023) [12].
[74] David Ryan, Coroner, Coroner's Court of Victoria, *Finding into death without inquest* (COR 2022 000357, 23 June 2023) [62].
[75] Letter from Stephen Farrow, Acting Commissioner, Independent Broad-based Anti-corruption Commission (Vic) to David Ryan, Coroner, Coroner's Court of Victoria on 4 September 2023 <https://www.coronerscourt.vic.gov.au/sites/default/files/2023-09/2022%200357%20Response%20to%20recommendations%20from%20Independent%20Broad-based%20Anti-corruption%20Commission%20%28IBAC%29_STAPLEDON.pdf>.
[76] Legislative Council Select Committee on Damage Harm or Adverse Outcomes Resulting From ICAC Investigations, Parliament of South Australia, *Report of the Select Committee on Damage, Harm or Adverse Outcomes Resulting From ICAC Investigations* (Final Report, 30 November 2021) 13 [5.5].
[77] Inspector of the Independent Commission Against Corruption (SA), *Report 2024/2: Review of the investigation of Chief Superintendent Douglas Barr* (29 April 2024) 23 [28], 95 [388] <https://www.inspector.sa.gov.au/__data/assets/pdf_file/0004/1003648/Report-2024-02-Review-of-the-investigation-Chief-Superintendent-Douglas-Barr.pdf>.

[78] Inspector of the Independent Commission Against Corruption (SA), *Report 2024/2: Review of the investigation of Chief Superintendent Douglas Barr* (29 April 2024) 51 [195].

# Chapter 8: Relevant inquiries and research

## 8.1 Relevant inquiries

The terms of reference require me to have regard to the findings and recommendations of relevant reviews and inquiries relating to the Crime and Corruption Commission.[1] In this chapter, some of the key reviews and inquiries that have taken place, beginning with the Fitzgerald Inquiry, are outlined.

### 8.1.1 The Fitzgerald Inquiry

The Fitzgerald Inquiry is regarded as a watershed for public sector integrity and accountability, not only for Queensland but across Australia. Led by the Hon Tony Fitzgerald AC KC, the 1987 *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, known as the Fitzgerald Inquiry, uncovered systemic high-level corruption in the Queensland Government and the Queensland Police Force.

The Fitzgerald report delivered over 100 recommendations to improve accountability and integrity in government and the administration of criminal justice, and to restore confidence in the public sector.[2] Importantly, Mr Fitzgerald recommended the creation of an independent Criminal Justice Commission to monitor, review, coordinate and initiate reform with respect to the administration of criminal justice in Queensland. He also recommended that the Criminal Justice Commission have the power to investigate official misconduct matters in relation to police and public officials.[3] The Criminal Justice Commission was later replaced by the Crime and Misconduct Commission, which became the Crime and Corruption Commission. As an accountability mechanism, the Fitzgerald report also recommended the Commission regularly report to a parliamentary committee.[4] Then Premier of Queensland, the Hon Mike Ahern AO, announced that all the recommendations would be implemented "lock, stock and barrel".[5]

### 8.1.2 The Callinan and Aroney Review

In 2012, then Attorney-General and Minister for Justice, the Hon Jarrod Bleijie appointed an independent advisory panel comprised of the Hon Ian Callinan AC KC and Professor Nicholas Aroney to review the *Crime and Misconduct Act 2001* and the operation of relevant agencies under the Act.[6]

Relevantly, the Panel's terms of reference required it to examine whether any legislative amendments were needed "with respect to … the use or any abuse of the powers and functions conferred by the Act".[7] The Parliamentary Crime and Misconduct Committee commented that this aspect of the terms of reference appeared to arise "from the media reports of a [Commission] assessment, and subsequent investigation, of

matters during the 2012 State election".[8] In the media statement announcing the appointment of Mr Callinan and Professor Aroney, Mr Bleijie said the review "would focus on how the [Commission] could continue to do its job without being drawn into political debates".[9] The Panel received more than 60 written submissions as well as informal submissions from legal professionals and public servants.[10]

The Panel's report dealt extensively with the publication of information about corruption investigations, by the Commission, the media, politicians, political aspirants and others. It recommended that disclosure of a complaint to the Commission or an investigation by the Commission should be an offence, with three exceptions: [11]

> The first exception should be that, in the case of a public investigation, fair reporting of, and debate about it will be permissible. The second exception should be as authorised by the Supreme Court in advance of publication or disclosure. The third is the case of a person cleared or not proceeded against who authorises in writing disclosure of it. Disclosure could of course occur if otherwise required by law, such as by Court processes or Court order.[12]

The Panel recommended that the limitations on publication should continue unless the investigation resulted in criminal or disciplinary proceedings, or unless the subject of the investigation consented to publication.[13] The Government accepted the recommendation in principle.[14] However, as noted in chapter 2, the recommendation was never implemented.

### 8.1.3 Commission's review on publicising allegations of corrupt conduct

In 2016 the Commission revisited the question of whether corruption allegations should be publicised. It released a discussion paper and, in response, received 82 submissions from members of the public, Queensland Police Service, Queensland Police Union of Employees, Queensland Law Society, political parties, the media, academics, local governments and community organisations. The Commission also held a two-day public forum attended by approximately 50 people and viewed by over 500 people on livestream.

Many submissions, including most of the submissions by members of the public, were in favour of publicising corruption allegations, albeit for varying reasons. A number said transparent investigation processes deterred corrupt behaviour and improved detection of corruption, and also provided an important mechanism to ensure integrity of the Commission's performance of its functions.[15]

Some challenged the idea that publishing corruption allegations might cause reputational damage, arguing that the public understood the difference between allegations and findings of corruption. An anonymous submitter wrote "The public are not stupid and can understand the very clear difference between being corrupt and

being alleged to be corrupt".[16] Others contended that the importance of transparency and the community's right to be informed outweighed the risk of reputational damage.[17]

Several submissions argued that it was fundamental to democratic government that information about integrity should be available to the community, particularly in the case of elected officials and those seeking election.[18] The Commission noted that many members of the public considered that elected officials and candidates for election should be subject to higher levels of public scrutiny and accountability.[19] The Commission agreed that it was not its role to safeguard the reputations of politicians and political aspirants.[20]

However, most submissions also recognised the significant damage to professional and personal lives that may result from publicising untested allegations.[21] The Commission acknowledged that existing remedies for reputational damage were expensive and time consuming, and that legal remedies could not always restore a damaged reputation.[22] Other submissions noted that while significant protections were available to whistleblowers, limited protections were available to the subjects of corruption allegations.[23]

In conclusion, the Commission recommended that there should be no changes to the current legislative framework for public reporting of corruption complaints and investigations, apart from the creation of a new offence of publicising allegations or complaints of corrupt conduct against a councillor or candidate during a local government election period.[24] As noted in chapter 3, again that recommendation was not implemented.

### 8.1.4 Parliamentary Committee's 2021 Report No 106

The Parliamentary Crime and Corruption Committee is tasked with monitoring and reviewing the Commission's functions and activities, and reporting to the Queensland Parliament on relevant matters. It also reviews and reports on the Commission's activities every five years.

In 2019 the Parliamentary Committee commenced an inquiry into the Commission's performance of its functions to assess and report on complaints about corrupt conduct. *The Inquiry into Corrupt Conduct Complaints* arose from concerns raised by the Speaker of the Legislative Assembly and the Parliamentary Ethics Committee about the Commission's investigations of corruption allegations against then Premier and Minister for Tradethe Hon Annastacia Palaszczuk and then Deputy Premier Jackie Trad. Those concerns included "the absence of formal reporting ability/requirements by the [Crime and Corruption Commission] on matters of significant public interest when there has been an assessment" and "the method of public reporting on matters of significant public interest".[25]

The complaint against Ms Palaszczuk concerned her announcement that she would withdraw certain staffing resources from the Queensland Parliamentary office of Katter's Australian Party (KAP) if it did not condemn a statement about immigration by then KAP Senator Fraser Anning. Among other things, the Commission investigated whether Ms Palaszczuk's actions amounted to offences of bribery of a member of Parliament, interference with a political right, or extortion. The allegation against Ms Trad related to her failure to declare the private purchase of a property in Woolloongabba at a time when she participated in government decision-making about important infrastructure in the area, specifically the construction of Cross River Rail and the Inner-City South State Secondary College.

In Ms Palaszczuk's case, the Commission released a media statement and the Commission Chairperson at the time held a press conference stating that while Ms Palaszczuk's actions might have involved an offence of bribery of a member of Parliament, there was no reasonable prospect of a successful prosecution.[26] In Ms Trad's case the Commission announced by media statement that it had found no evidence to support a reasonable suspicion of corrupt conduct; however it had identified deficiencies in Cabinet processes that increased the risk of corruption.[27] The Commission did not make a formal report on either matter, and in both cases described its process as an assessment, rather than an investigation.[28]

The Parliamentary Committee's inquiry received fourteen submissions from government departments, statutory bodies, academics, and members of the public. A number of submissions supported public reporting by the Commission, arguing that it fostered openness, transparency, and accountability within the public sector, that "public reporting of matters by the [Crime and Corruption Commission] is a way of assisting to support openness and transparency",[29] was "an important education and prevention tool"[30] and enhanced public confidence in the public sector.[31] The Commission made a detailed submission to the inquiry explaining the general principles it considered when publishing information and the circumstances in which it made its public statements about the outcomes of the complaints against Ms Palaszczuk and Ms Trad.[32]

The Parliamentary Committee suspended the inquiry in early 2020 due to the COVID-19 pandemic, resuming it later that year as part of the Committee's five-year review of the Commission's activities. In its report the Parliamentary Committee expressed its concerns about the Commission's use of media statements to announce the outcomes of its consideration of corruption allegations:

> the absence of a detailed report on matters of significant public interest can affect public confidence in the [Crime and Corruption Commission], as evidence and conclusions are not fully disclosed publicly, and can lead to

> confusion or misinterpretation of information as it emerges through other public forums (such as media releases and statements made at media conferences).[33]

While it noted that decisions about reporting were a matter for the Commission, it recommended that the *Crime and Corruption Act* be amended to clarify the distinction between the Commission's assessment and investigation of a corruption complaint, commenting:

> This is particularly true given the [Crime and Corruption Commission]'s apparent reliance on the fact that an assessment, not an investigation, was conducted in both the Premier and former Deputy Premier matter[s], when explaining why it did not produce a publicly available report on either matter.[34]

The Queensland Government supported the recommendation in-principle.[35]

### 8.1.5 Parliamentary Committee's Report No 108

In 2021, in response to a complaint by the Local Government Association of Queensland, the Parliamentary Committee held a public inquiry into the Commission's investigation into the conduct of the Logan City Council Mayor and seven Logan City councillors, and its subsequent decision to charge the mayor and councillors with fraud, charges which were ultimately discontinued.

The mayor and councillors were arrested and charged on 26 April 2019. As a consequence each was automatically disqualified from office by the operation of s 175K of the *Local Government Act 2009*, rendering the Logan City Council inquorate. Then Minister for Local Government Stirling Hinchcliffe dissolved the Council and appointed an interim administrator on 2 May 2019.

The fraud charges against the mayor and councillors were discontinued on 14 April 2021 after the Crown offered no evidence on each charge.[36] Other charges against the mayor continued, and he received an 18-month suspended sentence in 2023 after pleading guilty to misconduct, receiving a secret commission and failing to update the register of interests.

The Parliamentary Committee's inquiry focused on the processes and decisions of the Commission that preceded the charging of the mayor and councillors, as well as the Commission's involvement in civil proceedings in the Queensland Industrial Relations Commission related to the termination of the appointment of the Logan City Council Chief Executive Officer.

The Parliamentary Committee accepted 31 submissions and held ten days of public hearings in August, September and October 2021. It was assisted by counsel, Mr Horton KC and Mr McMillan, and received advice from Mr Walker AO SC.

In its report, the Parliamentary Committee observed that the Commission is "entrusted with extraordinary powers".

> With these extraordinary powers comes enormous responsibility in how, if, or when those powers should be utilised. This is crucial to ensure the [Crime and Corruption Commission] acts in accordance with the law—in particular the statute at the foundation of the [Commission].[37]

The Parliamentary Committee made 14 findings and six recommendations, including a recommendation that the Government initiate a commission of inquiry to review the Commission's organisational structure regarding its investigative and charging functions.[38] The Government supported the recommendation, acknowledging the importance of public confidence in the Commission as an impartial and independent anti-corruption agency. The *Commission of Inquiry into the Crime and Corruption Commission* was announced in January 2021.

### 8.1.6 The Fitzgerald-Wilson Commission of Inquiry

The Queensland Government appointed the Hon Tony Fitzgerald AC KC and the Hon Alan Wilson KC to lead the *Commission of Inquiry relating to the Crime and Corruption Commission*. The Inquiry's terms of reference required it to examine the Commission's use of seconded police officers, the legislation, procedures and processes in place in relation to the charging and prosecution of criminal offences, and the operation of s 49 of the Act.[39]

The Inquiry received 87 submissions from members of the public, local councils, current and former mayors and councillors, Queensland Government agencies, Queensland and interstate organisations, and academics. It did not hold public hearings.

Several individuals who had been the subject of corruption investigations made submissions recounting their personal experiences, including the damage to their reputations, livelihoods and families caused by publicity about the investigations.[40]

The Inquiry concluded that the Commission's use of seconded police officers carried the risk that the Commission would take a "law enforcement approach" to investigating corruption matters rather than pursuing prevention and organisational reform[41] and recommended that the Commission "transition to a predominantly civilianised model" for its corruption investigations, and retain only the necessary number of seconded officers.[42] The Inquiry also recommended that s 49 be amended to require seconded officers to seek the opinion of the Director of Public Prosecutions prior to bringing charges against an individual.[43]

### 8.1.7 The Coaldrake Review

Concerns about "the independence, transparency, integrity, accountability and impartiality of particular agencies and offices"[44] across the Queensland public sector prompted the Queensland Government to appoint Emeritus Professor Peter Coaldrake AO in February 2022 to undertake a review of the Queensland public sector's culture and accountability.

Professor Coaldrake examined what he termed "the patchwork" of integrity bodies that form Queensland's integrity framework. Of those bodies, the Commission has the greatest share of funding and powers, and its interrelationship with other Queensland integrity bodies was a focus of the Coaldrake Review.[45]

Several submitters raised the problem of "mission creep" and overreach by the Commission, citing as an example the Commission's *Investigation Arista: a report concerning an investigation into the Queensland Police Service's 50/50 gender equity recruitment strategy*.[46] In that investigation, the Commission reported that it had found "ample evidence to support the conclusion that ... the [Queensland Police Service] engaged in discriminatory recruitment practices to achieve the 50% female recruitment target".[47] Queensland's Human Rights Commissioner Scott McDougall wrote to the Commission Chairperson at the time, arguing that the Commission had not properly understood the operation of the relevant discrimination law. Mr McDougall challenged "a number of damning and pejorative conclusions" in the report and the inference that Queensland Police Service staff involved in implementing the gender equity strategy engaged in unlawful discrimination.[48] The Chairperson declined Mr McDougall's suggestion that the Commission consider publishing an addendum to its report to clarify the lawfulness of the Queensland Police Service's gender equity strategy.

The Coaldrake Review delivered 14 recommendations, including the establishment of a clearing house to direct integrity complaints to the appropriate agency for investigation and action, allowing the Commission to focus on substantial corruption matters.[49] The Queensland Government established a taskforce to implement all 14 recommendations.[50]

## 8.2 Current developments, reform and research

The terms of reference required consideration of recent Australian and international developments, reform and other research relevant to public reporting on corruption and related human rights.[51]

Assisted by the Crown Law Library, the Review team conducted an initial search for academic literature on the effects, both positive and adverse, of publicising corruption investigations.

While the Review team found a significant body of literature asserting the general principle that public reporting is a critical mechanism for enhancing public sector integrity and the work of anti-corruption agencies,[52] the team identified very little scholarship about the specific effects of public reporting, or comparing the value of different forms of reporting, such as investigation reports which may or may not involve the identification of individuals and their acts, or completely de-identified prevention reports.

It is important to note that much of the literature claiming the value of reporting by anti-corruption bodies fails to distinguish between performance reporting, such as annual reports, and individual corruption investigation reports. The distinction is a significant one. Annual reports or performance reports are unlikely to carry significant human rights and privacy concerns.

Not only was the Review unable to identify any empirical research to support the widely accepted view that transparent corruption investigations prevent future corruption or contribute to public confidence in public sector integrity, there was a notable absence of literature considering any possible negative impacts arising from public reporting, such as reputational damage to individuals, human rights and privacy impacts, and adverse effects on the work and reputation of anti-corruption agencies. The lack of scholarship in this area is somewhat surprising, given controversial investigations by Australian anti-corruption agencies, some of which are mentioned in chapter 7.

The Review sought assistance from experts in government integrity, commissioning Professor Gabrielle Appleby (University of New South Wales), Associate Professor Yee-Fui Ng (Monash University) and Professor AJ Brown AM (Griffith University) to undertake a review of current Australian and international scholarship directed at the effect of public reporting by anti-corruption agencies. Their report *Public Reporting of Corruption Matters: research report for the Independent Crime and Corruption Commission Reporting Review* can be found at Annexure E.

The research brief focused on four areas:

1. The effect of public reporting on standards of public sector integrity, principally:
    - the value of identifying individuals who are the subject of investigations as a means of reducing public sector corruption and
    - the value of reporting specific details of corruption investigations as a means of reducing public sector corruption.
2. The effect of public reporting on public confidence in the public sector and work of anti-corruption bodies, principally the value of de-identified reports compared

to that of reports that identify the subject of an investigation, and whether or not specific case details are included.

3. The weighing of potential reputational damage to individuals who are the subject of corruption investigation reports against the public interest in promoting public sector integrity and public confidence in a transparent and independent anti-corruption framework.

4. Any qualitative or quantitative research into current community standards or expectations about the public reporting of corruption investigations.

In their report, Appleby, Ng and Brown found that the literature consistently identified public reporting by anti-corruption agencies as an important mechanism for exposing corruption, fostering higher standards of public sector integrity, and ensuring transparency in the exercise of its functions and powers.[53] However, they also confirmed that little attention had been given to how public reporting works best, noting "there is no data that we have been able to locate directly considering the perceived performance of anti-corruption commissions relative to their powers to report publicly".[54] They noted:

> the extent and nature of that public reporting, whether it be annual or with respect to specific investigations, is left at a high level of abstraction. The scholarship tends therefore not to draw out the different potential impacts of different forms of reporting.[55]

Notably, Appleby, Ng and Brown confirmed that there is very limited academic consideration of the intersection between public corruption investigation reports and human rights,[56] or the issue of reputational damage to individuals who are investigated by anti-corruption bodies. Any commentary in this area is by legal practitioners and public officials, with a general focus on procedural fairness mechanisms, reputational harm and exoneration protocols.[57]

So far, there also appears to be little academic response to the issues raised by the High Court's decision in *Crime and Corruption Commission v Carne*[58] or the United Nation's Human Rights Committee's findings in *Kazal v Australia* that the New South Wales Independent Commission Against Corruption had breached the right to privacy in article 17 of the *International Covenant on Civil and Political Rights*.[59]

Finally, Appleby, Ng and Brown found no qualitative or quantitative empirical research on community standards or expectations about public reporting of corruption investigations.[60]

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1 Terms of reference, [6](f).

[2] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Report, 3 July 1989) 357–67.
[3] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Report, 3 July 1989) 302, 308, 372–79.
[4] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Report, 3 July 1989) 308.
[5] Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Review of the Crime and Corruption Commission's activities* (Report No 106, June 2021) viii.
[6] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters*: *Report of the Independent Advisory Panel* (Final Report, 28 March 2013) 221.
[7] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters*: *Report of the Independent Advisory Panel* (Final Report, 28 March 2013) 221.
[8] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters*: *Report of the Independent Advisory Panel* (Final Report, 28 March 2013) 8.
[9] Attorney-General and Minister for Justice Jarrod Bleijie, 'Expert advisory panel to review the CMC' (Media Statement, 11 October 2012).
[10] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters*: *Report of the Independent Advisory Panel* (Final Report, 28 March 2013) 6.
[11] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters*: *Report of the Independent Advisory Panel* (Final Report, 28 March 2013) 216–7 (recommendation 8).
[12] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters*: *Report of the Independent Advisory Panel* (Final Report, 28 March 2013) 216.
[13] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters*: *Report of the Independent Advisory Panel* (Final Report, 28 March 2013) 217.
[14] Queensland Government response*, Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (2013) 29.
[15] Crime and Corruption Commission*, Publicising allegations of corrupt conduct: Is it in the public interest?* (Final Report, 2016) 18–21.
[16] Crime and Corruption Commission*, Publicising allegations of corrupt conduct: Is it in the public interest?* (Final Report, 2016) 24.
[17] Crime and Corruption Commission*, Publicising allegations of corrupt conduct: Is it in the public interest?* (Final Report, 2016) 25.
[18] Crime and Corruption Commission*, Publicising allegations of corrupt conduct: Is it in the public interest?* (Final Report, 2016) 21–22.
[19] Crime and Corruption Commission*, Publicising allegations of corrupt conduct: Is it in the public interest?* (Final Report, 2016) 21.
[20] Crime and Corruption Commission*, Publicising allegations of corrupt conduct: Is it in the public interest?* (Final Report, 2016) 30.
[21] Crime and Corruption Commission*, Publicising allegations of corrupt conduct: Is it in the public interest?* (Final Report, 2016) 24–5.
[22] Crime and Corruption Commission*, Publicising allegations of corrupt conduct: Is it in the public interest?* (Final Report, 2016) 30.
[23] Crime and Corruption Commission*, Publicising allegations of corrupt conduct: Is it in the public interest?* (Final Report, 2016) 26.
[24] Crime and Corruption Commission*, Publicising allegations of corrupt conduct: Is it in the public interest?* (Final Report, 2016) 32.
[25] Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Review of the Crime and Corruption Commission's activities* (Report No 106, June 2021) 62.
[26] Crime and Corruption Commission, 'CCC finalises assessment of complaint by Mr Robbie Katter MP' (Media Release, 27 September 2018).

[27] Crime and Corruption Commission, 'CCC determines not to investigate the Deputy Premier but calls for improvements to Cabinet processes and legislative reform' (Media Release, 6 September 2019).
[28] Crime and Corruption Commission, 'CCC finalises assessment of complaint by Mr Robbie Katter MP' (Media Release, 27 September 2018); Crime and Corruption Commission, 'CCC determines not to investigate the Deputy Premier but calls for improvements to Cabinet processes and legislative reform' (Media Release, 6 September 2019).
[29] Department of State Development, Manufacturing, Infrastructure and Planning, Submission No 1 to the Parliamentary Crime and Corruption Committee, *Inquiry into the Crime and Corruption Commission's performance of its functions to assess and report on complaints about corrupt conduct* (undated).
[30] Queensland Health, Submission No 13 to the Parliamentary Crime and Corruption Committee, *Inquiry into the Crime and Corruption Commission's performance of its functions to assess and report on complaints about corrupt conduct* (6 February 2020).
[31] Queensland Corrective Services, Submission No 11 to the Parliamentary Crime and Corruption Committee, *Inquiry into the Crime and Corruption Commission's performance of its functions to assess and report on complaints about corrupt conduct* (28 January 2020); Department of State Development, Manufacturing, Infrastructure and Planning, Submission No 1 to the Parliamentary Crime and Corruption Committee, *Inquiry into the Crime and Corruption Commission's performance of its functions to assess and report on complaints about corrupt conduct* (undated).
[32] Crime and Corruption Commission, Submission No 8 to the Parliamentary Crime and Corruption Committee, *Inquiry into the Crime and Corruption Commission's performance of its functions to assess and report on complaints about corrupt conduct* (January 2020).
[33] Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Review of the Crime and Corruption Commission's activities* (Report No 106, June 2021) 98.
[34] Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Review of the Crime and Corruption Commission's activities* (Report No 106, June 2021) 78.
[35] *Queensland Government response, Review of the Crime and Corruption Commission's activities*, 9 <https://cabinet.qld.gov.au/documents/2021/Nov/PCCCReport106/Attachments/Response.pdf>.
[36] Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City; and related matters* (Report No 108, December 2021) 125.
[37] Parliamentary Crime and Corruption Committee, Parliament of Queensland *Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City; and related matters* (Report No 108, December 2021) 140.
[38] Parliamentary Crime and Corruption Committee, Parliament of Queensland *Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City; and related matters* (Report No 108, December 2021) 162.
[39] Gerald Edward (Tony) Fitzgerald and Alan Wilson, *Commission of Inquiry relating to the Crime and Corruption Commission* (2022) 11–12.
[40] Eg Allan Sutherland, Submission to the *Commission of Inquiry relating to the Crime and Corruption Commission* (undated); Current and former Ipswich councilors, Submission to the *Commission of Inquiry relating to the Crime and Corruption Commission* (undated).
[41] Gerald Edward (Tony) Fitzgerald and Alan Wilson, *Commission of Inquiry relating to the Crime and Corruption Commission* (2022) 85–6.
[42] Gerald Edward (Tony) Fitzgerald and Alan Wilson, *Commission of Inquiry relating to the Crime and Corruption Commission* (2022) 142.
[43] Gerald Edward (Tony) Fitzgerald and Alan Wilson, *Commission of Inquiry relating to the Crime and Corruption Commission* (2022) 144–5.
[44] Peter Coaldrake, *Let the sunshine in: Review of culture and accountability in the Queensland public sector* (Final Report, 28 June 2022) 4.
[45] Peter Coaldrake, *Let the sunshine in: Review of culture and accountability in the Queensland public sector* (Final Report, 28 June 2022) 32.

[46] Peter Coaldrake, *Let the sunshine in: Review of culture and accountability in the Queensland public sector* (Final Report, 28 June 2022) 38.
[47] Crime and Corruption Commission, *Investigation Arista: A report concerning an investigation into the QPS's 50/50 gender equity recruitment strategy* (May 2021) 10.
[48] Letter from Scott McDougall, Queensland Human Rights Commissioner to Alan MacSporran, Crime and Corruption Commission Chair, 27 May 2021 <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/generic/cor-20July2021.pdf>.
[49] Peter Coaldrake, *Let the sunshine in: Review of culture and accountability in the Queensland public sector* (Final Report, 28 June 2022) 36–7, 40–6.
[50] Premier and Minister for the Olympics Anastacia Palaszczuk and Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympics Infrastructure Steven Miles, 'Taskforce to implement Coaldrake recommendations' (Joint Media Statement, 4 July 2022).
[51] Terms of reference, [6](i).
[52] Gabrielle Appleby, Yee-Fui Ng and AJ Brown, *Public Reporting of Corruption Matters: Research for the Independent Crime and Corruption Commission Reporting Review* (Research Report, 30 April 2024) 14–15.
[53] Gabrielle Appleby, Yee-Fui Ng and AJ Brown, *Public Reporting of Corruption Matters: Research for the Independent Crime and Corruption Commission Reporting Review* (Research Report, 30 April 2024) 14–15.
[54] Gabrielle Appleby, Yee-Fui Ng and AJ Brown, *Public Reporting of Corruption Matters: Research for the Independent Crime and Corruption Commission Reporting Review* (Research Report, 30 April 2024) 33.
[55] Gabrielle Appleby, Yee-Fui Ng and AJ Brown, *Public Reporting of Corruption Matters: Research for the Independent Crime and Corruption Commission Reporting Review* (Research Report, 30 April 2024) 9.
[56] Gabrielle Appleby, Yee-Fui Ng and AJ Brown, *Public Reporting of Corruption Matters: Research for the Independent Crime and Corruption Commission Reporting Review* (Research Report, 30 April 2024) 23.
[57] Gabrielle Appleby, Yee-Fui Ng and AJ Brown, *Public Reporting of Corruption Matters: Research for the Independent Crime and Corruption Commission Reporting Review* (Research Report, 30 April 2024) 24–5.
[58] *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737.
[59] Human Rights Committee, *Views: Communication No 3088/2017*, UN Doc CCPR/C/138/D/3088/2017 (11 April 2024) ('*Kazal v Australia*'). See Gabrielle Appleby, Yee-Fui Ng and AJ Brown, *Public Reporting of Corruption Matters: Research for the Independent Crime and Corruption Commission Reporting Review* (Research Report, 30 April 2024) 24, 32.
[60] Gabrielle Appleby, Yee-Fui Ng and AJ Brown, *Public Reporting of Corruption Matters: Research for the Independent Crime and Corruption Commission Reporting Review* (Research Report, 30 April 2024) 33.

# Chapter 9: Human rights considerations

The terms of reference require consideration of the rights to privacy, reputation and a fair trial, as well as whether the legislative amendments recommended are compatible with human rights under the *Human Rights Act 2019*.[1]

This chapter identifies the human rights that are relevant when considering what amendments should be made to enable the Crime and Corruption Commission to report publicly and to make public statements in performing its corruption and prevention functions. Guidance on human rights standards is provided by international sources (taking into account differences in contexts),[2] particularly the United Nations Human Rights Committee and the European Court of Human Rights, which have the most detailed case law on how to balance competing human rights when dealing with allegations of corruption. Identifying the human rights at stake in this chapter helps to inform the generation of policy options later in the report.

Later in the report, in the course of making recommendations, any proposed amendments will be assessed for compatibility with human rights. "Compatible with human rights" is defined in s 8 of the *Human Rights Act*. In this context, it means that the proposed amendment either:

- would not limit any human rights, or
- would limit human rights, but those limits would nonetheless be justified under the test of proportionality set out in s 13 of the *Human Rights Act*.

Broadly, a limit on human rights will be proportionate and justified under s 13 if:

- the proposed amendment has a legitimate aim
- it helps to achieve that legitimate aim
- there is no alternative way to achieve the legitimate aim that would harm human rights to a lesser extent, and
- the proposed amendment strikes a fair balance between the importance of achieving the legitimate aim and the harm caused to the human right.[3]

As will be seen later in the report, the final question of whether the amendment strikes a fair balance is critical where competing human rights need to be weighed against each other,[4] making it all the more important to understand the relative importance of the human rights at stake, and the circumstances in which one right will weigh more heavily than another.

## 9.1 Rights identified as relevant by the Fitzgerald Inquiry

Addressing the risks of corruption, the Fitzgerald Inquiry noted the need to "strike a balance" between freedom of expression and privacy.

On the one hand, there is a "need for a free flow of accurate information within a society. Such a flow of information is needed if public opinion is to be informed. Public opinion is the only means by which the powerful can be controlled". On the other hand, "there is a conflicting right of individuals to privacy", though "[i]n some circumstances, such privacy results in the secrecy which allows corruption to breed and official misconduct to escape detection".[5]

The Chairman, Mr Fitzgerald AC KC, also noted the possible impacts of his inquiry on subsequent criminal proceedings. He repeatedly reminded journalists covering the inquiry that "it is fundamental in our society that there is a presumption of innocence".[6] He also said that, in conducting the inquiry and preparing the report, "every practical effort to avoid or minimise any impediment to fair trials" had been taken, while noting that "[o]ur legal system effectively accommodates the public interests in an open inquiry and freedom of speech with public and private interests in fairness to individual accused".[7]

Those competing considerations are now reflected in the *Human Rights Act*, by, in particular, the rights to freedom of expression, to privacy and reputation, and to a fair hearing.

## 9.2 Freedom of expression and the need for transparency

Freedom of expression is protected by s 21 of the *Human Rights Act* in these terms:

> **21 Freedom of expression**
>
> (1) Every person has the right to hold an opinion without interference.
>
> (2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland and whether—
>
> (a) orally; or
>
> (b) in writing; or
>
> (c) in print; or
>
> (d) by way of art; or
>
> (e) in another medium chosen by the person.

Section 21 of the *Human Rights Act* is based on[8] article 19 of the *International Covenant on Civil and Political Rights*[9] and is similar to provisions in other human rights instruments protecting equivalent rights to freedom of expression.[10]

Members of the community enjoy the right to seek, receive and impart information about corruption. Freedom of expression is recognised as important for the individual as one of the "indispensable conditions for the full development of the person", and as important for society as a whole as "the foundation stone for every free and democratic society".[11] In the context of corruption, freedom of expression is seen as "a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights".[12] Freedom of expression protects public servants who disclose corrupt or criminal conduct in the public sector,[13] as well as journalists who take up that information and disseminate it to the general public.[14] Measures that discourage public servants from coming forward require careful scrutiny, as do measures that prevent the press from engaging in debates on matters of legitimate public concern.

In some cases, people may even have a right to "seek" and "receive" information from the government about allegations of corruption under s 21(2) of the *Human Rights Act*.[15] Journalists may have an argument that access to such information is instrumental to their ability to exercise their freedom of expression.[16] Complainants may also have a right to seek and receive information about the outcome of their complaint, although in Queensland the right may be fulfilled—at least in part—by the requirement in s 46(5) of the *Crime and Corruption Act 2001* to inform complainants of the outcome. (In theory, the ability of the complainant to request access to the report under the *Right to Information Act 2009* also serves to meet this right, but access is subject to the Commission's willingness to exercise its discretion to release information which the *Right to Information Act* classifies as exempt.[17])

The *United Nations Convention Against Corruption* sheds light on the Commission's proper role in helping members of the community to enjoy their freedom of expression in relation to corruption.[18] Article 6 of the Convention requires the creation of anti-corruption bodies like the Commission to help prevent corruption, including by "[i]ncreasing and disseminating knowledge about the prevention of corruption". Article 10 requires state parties to enhance transparency by "[p]ublishing information, which may include periodic reports on the risks of corruption in its public administration". Finally, under article 13, state parties are to promote the active participation of society in preventing corruption. This includes strengthening participation by "[r]especting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption", subject to the need to respect "the rights or reputations of others".

A related human right is the right to take part in public life in s 23 of the *Human Rights Act*.[19] Under s 23(1), "[e]very person in Queensland has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs, directly or through chosen representatives". One way that people do that is by exercising their right to vote protected under s 23(2)(a) of the *Human Rights Act*. People are likely to participate more effectively in the conduct of public affairs if they are properly informed about matters of public concern, including about corruption in the public sector.

However, as recognised by s 13 of the *Human Rights Act*, freedom of expression and related human rights may need to be limited in light of competing considerations, including the need to safeguard other human rights such as the rights to privacy and reputation.[20]

## 9.3 Privacy and reputation

Section 25 of the *Human Rights Act* sets out the rights to privacy and reputation:

> **25 Privacy and reputation**
>
> A person has the right—
>
> (a) not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
>
> (b) not to have the person's reputation unlawfully attacked.

Section 25 of the *Human Rights Act* is based on article 17 of the *International Covenant on Civil and Political Rights*[21] and is similar to equivalent rights to privacy protected by other human rights instruments.[22]

In *Carne v Crime and Corruption Commission* in the Court of Appeal, only Freeburn J considered whether human rights had a bearing on the proper construction of the *Crime and Corruption Act*. When it came to the right to privacy, in his Honour's view, "[i]t [wa]s doubtful that the issues raised as to the performance by [Mr Carne] of his role as the Public Trustee [could] be protected by principles of privacy".[23] However, it seems unlikely that authorities on the broad scope of the right to privacy were brought to his Honour's attention.

The concept of privacy in s 25(a) of the *Human Rights Act* is very wide with many dimensions.[24] The right to privacy is concerned with dignity, personal autonomy[25] and identity,[26] and serves to protect a person's "sphere of individual self-realization".[27]

There are three aspects of privacy that are relevant to public statements about allegations of corruption:

- Informational privacy – The right to privacy includes a right to decide for oneself when, how and to what extent to release personal information.[28] Personal information includes a person's name, photograph, address,[29] as well as any other information of a private nature that a person can legitimately expect should not be published without their consent.[30] That would, one would expect, include disclosing that a person is under investigation for corruption.[31] However, a charge or conviction for corruption does not fall within the scope of privacy, at least, not until it recedes into the past as a spent conviction. The reason is that a charge is a matter of public record, and convictions take place in a public hearing.[32] Publishing identifying information in a Commission report can interfere with a person's privacy. Releasing private information from a corruption investigation in other ways can also interfere with privacy. For example, in *Craxi v Italy [No 2]*, a former Prime Minister had his phone tapped in the course of a corruption investigation. The telephone conversations were private in nature. Even though they were not relevant to the corruption charges, they found their way into the hands of the press, in breach of the right to privacy.[33]
- Mental and bodily integrity – In a human rights context, privacy extends to mental and bodily integrity.[34] In the case of *BZN v Chief Executive, Department of Children, Youth Justice and Multicultural Affairs*, the Supreme Court accepted that this aspect of privacy may be engaged by a finding that a serious allegation against a public servant has been substantiated. That is because the public servant may find the process so distressing that their mental health is compromised.[35] According to Mr Carne's lawyers, in his case, the publication of the Commission's report would have had serious adverse health ramifications for him.[36] As outlined in chapter 7, the impacts of corruption investigations and reports on the psychological wellbeing of persons of interest in investigations and witnesses more generally has also recently received attention in Victoria[37] and New South Wales.[38] The potential harm to a person's psychological wellbeing has also led the Commission to develop a witness welfare policy.[39]
- Professional relations – The right to privacy extends to protect an individual's private life more generally.[40] Arguably, that may encompass the right to establish and develop meaningful social relations, including professional relations.[41] On that basis, in Europe, the settled position is that the right to privacy protects a person's ability to work in their chosen profession,[42] including as a politician.[43] Often this aspect of the right to privacy arises in Europe in the context of lustration measures designed to address corruption.[44] The Victorian Supreme Court has considered whether the right to privacy in the *Charter of Human Rights and Responsibilities 2006* (Vic) has an equivalent scope, but ultimately left the question open.[45] An adverse finding in a report of the Crime and Corruption

> Commission can have consequences for a person's career and interfere with their private life in this broad sense. As counsel for the Ms Trad submitted to this Review, public findings have "the potential to destroy [an] individual's career and livelihood".[46]

Often, these different aspects of privacy can overlap. For example, Mr Barbagallo AM asserted that the Commission's investigation and reporting on an allegation made against him caused significant harm to a number of aspects of his private life:[47]

> 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 … I cannot overstate the[] importance [of these outcomes] to me.

Section 25(b) of the *Human Rights Act* separately protects against attacks on a person's reputation that are unlawful, intentional and based on untrue allegations.[48] A person's reputation includes their social reputation as well as their professional reputation in particular.[49]

International cases draw a distinction between the interest a person has in their reputation prior to a finding that they have engaged in serious misconduct, and their interest in their reputation following such a finding. It is said that the right to reputation does not protect a person against a loss of reputation that is the foreseeable consequence of their own actions, such as the commission of a criminal offence or "other misconduct entailing a measure of legal responsibility".[50] However, that caveat does not apply where the person is the victim of a wrongful conviction or finding.[51] The caveat also does not apply where the person "contest[s] the very existence of any misconduct" or criminal conduct.[52] A person who is defending an allegation of corruption still has an interest in their reputation.

To amount to an attack, the interference with a person's reputation must rise to a certain level of intensity.[53] According to European authorities, ordinarily, an allegation that a person has committed a crime or engaged in unprofessional or unethical conduct will be capable of tarnishing their reputation with consequences serious enough to limit the right to reputation.[54]

The rights to privacy and reputation have "internal limitations". For privacy, the interference must be either unlawful or arbitrary. For reputation, the attack must be unlawful.[55] In a human rights context, an interference will be arbitrary if it is capricious, unjust, or unreasonable in the sense of not being proportionate to a legitimate aim sought.[56] That involves a broad and general assessment of whether, in all the circumstances, the interference with privacy goes beyond what is reasonably necessary to achieve the legitimate aim,[57] such as the aim of ensuring free expression

about investigations into corruption.[58] An attack on reputation will be unlawful if it is not authorised by law.[59] On one view, any proposed legislation will not limit the right to reputation, because any attack on reputation that the legislation authorises (and that is not otherwise infected by error) will be authorised by law.[60] However, as the Queensland Human Rights Commissioner pointed out, under international law, the right to reputation imposes an obligation on state parties to provide adequate protection of reputation in its legislation.[61] In line with international human rights standards, it is necessary to consider for the purpose of this Review whether possible amendments would come at too high a cost to reputation.[62]

*Kazal v Australia* provides an example of a breach of the right to privacy. In that case, the United Nations Human Rights Committee found that the New South Wales Independent Commission Against Corruption breached the right to privacy when it published the findings of a corruption investigation. In 2010 and 2011, the Commission conducted an investigation into an alleged undisclosed conflict of interest of a senior executive of the Sydney Harbour Foreshore Authority. The Commission decided to conduct the hearings in public and went on to publish a report in December 2011.[63] In that report, the Commission made findings that the senior executive and Mr Charif Kazal had both acted corruptly. The Commission found that Mr Kazal had sought to improperly influence the senior executive by holding out to him the prospect of a joint business venture with the Kazal family and by paying for his flights to the United Arab Emirates.

Despite the findings, the Office of the Director of Public Prosecutions determined there was insufficient evidence to warrant a prosecution. Mr Kazal sought judicial review of the findings, but the New South Wales Supreme Court found that the Commission had acted within its wide jurisdiction.[64] The consequence was that Mr Kazal was left with adverse findings he could not appeal, or negate in another way such as through an exoneration protocol. In 2017, the Office of the Inspector of the Independent Commission Against Corruption criticised the report findings, finding them "weak and flawed". The Office of the Inspector was also critical of the lack of any written record of the reasons for holding public hearings and the lack of any exoneration protocol.[65]

There was no doubt that the investigation and publication of the report interfered with Mr Kazal's privacy and damaged his reputation.[66] According to Mr Kazal, the Commission's findings left a "stain" on his reputation with "devast[at]ing consequences" for his ability to continue conducting business.[67] However, the interference with Mr Kazal's privacy and reputation was lawful, being authorised by the *Independent Commission Against Corruption Act 1988* (NSW). The key question, therefore, was whether the interference with his privacy was "arbitrary". While the Commission's actions served the legitimate aim of investigating corruption in the public sector, the Human Rights Committee found that the interference with Mr Kazal's

privacy was not proportionate to that legitimate aim.[68] The lack of proportionality arose from a combination of features, particularly the following:

- the Independent Commission Against Corruption did not give any explanation for why it conducted the hearings in public
- Mr Kazal was not able to challenge the Commission's findings, and
- the publication of the findings damaged Mr Kazal's reputation and his ability to conduct his family business.

When the Review team brought *Kazal v Australia* to the attention of the Crime and Corruption Commission, it pointed out that the legislative regime is different in New South Wales and asserted that a similar situation would be unlikely to arise in Queensland,[69] especially because the Crime and Corruption Commission is subject to obligations to consider human rights and act compatibly with human rights.[70] It is true that, in New South Wales, the Commission has a power to make findings of corrupt conduct in their investigation reports, whereas in Queensland, the Commission does not. Certainly, *Kazal* highlights that the risk posed to privacy and reputation is heightened when anti-corruption bodies are given the power to make findings. But that is not the only relevance of the case. *Kazal* demonstrates the need to weigh what is actually necessary in order to investigate corruption against the damage caused to the privacy of the person being investigated. It draws attention to the invidious position a person can find themselves in if they are the subject of an adverse comment in a public report, but they cannot clear their name by successfully defending a prosecution or through some other process such as an exoneration protocol. Even with human rights obligations, the Crime and Corruption Commission has placed people in a similar position in Queensland.

There are two further human rights related to the rights to privacy and reputation that can, in certain circumstances, protect against impacts on a person's employment. The first is the right, in s 23(2)(b) of the *Human Rights Act*, "to have access, on general terms of equality, to the public service and to public office". That is a right to join the public service or to be appointed to public office, and it is intended to prevent privileged groups from monopolising public service, in the sense of monopolising the composition of the public service.[71]

According to the United Nations Human Rights Committee, the equivalent right in article 25 of the *International Covenant on Civil and Political Rights* also protects against suspension or dismissal from the public service.[72] For example, in *Vargas-Machuca v Peru*, a police chief was forced to face a press conference to address allegations in relation to the death of a detainee at a police station. He was relieved of his duties and not reinstated even though he was never charged or sentenced. In those

circumstances, the Committee found a breach of the right of equal access to the public service.[73]

The second related human right is the right not to be arbitrarily deprived of one's property, in s 24(2) of the *Human Rights Act*. According to European case law, a person's property may include the goodwill associated with a right to practise their profession.[74] A public report that effectively ends a person's career may violate their rights under ss 23 and 24 of the *Human Rights Act*.

In addition to cases like *Kazal v Australia*, there is a number of other international human rights cases that have considered the balance between privacy and freedom of expression in other scenarios involving corruption allegations, such as whistle-blowers or journalists revealing corruption. According to those cases, the following factors are relevant to whether public disclosure comes at too high a cost to privacy, reputation and related rights:

- The identity of the person under investigation – While all people are entitled to their privacy, the limits of acceptable criticism may be wider when it comes to public servants and public officials exercising their powers compared to private individuals.[75] Politicians are subject to even greater acceptable levels of criticism, given that they "inevitably and knowingly lay themselves open to close scrutiny by both journalists and the public at large".[76] That includes politicians at the local government level.[77]

- How widely the information is disseminated – There is, obviously, greater harm to privacy and reputation if allegations of corruption are reported to a wide audience, compared to where the disclosure is more targeted, such as a disclosure in a complaint made through official channels.[78] However, in some circumstances, even allegations disseminated to a small group of people can tarnish a person's professional reputation.[79]

- The impact on the person – The more severe the consequences are for the person who is the subject of the allegations, the more difficult it will be to justify the interference with privacy and reputation. For example, the European Court of Human Rights has pointed out that allegations of corruption "may result in investigating measures and may have very serious detrimental effects for the persons concerned, causing unnecessary stress and anxiety".[80] The same may be said of a report of such an investigation. As noted above, in *Kazal v Australia*, when concluding that the interference with privacy was arbitrary, the Human Rights Committee took into account that "the publication of the findings damaged his reputation and his ability to conduct his family business".[81]

- The stage of the investigation – Reputational interests are strongest before allegations of corruption have been substantiated,[82] and following a hearing, if allegations of corruption have been found to be unsubstantiated.[83] On the other hand, if, following a hearing, the allegations are found to be true, the person's reputational interests will be relatively weak.[84]
- Contribution to public debate and how relevant the information is to the corruption allegation – Disclosure of information will be more important where it serves a compelling public interest, such as uncovering corruption.[85] Conversely, and obviously, disclosure of personal information will be more difficult to justify where it has little bearing on the corruption allegation under investigation.[86] Disclosure will also gain in importance where the information has been verified as accurate, while having relatively low value where it is unfounded.[87]
- Safeguards – The presence of procedural safeguards and restrictions will help to ensure that any interference with privacy and reputation is proportionate. Possible safeguards include an exoneration protocol, an avenue for challenging findings, and a requirement to provide reasons for a decision to make findings public.[88]

## 9.4 The right to a fair hearing and the right to be presumed innocent

Given the possibility that Commission reports will be about a matter before the courts or that will come before the courts, another significant human right is the right to a fair hearing in s 31 of the *Human Rights Act*.[89] Relevantly, s 31(1) provides that "[a] person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing". Closely related is the right in s 32(1) to be "presumed innocent until proved guilty according to law". That right is enjoyed by people who have been charged.[90] Sections 31 and 32 of the *Human Rights Act* are based on article 14 of the *International Covenant on Civil and Political Rights*[91] and are similar to equivalent rights protected by other human rights instruments.[92]

The scope of the right to a fair hearing in s 31 is "ascertained by proceeding from the common law".[93] The common law and s 31 "are mutually reinforcing and the obligations arising under each are almost always co-extensive".[94] However, there is one important way that the right in s 31 is broader. The common law only protects a trial that is as fair as the courts can make it by reference to matters under the control of the courts. Section 31 goes further in also requiring the executive (which may include investigating police and prosecutors,[95] commissions of inquiry when issuing a public report,[96] and the Crime and Corruption Commission[97]) to play a role in ensuring a fair

trial.[98] The UN Human Rights Committee notes that "[i]t is a duty for all public authorities to refrain from prejudging the outcome of a trial", for example, "by abstaining from making public statements affirming the guilt of the accused".[99] Even at common law, the executive is expected to "exercise a sound discretion in making a decision whether any part of [a] report that might be prejudicial will be made public while criminal proceedings are pending".[100]

In an extreme case, prejudicial pretrial publicity may deprive a person of a fair hearing before an "independent and impartial" court as required by s 31 of the *Human Rights Act*.[101] Prejudice arising from pretrial publicity threatens the independence and impartiality of the court, which comprises both the judge and the jury.[102] Public statements which encourage the trier of fact to prejudge the accused can also interfere with the presumption of innocence protected by s 32(1) of the *Human Rights Act*.[103]

An example is provided by the case of *Engo v Cameroon* decided by the UN Human Rights Committee. Pierre Engo had been the managing director of Cameroon's national social security fund. He was charged with a number of corruption offences, including misappropriation of public funds, trading in influence and abuse of functions. The State media repeatedly portrayed Mr Engo as guilty before he had been tried and published articles to that effect.[104] Numerous requests to the prosecutor and the Minister of Justice to put a stop to the media campaign met with no response.[105] In those circumstances, the Committee found that Mr Engo's right to be presumed innocent, set out in article 14(2) of the International Covenant, had been violated.[106]

The right to a fair hearing is compatible with robust public discussion about matters before the courts, especially where they enliven the public interest, such as revelations of corruption.[107] International cases suggest that the following factors are relevant to whether adverse public comments by public authorities cross the line and breach the right to a fair hearing:

- The choice of words – Unequivocal statements by public authorities that a person is guilty will breach their right to a fair hearing. On the other hand, statements that a person is suspected of guilt will be less likely to breach the right, though the distinction in wording is not always determinative, depending on the surrounding context.[108] Public statements that there was sufficient evidence to warrant an investigation or a charge are acceptable.[109]
- The timing of the public comments – Greater caution is required when the matter is still under investigation. For example, in *GCP v Romania*, the prosecutor had publicly commented that the accused was guilty of wrongful misappropriation when the investigation had only just begun. According to the European Court of Human Rights, "[i]t was particularly important at this initial stage not to make

any public allegations which could have been interpreted as confirming the guilt of the applicant in the opinion of State authorities".[110]

- The identity of the public authority making the statement – More caution is expected from public officials such as prosecutors compared to politicians. In the case of public statements by politicians made in the course of legitimate public debate, "a certain degree of exaggeration and liberal use of value judgments with reference to political rivals" will more likely be condoned.[111]
- Whether measures can be taken to mitigate the impact, such as a change of venue, delaying the trial, giving the jury directions, or conducting a judge-alone trial.[112]

Ordinarily, even where there is extensive pretrial publicity, the traditional safeguards of a jury trial will be sufficient to enable a fair hearing.[113] However, as the Hon Ian Callinan AC KC and Professor Nicholas Aroney pointed out in their review of the *Crime and Misconduct Act* in 2013, "[i]t is easy to be too complacent about the problems caused by prejudicial pre-trial publicity. No one can ever be certain as to the extent to which entrenched prejudice or preconception may be displaced by directions to the contrary".[114] Public entities should avoid prejudicing the presumption of innocence and a fair hearing, notwithstanding that courts have powers to minimise the impact.[115]

Given the possibility that the Crime and Corruption Commission might comment on matters that are the subject of an appeal, it should be noted that even after a trial has concluded, these rights can continue to have relevance. The right to a fair hearing includes a right to a fair appeal.[116] The risk of prejudicial publicity will be reduced given that the appeal will be heard by a judge who is assumed to be less susceptible to such publicity,[117] but the possibility of a retrial cannot be discounted. The right to be presumed innocent may also have continuing relevance in an appeal,[118] though necessarily attenuated if the person has already been proven guilty at the trial being appealed from.[119]

## 9.5 Human rights impacts of coercive powers

The Crime and Corruption Commission has coercive powers when investigating allegations of corruption, including the power to require a person to incriminate themselves.[120] The exercise of that power engages the right not to incriminate oneself in s 32(2)(k) of the *Human Rights Act*.[121] Those powers are outside the scope of the Review.

However, the Office of the Information Commissioner pointed out that "[t]here is an obvious risk that reporting information obtained through these special powers could have disproportionate impacts on an individual's rights".[122] A public report about a person that contains incriminating information about them—"forced … out of [their]

own mouth"[123]—may exacerbate the interference with privacy. The reason is that requiring a person to incriminate themselves is already an "affront to dignity and privacy".[124] Disseminating that information to the world at large may compound the affront.[125] Such a public report may also increase the risk to a fair hearing because it will put before the public evidence that would not be admissible in any trial.[126] In some circumstances, a fair hearing can be jeopardised by distributing coerced evidence to a narrow range of people,[127] let alone to the general public in a report.[128]

Accordingly, if compelled evidence were to be included in Commission reports, the rights to privacy and to a fair hearing would assume even greater weight. As the Queensland Human Rights Commission noted, publication of a report will be more unfair and more difficult to justify where it includes coerced evidence.[129] That is not to say that including coerced evidence in a public report could never be justified. It may be possible, for example, to carefully work through which coerced evidence is needed, consider anonymising the source of the information and provide them with procedural fairness on any proposal to include the information in the report.[130]

## 9.6 The safeguard in s 58 of the *Human Rights Act 2019*

An important existing safeguard is the obligation the Crime and Corruption Commission has as a public entity under s 58 of the *Human Rights Act*. Under that provision, whenever public entities exercise a statutory discretion,[131] they are required to give proper consideration to human rights before making a decision and then ensure they make the decision and act in a way that is compatible with human rights. Those obligations are "additional or supplementary to any obligation imposed under the primary legislation governing the operations" of the public entity.[132]

That means that if the Commission had a power to report on individual corruption matters or a power to make public statements, it would need to comply with s 58 when exercising those powers. The Commission would first need to give proper consideration to the impact on the rights to privacy, reputation and a fair hearing. If a report or public statement came at too high a cost to those human rights and was disproportionate to a legitimate aim, the Commission would not be acting lawfully if it nonetheless went ahead with the report or the public statement.

The Commission has developed a human rights compatibility framework to guide decision-making by officers at the Commission to help ensure compliance with s 58. According to the Commission, the framework helps to make sure that any arbitrary interference with privacy is identified ahead of time and avoided.[133] In fact, the Commission submitted that the human rights concerns raised in *Kazal v Australia* would be "mitigated in part, if not in full", by the fact that the Commission has an obligation to act compatibly with human rights and has developed an accompanying framework to guide decision-makers.[134]

In order to understand the Commission's approach to the obligations in s 58 of the *Human Rights Act* and the extent to which it was likely to provide a safeguard for privacy and reputation, the Review team requested copies of any policies and procedures setting out how the Commission addresses human rights. The Commission provided a copy of its human rights policy and procedure, which, among other things, requires the Commission's existing policies and procedures to be reviewed for compatibility with human rights.[135] The Commission also provided copies of the relevant parts of its operations manual.[136] It advised that those parts of the operations manual had been reviewed for compatibility with human rights in accordance with its human rights policy and procedure.[137] The Commission gave the Review team a copy of its human rights compatibility framework, which guides decision-makers when making individual decisions and sets out steps for assessing whether a proposed decision would be compatible with human rights.[138] Finally, a copy of the Commission's human rights operating model, which sets out a matrix of things to consider or refer to in particular contexts, was provided.[139] The Commission also has other human rights tools it did not provide to the Review, such as various guides listed as "related documents" in the human rights policy and procedure.[140]

The development of tools such as these is commendable, and is likely to assist in the building of a human rights culture within the Commission.[141] The Commission also provides annual human rights training to its officers, and that too is reassuring.[142] However, as has been pointed out in the Victorian context, in helping to build a human rights culture, "[h]igh level policy is one thing, but you change behaviour in service delivery areas through operational policy. That is what people work to".[143] The Commission's policies and procedures, at least those provided to the Review team, might be described as high-level policies.

For example, the human rights framework largely restates the test for compatibility with human rights set out in the *Human Rights Act*, leaving decision-makers with little guidance about what weight to give to competing considerations in particular scenarios. The framework does not, for example, outline in what circumstances the impact on a person's privacy would warrant anonymising a report or not issuing a report at all. Instead, decision-makers are left with an abstract choice between prioritising an individual's human rights and prioritising competing public interest considerations. It may be that that more detailed guidance is set out in human rights guides that were not provided to the Review. However, if decision-makers are faced with that stark choice without sufficient guidance, it may be wondered, as one submitter did wonder, whether a decision-maker at the Commission would ever "demur[] in favour of the rights of an individual".[144] In those circumstances, there could be a risk that the consideration given to human rights comes to be seen as "perfunctory lip service", especially if the compatibility assessment almost always leads to the conclusion that the

Commission's "duties and responsibilities outweigh the rights of individuals to privacy and reputational protection".[145]

The review of the Commission's operations manual for compatibility with human rights does not appear to have led to human rights considerations being embedded in the operations manual, at least not in the parts provided to the Review team. For example, the section of the operations manual dealing with matter reports and publications sets out a list of considerations that are relevant to decisions about what to publish and how best to communicate.[146] Nowhere does it mention the impact on a person's privacy or reputation. The same is true of the Commission's communications policy and procedure.[147]

Far more guidance appears to have been offered by policies and procedures in the past. For example, in 2001, the Commission's media policies and procedures manual offered the following guidance to its officers:

> The [Criminal Justice Commission] must balance accountability considerations against the clear legislative emphasis on confidentiality. Where privacy considerations and the protection of operational information take on significance, they must ultimately outweigh the otherwise legitimate desire to generally inform the public.
>
> In considering a release concerning a current investigation, it must be borne in mind that the reputations of individuals may be seriously damaged by information as to the existence of an investigation or details of the nature of an investigation. This consideration will ordinarily take precedence over otherwise justifiable reasons for disclosure.[148]

That is, decision-makers were guided by a rule of thumb that where an investigation was ongoing, the impact on a person's privacy would ordinarily outweigh competing considerations.

The Commission has a media policy on its website that provides similar guidance today, though it no longer expresses any rule of thumb in those terms. According to the media policy, the Commission is required to strike a balance between "confidentiality and accountability". Where privacy and similar considerations "take on significance, they must ultimately outweigh the release of information to the public".[149] It is not clear how the publicly available media policy interacts with the Commission's internal communications and policy procedure. The latter document lists related policies, procedures and guides, but does not refer to the media policy that is available to the public.[150]

Ultimately, when assessing whether a statutory power—such as a power to report—is compatible with human rights, it is relevant to take into account that s 58 of the *Human*

*Rights Act* requires the power to be exercised in a way that is compatible with human rights.[151] But s 58 may not always be enough, by itself, to guide decision-makers to exercise the statutory power in a way that is compatible with human rights. The reality of how the statutory power is likely to be exercised also needs to be taken into account when assessing its compatibility with human rights. Even with the overlay of s 58, a statutory power that does not have sufficient guidance and safeguards built in may not be compatible with human rights.[152]

## 9.7 Human rights relevant to retrospective amendments

The terms of reference require consideration of whether any legislative amendments should be made to operate retrospectively.[153] A fundamental legislative principle is that legislation should not adversely affect rights and liberties retrospectively.[154] There is now also a human rights dimension to the question of whether legislation should be retrospective.[155]

In *Crime and Corruption Commission v Carne*, the High Court found that the Commission did not have a statutory power to issue a public report on an investigation of a particular complaint of corrupt conduct.[156] The Chairperson of the Commission has identified 32 reports dating from September 1998 that the Commission would not have published had it known it did not have power to do so, as well as 256 media releases from January 2006 that it would not have issued.[157] If those reports or public statements interfered with privacy or attacked a person's reputation, that person's human rights are likely to have been breached. The reason is that, in a society that respects the rule of law, a bare minimum requirement for justifying an interference with a person's human rights is lawful authority to do so.[158]

Validating those reports and statements on the basis of the amendments would resolve any doubts about their lawfulness, at least to the extent that they complied with the amended legislation, so that they could continue to remain publicly available, for example on the Commission's website. The Commission asserts that those reports highlighted corruption risks, demonstrated important integrity lessons and in many cases were the impetus for improved processes and procedures in public agencies.[159] There is an argument for ensuring that those reports remain in the public domain, on the basis that it would promote freedom of expression.

However, those benefits may come at a cost to other human rights, including, as outlined above, the rights to privacy and to a fair hearing. The Queensland Human Rights Commission submitted that the interference with privacy will more likely be "arbitrary" given that retrospectively changing the law involves an element of unpredictability.[160]

There are also additional human rights that are relevant to retrospective amendments, particularly the right to property.

## 9.8 The right to property

Retrospectively validating some or all of the Commission's previous reports and media releases may mean that causes of action that potentially exist now would cease to exist. It is conceivable that a person affected by one of those reports or media releases may have a cause of action available to them, for example, an action in negligence or defamation.[161] Such a claim may face challenges, including the application of parliamentary privilege in the case of reports that have been tabled in Parliament.[162] However, the possibility that a person may currently have a cause of action available to them cannot be ruled out.

Removing a cause of action for damages would engage the right to property in s 24 of the *Human Rights Act*. Relevantly, s 24(2) provides that "[a] person must not be arbitrarily deprived of the person's property". The term "property" should be construed liberally and beneficially to encompass economic interests,[163] and would likely include a chose in action[164] or a legitimate expectation of being entitled to damages.[165] For example, the European Court of Human Rights has found that legislation extinguishing compensation claims amounts to a deprivation of property.[166]

The question then would be whether the deprivation of property is "arbitrary". In this context, a deprivation will be arbitrary if it is capricious, unjust or unreasonable in the sense of not being proportionate to a legitimate aim sought.[167] The key aim for any retrospective amendments in this context should be to ensure freedom of expression in relation to previous reports and statements. Other legitimate reasons for making amendments retrospective include the need to re-establish legal certainty, the need to protect the State's financial interests, and the need to bring the law into line with other jurisdictions or with standards of fairness.[168]

Case law from Europe suggests that the following factors are relevant to whether validating legislation is proportionate to one or more of those legitimate aims:

- The need to re-establish legal certainty will not be a weighty consideration where the legal position following a court ruling is clear.[169] In the present context, the legal position is clear following the High Court's judgment in *Crime and Corruption Commission v Carne*.[170] It cannot be said that validating legislation is needed to bring clarity to an unclear area of the law.
- The need to bring the law into line with other jurisdictions or with standards of fairness is a weighty consideration when it comes to prospective amendments, but relatively weak when it comes to retrospective amendments.[171]
- When it comes to the need to preserve the State's finances, a fair balance needs to be struck between the demands of the general interest of the community and

the individual's right to property.[172] That balance will not exist if the person is required to bear an individual and excessive burden.[173]

- Validating legislation will more likely strike a fair balance if it is accompanied by compensation for any extinguished claims.[174] However, according to the explanatory notes, s 24 of the *Human Rights Act* was not intended to provide a right to compensation.[175]

The right to a fair hearing in s 31 of the *Human Rights Act* includes a right to access the courts in order to vindicate legal rights.[176] According to the European Court of Human Rights, the right to a fair hearing does not prevent the legislature from "adopting new retrospective provisions to regulate rights arising under existing law".[177] What it does do is prevent the legislature from enacting legislation designed to interfere with the judicial determination of a dispute (unless there is a compelling justification).[178] Appropriately drafted, validating legislation will not have that effect.[179]

The right not to be subject to retrospective criminal laws under s 35(1) of the *Human Rights Act* is also not relevant. That is because any retrospective amendments to validate previous reports or statements would not impose or expand criminal liability.

The human rights considerations outlined in this chapter will be returned to later in the Report, in the contexts of considering what amendments should be made to enable the Commission to release public reports and statements in a way that strikes a fair balance between the competing rights and interests at stake, and whether those amendments should be given retrospective effect.

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1 Terms of reference, [6](d) and (j).

2 Explanatory Notes, Human Rights Bill 2018 (Qld) 31; *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250, 293–4 [114]–[117].

3 Explanatory Notes, Human Rights Bill 2018 (Qld) 5, 17. See also *Johnston v Carroll* [2024] QSC 2, [68], [429]-[430].

4 Where the question is whether to prioritise one human right (such as privacy) over another (such as freedom of expression), the first three steps of proportionality will almost always be met. Protecting a human right (such as privacy) will always be a legitimate aim for the purposes of s 13(2)(b) of the *Human Rights Act 2019*, the legislative amendment will generally be rationally connected to that legitimate aim for the purposes of s 13(2)(c), and the amendment will generally be the least restrictive way of protecting the privacy for the purposes of s 13(2)(d), because any alternative that prioritises freedom of expression will not be as effective in protecting privacy. Any alternative that is less restrictive of one human right will be more restrictive of the other human right. That leaves the question of fair balance in ss 13(2)(e)–(g) as critical. Where privacy and freedom of expression need to be weighed against each other, the European Court of Human Rights has also recognised that the analysis focuses on fair balance: *Wojczuk v Poland* (2022) 75 EHRR 9, 283–4 [69]–[70]; *Matalas v Greece* (2021) 73 EHRR 26, 976–7 [41]–[42]. The same reasoning applies when considering whether an impact on privacy would be "arbitrary" for the purposes of s 25(a) of the *Human Rights Act*, which involves an assessment of proportionality similar to s 13: *Thompson v Minogue* (2021) 67 VR 301, 318–9 [55]–[58].

[5] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (3 July 1989) 6 [1.2]. See also at 357.

[6] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (3 July 1989) app 15, A183 (ruling of 31 August 1987), A195 (ruling of 26 October 1987). See also at 357.

[7] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (3 July 1989) app 15, A228 (ruling of 7 February 1989).

[8] Explanatory Notes, Human Rights Bill 2018 (Qld) 20.

[9] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

[10] *Human Rights Act 2004* (ACT) s 16; *Charter of Human Rights and Responsibilities 2006* (Vic) s 15; *New Zealand Bill of Rights Act 1990* (NZ) s 14; *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953) art 10 ('European Convention on Human Rights'); *Canada Act 1982* (UK) c 11, sch B, pt I, s 2(b) ('Canadian Charter of Rights and Freedoms').

[11] Human Rights Committee, *General comment No 34: Article 19: Freedoms of Opinion and Expression*, 102nd sess, UN Doc CCPR/C/GC/34 (12 September 2011) [2].

[12] Human Rights Committee, *General comment No 34: Article 19: Freedoms of Opinion and Expression*, 102nd sess, UN Doc CCPR/C/GC/34 (12 September 2011) [3].

[13] *Guja v Moldova* (2011) 53 EHRR 16, 551 [72]; *Goryaynova v Ukraine* (2021) 73 EHRR 4, 102 [49]–[50]; *Norman v United Kingdom* (2022) 74 EHRR 4, 62 [85]. Freedom of expression also protects private citizens who notify the authorities of possible corruption: *Rogalski v Poland* (2023) 77 EHRR 31, 834–7 [38]–[54]. For examples of a justified limit on a public servant raising allegations of irregularities, see *Panioglu v Romania* (2021) 72 EHRR 27; *Wojczuk v Poland* (2022) 75 EHRR 9.

[14] *Norman v United Kingdom* (2022) 74 EHRR 4, 62 [84]; *Sedletska Ukraine* (2024) 78 EHRR 10, 206 [65]; *Danielson v Calgary* (2005) 249 DLR (4th) 737, 748 [34]. See also Kieran Pender, 'Protecting Press Freedom Through Human Rights Charters in Australia' (2023) 47(1) *Melbourne University Law Review* 192, 206 ("say Queensland enacted a law preventing newspapers publishing news articles about ongoing investigations by the Crime and Corruption Commission. Such a law would, on its face, limit the freedom of expression of journalists in Queensland").

[15] On whether s 21 includes a right to seek and receive government-held information, see *XYZ v Victoria Police* (2010) 33 VAR 1, 86–95 [515]–[559]; *Horrocks v Department of Justice* [2012] VCAT 241, [110]; *Lawrence v Queensland Police Service* [2022] QCATA 134, [23]; *O'Connor v Department of Child Safety, Seniors and Disability Services* [2024] QCATA 34, [7] n 9.

[16] *Hajiyev v Azerbaijan* (2022) 75 EHRR 4, 108 [44]; Kieran Pender, 'Protecting Press Freedom Through Human Rights Charters in Australia' (2023) 47(1) *Melbourne University Law Review* 192, 215–9.

[17] Based on Victorian authorities, ordinarily, when a public entity properly processes a request for access to documents under the *Right to Information Act 2009*, it will also be respecting, and acting compatibly with, the applicant's right to seek and receive information under s 21(2) of the *Human Rights Act 2019*: *XYZ v Victoria Police* (2010) 33 VAR 1, 98 [573]. The Crime and Corruption Commission may receive a right to information request under s 24 of the *Right to Information Act*. The Commission has a discretion under ss 40 and 48 to refuse to deal with an application, or to refuse an application, concerning exempt information. The Commission still has a discretion to release that information: ss 39(3), 47(2)(b), 48(3). However, the Office of the Information Commissioner points out that "agencies may be reluctant to give access to information where a ground to refuse access is established" so that this avenue for seeking and receiving information may be limited in practice: Office of the Information Commissioner submission, dated 19 March 2024, 2.

[18] *United Nations Convention Against Corruption*, opened for signature 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005). Australia ratified the Convention on 7 December 2005.

[19] On the close relationship between the rights in ss 21 and 23, see *Australian Institute for Progress Ltd v Electoral Commission of Queensland* (2020) 4 QR 31, 73 [119]–[120].

[20] On weighing these competing rights in the context of allegations of misconduct, see *Wojczuk v Poland* (2022) 75 EHRR 9, 283–4 [69]–[70]; *Matalas v Greece* (2021) 73 EHRR 26, 976–7 [41]–[42]. On weighing these competing rights in the context of allegations of criminality, albeit offering less guidance, see *Hogan v Hinch* (2011) 243 CLR 506, 535 [27], 549 [71].
[21] Explanatory Notes, Human Rights Bill 2018 (Qld) 22.
[22] *Human Rights Act 2004* (ACT) s 12; *Charter of Human Rights and Responsibilities 2006* (Vic) s 13; European Convention on Human Rights, art 8.
[23] (2022) 11 QR 334, 392 [195].
[24] *BZN v Chief Executive, the Department of Children, Youth Justice and Multicultural Affairs* [2023] QSC 266, [231], [244].
[25] *R v B* [2009] 1 NZLR 293, 304–5 [43]; *Farm Transparency International Ltd v New South Wales* (2022) 96 ALJR 655, 667 [31], 68 [159] (albeit in relation to privacy as a legal value).
[26] *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 131 [619]–[620]. The underlying value of "identity" means that there is a close relationship between privacy and reputation: *Denisov v Ukraine* [2018] ECHR 1061, [97].
[27] William A Schabas, *UN International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (NP Engel, 3rd ed, 2019) 459 [1].
[28] *DPP (Vic) v Kaba* (2014) 44 VR 526, 560 [119], 561 [121].
[29] *DPP (Vic) v Kaba* (2014) 44 VR 526, 562–4 [126]–[134]; *SF v Department of Education* [2021] QCAT 10, [43]–[46].
[30] *Saaristo v Finland* [2010] ECHR 1497, [61].
[31] *Charest v Attorney-General (Quebec)* [2023] QCCS 1050, [26], [63]. For the context of this case, see chapter 6 at [6.2].
[32] *R (T) v Chief Constable of Greater Manchester Police* [2015] AC 49, 65–6 [18]; *R (L) v Commissioner of Police of the Metropolis* [2010] 1 AC 410, 427 [27].
[33] *Craxi v Italy [No 2]* (2004) 38 EHRR 47, 1020 [57], 1022 [66]–[67], 1023 [75]–[76].
[34] Explanatory Notes, Human Rights Bill 2018 (Qld) 22; *Johnston v Carroll* [2024] QSC 2, [358]–[359].
[35] [2023] QSC 266, [231], [244]. See also *Wojczuk v Poland* (2022) 75 EHRR 9, 288–9 [97]–[98].
[36] *Carne v Crime and Corruption Commission* [2021] QSC 228, [25]–[26].
[37] David Ryan, Coroner, Coroner's Court of Victoria, *Finding into death without inquest* (COR 2022 000357, 23 June 2023) [15]–[19], [62]–[63], [66]–[69]; Integrity and Oversight Committee, Parliament of Victoria, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare* (October 2022).
[38] Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Reputational impact on an individual being adversely named in the ICAC's investigations* (Report 4/57, November 2021) 3–5 [1.13]–[1.22], [1.26].
[39] Crime and Corruption Commission, second submission, dated 18 April 2024, 6–7, annexure 5.
[40] Explanatory Notes, Human Rights Bill 2018 (Qld) 22.
[41] *Denisov v Ukraine* [2018] ECHR 1061, [100], citing *Niemietz v Germany* (1993) 16 EHRR 97, 111 [29].
[42] *ZZ v Secretary, Department of Justice* [2013] VSC 267, [72]–[95].
[43] *Butkevičius v Lithuania* [2022] ECHR 471, [85]–[87].
[44] Eg *Xhoxhaj v Albania* (2021) 73 EHRR 14; *Samsin v Ukraine* (2022) 74 EHRR 29.
[45] *ZZ v Secretary, Department of Justice* [2013] VSC 267, [86]. In Queensland, QCAT has also noted that the right to work may be an implied aspect of some of the enumerated rights, including the right to privacy: eg *MB* [2022] QCAT 185, [253].
[46] Trad submission, dated 20 March 2024, 16 [35].
[47] Barbagallo submission, dated 22 March 2024, 1–2. See also Together Queensland submission, dated 21 March 2024, 11 [53].
[48] Explanatory Notes, Human Rights Bill 2018 (Qld) 22. On the idea that the right to reputation protects against attacks that are intentional and based on untrue allegations, see also William A Schabas, *UN International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (NP Engel, 3rd ed, 2019) 493 [60].

[49] *Denisov v Ukraine* [2018] ECHR 1061, [112]; *BZN v Chief Executive, Department of Children, Youth Justice and Multicultural Affairs* [2023] QSC 266, [225] (summarising the applicant's submissions).

[50] Human Rights Committee, *Views: Communication No 2148/2012*, UN Doc CCPR/C/119/D/2148/2012 (2 June 2017) [6.10] ('*MAK v Belgium*'); *Denisov v Ukraine* [2018] ECHR 1061, [98]; *Matalas v Greece* (2021) 73 EHRR 26, 975–6 [39].

[51] William A Schabas, *UN International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (NP Engel, 3rd ed, 2019) 493–4 [61]–[63].

[52] *Denisov v Ukraine* [2018] ECHR 1061, [121].

[53] William A Schabas, *UN International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (NP Engel, 3rd ed, 2019) 492 [58].

[54] *Matalas v Greece* (2021) 73 EHRR 26, 977 [45]. See, likewise, the position at common law: *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625, 633, 365–6.

[55] *BZN v Chief Executive, Department of Children, Youth Justice and Multicultural Affairs* [2023] QSC 266, [230], [243], [246].

[56] *Thompson v Minogue* (2021) 67 VR 301, 318 [55].

[57] *Thompson v Minogue* (2021) 67 VR 301, 318 [56].

[58] In a human rights context, the Queensland Supreme Court has held that "the general purpose of preventing corruption and undue influence in the government of the State" is a legitimate aim: *Australian Institute for Progress Ltd v Electoral Commission of Queensland* (2020) 4 QR 31, 73–4 [122]. See also *A v Commissioner of the Independent Commission Against Corruption* (2012) 15 HKCFAR 362, 406 [122]–[123]; *HJ v Independent Broad-based Anti-corruption Commission* (2021) 64 VR 270, 313–4 [193]; *Butkevičius v Lithuania* [2022] ECHR 471, [95]; Queensland Human Rights Commission, first submission, dated 4 April 2024, 1.

[59] An unlawful interference is one which infringes an applicable law: *Thompson v Minogue* (2021) 67 VR 301, 317 [49]. This is subject to the possibility that a law that is not sufficiently accessible, clear and certain will not amount to a law for the purposes of s 25 or s 13(1) of the *Human Rights Act*: *Sunday Times v United Kingdom* (1979) 2 EHRR 245, 271 [49]; *Kracke v Mental Health Review Board* (2009) 29 VAR 1, 46 [174]; *PJB v Melbourne Health* (2011) 39 VR 373, 396 [91].

[60] Trad submission, dated 20 March 2024, 46–7 [130]–[134].

[61] Queensland Human Rights Commission, first submission, dated 4 April 2024, 3. See also Human Rights Committee, *General comment No 16: Article 17 (Right to privacy)*, 32nd sess (1988) [11]; Human Rights Committee, *Views: Communication No 3088/2017*, UN Doc CCPR/C/138/D/3088/2017 (11 April 2024) [8.3] ('*Kazal v Australia*'); William A Schabas, *UN International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (NP Engel, 3rd ed, 2019) 493 [60].

[62] There is a number of further reasons why this analysis is not confined to the internal limitation of lawfulness. First, there is an overlap between the internal limitations and the test of justification in s 13 of the *Human Rights Act*. An impact on human rights that is "unlawful" for the purposes of s25(a) and (b) will also not be "under law" as required by s 13(1) of the *Human Rights Act*: *Thompson v Minogue* (2021) 67 VR 301, 318-9 [58]. Second, there is an overlap between the scope of the rights to privacy and reputation (*Denisov v Ukraine* [2018] ECHR 1061, [97]), and the right to privacy has the additional internal limitation of "arbitrariness", so that authorisation by law is not sufficient to conclude that the right is not limited. Third, focusing on the internal limitations distracts from the real impacts on privacy and reputation. When considering what legislative amendments should be made, focusing on the impacts on privacy and reputation can help to ensure that the proposed legislation is the option that is most compatible with human rights, rather than one that merely meets the bare minimum requirement of compatibility with human rights: Kent Blore and Brenna Booth-Marxson, 'Breathing Life into the *Human Rights Act 2019* (Qld): The Ethical Duties of Public Servants and Lawyers Acting for Government' (2022) 41(1) *University of Queensland Law Journal* 1, 30–1. Fourth, when reviewing human rights statements of compatibility for proposed legislation, portfolio committees have recommended engaging more fully with justification under s 13 of the *Human Rights Act* for interferences with privacy, even if the Minister comes to the conclusion in their statement of compatibility that the interference with privacy is lawful and not arbitrary. According to the

committee, any other approach would be inconsistent with international human rights standards about what the right to privacy requires: Health and Environment Committee, Parliament of Queensland, *Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2022* (Report No 21, July 2022) 71 [5.2]. Finally, the terms of reference require consideration of the impacts on privacy and reputation generally, quite apart from the *Human Rights Act*, in any event.

63 Independent Commission Against Corruption, *Investigation into the Undisclosed Conflict of Interest of a Senior Executive of the Sydney Harbour Foreshore Authority* (ICAC Report, December 2011) <https://www.parliament.nsw.gov.au/la/papers/Pages/tabled-paper-details.aspx?pk=26515>.

64 *Kazal v Independent Commission Against Corruption* (2013) 224 A Crim R 510, 522 [43].

65 Office of the Inspector of the Independent Commission Against Corruption, *Report Pursuant to Sections 57B & 77A Independent Commission Against Corruption Act 1988 – Operation "Vesta"* (Report, June 2017) <https://www.oiicac.nsw.gov.au/assets/Uploads/Reports/Special-Reports/Operation-22Vesta22-Andrew-Kelly-Charif-Kazal-and-Jaimie-Brown-complaints.pdf>.

66 Human Rights Committee, *Views: Communication No 3088/2017*, UN Doc CCPR/C/138/D/3088/2017 (11 April 2024) [4.10], [4.13], [8.2], [8.5] ('*Kazal v Australia*').

67 Human Rights Committee, *Views: Communication No 3088/2017*, UN Doc CCPR/C/138/D/3088/2017 (11 April 2024) [2.5], [5.2] ('*Kazal v Australia*').

68 Human Rights Committee, *Views: Communication No 3088/2017*, UN Doc CCPR/C/138/D/3088/2017 (11 April 2024) [8.5] ('*Kazal v Australia*').

69 Crime and Corruption Commission, second submission, dated 18 April 2024, 4–6.

70 *Human Rights Act 2019*, s 58.

71 *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [324].

72 Human Rights Committee, *General Comment No 25*, 57th sess, UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996) [23].

73 Human Rights Committee, *Views: Communication No 906/2000*, UN Doc CCPR/C/75/D/906/2000 (9 October 2002) [7.4] ('*Vargas-Machuca v Peru*'). However, it should be noted that the Supreme Court has recently indicated that this right will only be limited if the access to the public service is given on a discriminatory basis: *Johnston v Carroll* [2024] QSC 2, [356].

74 *Van Marle v Netherlands* (1986) 8 EHRR 483, 491 [41]-[42]; *Malik v United Kingdom* [2012] ECHR 438, [94]-[100]. On the link between the right to property and work, see Kent Blore and Nikita Nibbs, 'A theory of the right to property under the *Human Rights Act 2019* (Qld)' (2022) 30 *Australian Property Law Journal* 1, 21–2.

75 *Rogalski v Poland* (2023) 77 EHRR 31, 835 [46]; *Panioglu v Romania* (2021) 72 EHRR 27, 890 [113]; *Wojczuk v Poland* (2022) 75 EHRR 9, 284 [72], 287–8 [93].

76 *Craxi v Italy [No 2]* (2004) 38 EHRR 47, 1021 [64]. See also *Butkevičius v Lithuania* [2022] ECHR 471, [97]. Cf Public servants do not lay themselves open to that level of scrutiny: *Lešník v Slovakia* [2003] ECHR 124, [53]; *Wojczuk v Poland* (2022) 75 EHRR 9, 288 [96].

77 *Zakharov v Russia* [2006] ECHR 834, [25].

78 *Lešník v Slovakia* [2003] ECHR 124, [61].

79 *Peruzzi v Italy* [2015] ECHR 629, [63].

80 *Wojczuk v Poland* (2022) 75 EHRR 9, 288–9 [97]–[98].

81 Human Rights Committee, *Views: Communication No 3088/2017*, UN Doc CCPR/C/138/D/3088/2017 (11 April 2024) [8.5] ('*Kazal v Australia*').

82 *Denisov v Ukraine* [2018] ECHR 1061, [121].

83 *Panioglu v Romania* (2021) 72 EHRR 27, 890–1 [115]–[118]; *Wojczuk v Poland* (2022) 75 EHRR 9, 289–90 [100]–[103].

84 *Denisov v Ukraine* [2018] ECHR 1061, [98].

85 *Guja v Moldova* (2011) 53 EHRR 16, 551 [74], 553 [88], 554 [91]; *Goryaynova v Ukraine* (2021) 73 EHRR 4, 104–5 [61]; *Butkevičius v Lithuania* [2022] ECHR 471, [101].

86 *Craxi v Italy [No 2]* (2004) 38 EHRR 47, 1020 [57], 1022 [66]–[67], 1023 [75]–[76]; *Norman v United Kingdom* (2022) 74 EHRR 4, 63 [89].

[87] *Lešník v Slovakia* [2003] ECHR 124, [57]–[58]; *Guja v Moldova* (2011) 53 EHRR 16, 551–2 [75], 553 [89]; *Panioglu v Romania* (2021) 72 EHRR 27, 890–1 [115]–[118]; *Wojczuk v Poland* (2022) 75 EHRR 9, 285 [74], 286 [84], 289–90 [100]–[103]; *Danielson v Calgary* (2005) 249 DLR (4th) 737, 747 [31]. It might be surprising that unfounded allegations are protected at all. In a human rights context, freedom of expression protects the expression of both truths and falsehoods at the first stage of analysis (limitation). However, at the second stage of analysis (justification), generally the expression of falsehoods will be of low value and more likely to be outweighed by competing considerations: eg *Canada (Attorney-General) v JTI-Macdonald Corp* [2007] 2 SCR 610, 637 [60], 640 [68].

[88] Human Rights Committee, *Views: Communication No 3088/2017*, UN Doc CCPR/C/138/D/3088/2017 (11 April 2024) [8.5] ('*Kazal v Australia*').

[89] In its first submission, the Queensland Human Rights Commission pointed out that the right to a fair hearing also applies to certain proceedings of an administrative character and noted that one of the partially dissenting opinions in *Kazal v Australia* took the approach that the right may apply to proceedings before an anti-corruption commission: Queensland Human Rights Commission, first submission, dated 4 April 2024, 6–7. The right to a fair hearing in s 31 of the *Human Rights Act* could only apply directly to the Crime and Corruption Commission when investigating an allegation of corruption if the Commission is itself a "tribunal" for the purposes of s 31 and therefore required to provide a fair hearing in the form of procedural fairness. In line with Victorian authority, "tribunal" should be read broadly to capture administrative decision-makers who preside over a "proceeding" of some kind, such as a board that conducts a hearing with identifiable parties: *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 95 [417]–[418]. However, when the Crime and Corruption Commission is carrying out a corruption investigation, it is not presiding over a "proceeding". That is consistent with *SQH v Scott* (2022) 10 QR 215, where the Queensland Supreme Court treated coercive questioning by the Commission as engaging the right to a fair hearing, not because the Commission was itself conducting a proceeding, but because of the potential impact on a concurrent criminal trial before a court: at 296 [325]. That is also consistent with the majority opinion of the UN Human Rights Committee in *Kazal v Australia*, in which it was found that the NSW ICAC was not required to provide Mr Kazal a fair hearing, as it was not determining criminal charges or a "suit at law": Human Rights Committee, *Views: Communication No 3088/2017*, UN Doc CCPR/C/138/D/3088/2017 (11 April 2024) [7.5] ('*Kazal v Australia*'). The obligation of the Crime and Corruption Commission to afford procedural fairness may provide an example of where rights at common law are broader than human rights under the *Human Rights Act*. The absence of a general right to procedural fairness under the *Human Rights Act* does not detract from the common law right: s 12. However, as the Queensland Human Rights Commission appeared to submit, a requirement to provide procedural fairness can still serve as a safeguard for other rights, particularly, the right to privacy and reputation.

[90] For that reason, in *Kazal v Australia*, the right to be presumed innocent was not engaged. Mr Kazal was not charged with a criminal offence at the time the findings were made, and he was not subsequently tried because the prosecutor found there were insufficient prospects: Human Rights Committee, *Views: Communication No 3088/2017*, UN Doc CCPR/C/138/D/3088/2017 (11 April 2024) [7.6] ('*Kazal v Australia*').

[91] Explanatory Notes, Human Rights Bill 2018 (Qld) 25–6.

[92] *Human Rights Act 2004* (ACT) ss 21, 22; *Charter of Human Rights and Responsibilities 2006* (Vic) ss 24, 25; *New Zealand Bill of Rights Act 1990* (NZ) s 25(a), (c); European Convention on Human Rights, art 6; Canadian Charter of Rights and Freedoms, s 11.

[93] *Application under Major Crime (Investigative Powers) Act 2004* (2009) 24 VR 415, 442 [118]. See also at 424 [38].

[94] *Matsoukatidou v Yarra Ranges Council* (2017) 51 VR 624, 682 [179].

[95] *R v Coghill* [1995] 3 NZLR 651, 661, where the evidence suggested police had breached the right to be presumed innocent in s 25(c) of the *New Zealand Bill of Rights Act 1990* by supplying information to the press.

[96] *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)* [1995] 2 SCR 97, 178 [163] (concurring in the result).
[97] Noting the Commission and its officers are public entities: *Human Rights Act 2019*, ss 9(1)(a)–(b); *SQH v Scott* (2022) 10 QR 215, 257 [124].
[98] *DPP (Vic) v Mokbel [No 1]* [2010] VSC 331, [162].
[99] Human Rights Committee, *General Comment No 32 – Article 14: Right to equality before courts and tribunals and to a fair trial*, 90th sess, UN Doc CCPR/C/GC/32 (23 August 2007) 9 [30], citing Human Rights Committee, *Views: Communication No 770/1997*, UN Doc CCPR/C/69/D/770/1997 (18 July 2000) [3.5], [8.3] ('*Gridin v Russian Federation*'). See also Lord Lester Hill et al (eds), *Human Rights Law and Practice* (LexisNexis, 3rd ed, 2009) 333–4 [4.6.63].
[100] *Hammond v Commonwealth* (1982) 152 CLR 188, 199.
[101] *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)* [1995] 2 SCR 97, 122 [32] (concurring in the result). See also Andrew Butler and Petra Butler, *The New Zealand Bill of Rights Act: A Commentary* (LexisNexis, 2nd ed, 2015) 1427–8 [23.14.7]–[23.14.11].
[102] *R v Sherratt* [1991] 1 SCR 509, 525.
[103] William A Schabas, *UN International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (NP Engel, 3rd ed, 2019) 386–7 [61]–[62]; *Germany v Ebke* (2000) 150 CCC (3d) 252, 265–6 [32].
[104] Human Rights Committee, *Views: Communication No 1397/2005*, UN Doc CCPR/C/96/D/1397/2005 (17 August 2009) [7.6] ('*Engo v Cameroon*').
[105] Human Rights Committee, *Views: Communication No 1397/2005*, UN Doc CCPR/C/96/D/1397/2005 (17 August 2009) [3.6] ('*Engo v Cameroon*').
[106] Human Rights Committee, *Views: Communication No 1397/2005*, UN Doc CCPR/C/96/D/1397/2005 (17 August 2009) [7.6] ('*Engo v Cameroon*').
[107] *Craxi v Italy [No 2]* (2004) 38 EHRR 47, 1021 [63]–[64]; *Craxi v Italy [No 1]* [2002] ECHR 797, [99]–[100], [103]; *Akay v Turkey* (European Court of Human Rights, Fourth Section, Application No 34501/97, 19 February 2002) [2]; *Ninn-Hansen v Denmark* (European Court of Human Rights, Second Section, Application No 28972/95, 18 May 1999) 22; *Burzo v Romania* (European Court of Human Rights, Third Section, Application Nos 75109/01 and 12639/02, 30 June 2009) [160].
[108] *Burzo v Romania* (European Court of Human Rights, Third Section, Application Nos 75109/01 and 12639/02, 30 June 2009) [157], [163].
[109] *Yeung Chung Ming v Commissioner of Police* (2008) 11 HKCFAR 513, 526 [23]; *GCP v Romania* [2011] ECHR 2231, [58]; *Burzo v Romania* (European Court of Human Rights, Third Section, Application Nos 75109/01 and 12639/02, 30 June 2009) [163].
[110] *GCP v Romania* [2011] ECHR 2231, [57]. Note this case was not in a corruption context. GCP was a private citizen rather than a public servant.
[111] *GCP v Romania* [2011] ECHR 2231, [59].
[112] *R v Coghill* [1995] 3 NZLR 651, 662; *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)* [1995] 2 SCR 97, 124 [35] (concurring in the result); *Akay v Turkey* (European Court of Human Rights, Fourth Section, Application No 34501/97, 19 February 2002) [2]; *Burzo v Romania* (European Court of Human Rights, Third Section, Application Nos 75109/01 and 12639/02, 30 June 2009) [166]; Andrew Butler and Petra Butler, *The New Zealand Bill of Rights Act: A Commentary* (LexisNexis, 2nd ed, 2015) 1428 [23.14.11].
[113] *DPP (Vic) v Mokbel [No 1]* [2010] VSC 331, [140]–[145], [159]–[166], applying the principles that apply to the right to a fair hearing at common law in *Dupas v The Queen* (2010) 241 CLR 237, 250–1 [35]–[38]. See also *Montgomery v HM Advocate* [2003] 1 AC 641, 673–4; *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)* [1995] 2 SCR 97, 168–9 [133] (concurring in the result); *R v Burns (Travis) [No 2]* [2002] 1 NZLR 410, 413 [11]; *Akay v Turkey* (European Court of Human Rights, Fourth Section, Application No 34501/97, 19 February 2002) [2]; *Craxi v Italy [No 1]* [2002] ECHR 797, [104].
[114] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 90. See also *R v B* [2009] 1 NZLR

293, 310–11 [78]–[79]; *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625, 633 (while a "finding [in a report] may not necessarily have a tendency to interfere with the due administration of justice in the event of a subsequent trial, the possibility cannot be disregarded").

115 *R v Coghill* [1995] 3 NZLR 651, 661–2.

116 *Matsoukatidou v Yarra Ranges Council* (2017) 51 VR 624, 648 [75].

117 *Craxi v Italy [No 1]* [2002] ECHR 797, [104].

118 *Konstas v Greece* (European Court of Human Rights, First Section, Application No 53466/07, 24 May 2011) [36].

119 *Bikas v Germany* [2018] ECHR 90, [33], [57]. See also *Herrera v Collins*, 506 US 390, 399–400 (1993).

120 *Crime and Corruption Act 2001*, ss 88C, 188(3), 192(2)(b).

121 *SQH v Scott* (2022) 10 QR 215, 296 [324]–[325].

122 Office of the Information Commissioner submission, dated 19 March 2024, 4. See also Together Queensland submission, dated 21 March 2024, 7 [37]–[38].

123 *R v Amway Corporation* [1989] 1 SCR 21, 40.

124 *R v Amway Corporation* [1989] 1 SCR 21, 40; *Environmental Protection Authority v Caltex Refining Co Pty Ltd* (1993) 178 CLR 477, 495, 513, 541.

125 See also *Butkevičius v Lithuania* [2022] ECHR 471, [88], where information obtained through special telephone monitoring powers was disseminated to a wider group of people. However, the interference with privacy was proportionate, in circumstances where the content of the recording did not concern intimate details of the Prime Minister's private life, and the prosecution had already confirmed that the Prime Minister would not be prosecuted in relation to the corruption allegations.

126 *Crime and Corruption Act 2001*, s 197(2). There is no direct use immunity in respect of self-incriminating documents or things produced under compulsion in corruption investigations: s 188(4). There is currently a Bill before the Legislative Assembly that would relocate the carveout in s 188(4) into s 197: Crime and Corruption and Other Legislation Amendment Bill 2024 (Qld) cl 26.

127 Eg *Lee v The Queen* (2014) 253 CLR 455, 470–2 [43]–[46].

128 *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)* [1995] 2 SCR 97, 177-8 [161]–[163] (concurring in the result).

129 Queensland Human Rights Commission, second submission, dated 17 April 2024, 3.

130 Eg, the New South Wales Crime Commissioner and others assert that an appropriate balance was struck in a case involving the use of material from coercive hearings to inform policy proposals in a public criminal intelligence report. An initial blanket non-publication order was varied on a case-by-case basis to allow information to be included in the report to fill identified information gaps, the witness was consulted on each occasion, and the witnesses were not identified in the report: Michael Barnes, Kelly Roberts and Nathan Leivesley, 'Balancing transparency and secrecy in public criminal intelligence reports' (2023) 109 *AIAL Forum* 90, 97–8.

131 Where there is no discretion, the public entity is relieved of their human rights obligations under s 58(1) by the exception in s 58(2) of the *Human Rights Act 2019*: see *SQH v Scott* (2022) 10 QR 215, 257 [127], 261 [143]–[144].

132 *HJ v Independent Broad-Based Anti-Corruption Commission* (2021) 64 VR 270, 306 [154].

133 Crime and Corruption Commission, second submission, dated 18 April 2024, 5–6.

134 Crime and Corruption Commission, second submission, dated 18 April 2024, 5. See also Crime and Corruption Commission, first submission, dated 12 March 2024, 26–7.

135 Crime and Corruption Commission, second submission, dated 18 April 2024, annexure 2.

136 Crime and Corruption Commission, second submission, dated 18 April 2024, annexures 8 and 9.

137 Crime and Corruption Commission, second submission, dated 18 April 2024, 6.

138 Crime and Corruption Commission, second submission, dated 18 April 2024, annexure 4.

139 Crime and Corruption Commission, second submission, dated 18 April 2024, annexure 3.

140 Crime and Corruption Commission, second submission, dated 18 April 2024, annexure 2, 12–13.

141 One of the stated objects in s 3(b) of the *Human Rights Act 2019*.

142 See also *Minogue v Thompson* [2021] VSC 56, [58].

[143] Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (Report, 2015) 32.
[144] Barbagallo submission, dated 22 March 2024, 4.
[145] Barbagallo submission, dated 22 March 2024, 4. On the point that the test of "proper consideration" of human rights requires more than "lip service", see: *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250, 284 [77], 298–9 [137], 325 [253]; *Certain Children v Minister for Families and Children [No 2]* (2017) 52 VR 441, 590 [514]–[515].
[146] Crime and Corruption Commission, second submission, dated 18 April 2024, annexure 8, 42.
[147] Crime and Corruption Commission, second submission, dated 18 April 2024, annexure 9.
[148] Set out in Parliamentary Criminal Justice Committee, Parliament of Queensland, *Three Yearly Review of the Criminal Justice Commission* (Report No 55, 2000) 197–8.
[149] Crime and Corruption Commission, 'Media Policy' (Web Page, published 9 August 2019, last modified 1 July 2021) <https://www.ccc.qld.gov.au/media/media-policy>.
[150] Crime and Corruption Commission, second submission, dated 18 April 2024, annexure 9, 62. In 2013, Callinan and Aroney also noted there were discrepancies between the Commission's internal media policy and its publicly available media policy: see Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 100.
[151] *R (Roberts) v Commissioner of Police of the Metropolis* [2016] 1 WLR 210, 225 [42]. See also Crime and Corruption Commission, first submission, dated 12 March 2024, 27; Martin submission, dated 20 March 2024, 7.
[152] *Christian Institute v Lord Advocate (Scotland)*, 2017 SC (UKSC) 29, 59 [86], 63 [101], 64–5 [106]. See also Queensland Human Rights Commission, first submission, dated 4 April 2024, 9; Together Queensland submission, dated 21 March 2024, 11 [56], 12 [59].
[153] Terms of reference, [4](c).
[154] *Legislative Standards Act 1992*, s 4(3)(g).
[155] Arguably, there was already a human rights dimension: *R v GT* [2005] QCA 478, [27].
[156] (2023) 97 ALJR 737, 743 [26], 749 [69], 753–4 [99]–[104].
[157] Letter from Crime and Corruption Commission to Parliamentary Crime and Corruption Committee, 26 August 2022; Letter from Crime and Corruption Commission to Parliamentary Crime and Corruption Committee, 20 October 2022.
[158] *DPP (Vic) v Kaba* (2014) 44 VR 526, 647 [468]; *Borrowdale v Director-General of Health* [2020] 2 NZLR 864, 912 [225], 915 [240].
[159] Crime and Corruption Commission, first submission, dated 12 March 2024, 30. See also Crime and Corruption Commission, Submission No 4 to Community Safety and Legal Affairs Committee, Parliament of Queensland, *Inquiry into the Crime and Corruption Amendment Bill 2023* (29 February 2024) 6 <https://documents.parliament.qld.gov.au/com/CSLAC-40FE/CCAB2023-A326/submissions/00000004.pdf>.
[160] Queensland Human Rights Commission, second submission, dated 17 April 2024, 1–2.
[161] A person may also be able to seek judicial review, and also "piggyback" a claimed breach of human rights under s 59 of the *Human Rights Act*, especially given that any interference with privacy or reputation will likely have been unlawful. However, where the application or claim does not vindicate an underlying property interest (for example, damages), removing the availability of the application or claim would likely not engage the right to property: see *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [330]–[332].
[162] *Parliament of Queensland Act 2001*, s 8. In addition, s 54 protects publication of fair reports of reports that have been tabled. The Commission and its officers also enjoy protection from civil liability under s 335 of the *Crime and Corruption Act 2001*. Any liability attaches instead to the State.
[163] *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [327].
[164] *Acts Interpretation Act 1954*, sch 1 (definition of "property").
[165] *Draon v France* (2006) 42 EHRR 40, 830–2 [65]–[70]; *Maurice v France* [2005] ECHR 683, [63].

[166] *Stran Greek Refineries and Stratis Andreadis v Greece* (1995) 19 EHRR 293, 326 [62], 327–8 [66]–[67]; *Pressos Compania Naviera SA v Belgium* (1996) 21 EHRR 301, 335 [34]; *Draon v France* (2006) 42 EHRR 40, 832 [70]–[72]; *Maurice v France* [2005] ECHR 683, [79]–[80].
[167] *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [333] n 291.
[168] *Pressos Compania Naviera SA v Belgium* (1996) 21 EHRR 301, 335–6 [36]; *Draon v France* (2006) 42 EHRR 40, 833 [77].
[169] *Pressos Compania Naviera SA v Belgium* (1996) 21 EHRR 301, 337–8 [42].
[170] (2023) 97 ALJR 737.
[171] *Pressos Compania Naviera SA v Belgium* (1996) 21 EHRR 301, 338 [43]; *Draon v France* (2006) 42 EHRR 40, 835 [85].
[172] *Pressos Compania Naviera SA v Belgium* (1996) 21 EHRR 301, 336 [38].
[173] *Yasar v Romania* (2020) 71 EHRR 25, 850 [51].
[174] *Pressos Compania Naviera SA v Belgium* (1996) 21 EHRR 301, 336–7 [38]–[39].
[175] Explanatory Notes, Human Rights Bill 2018 (Qld) 22.
[176] *Slaveski v Smith* (2012) 34 VR 206, 220 [50]–[52]; *Bare v Independent Broad-Based Anti-Corruption Commission* (2015) 48 VR 129, 250 [375].
[177] *Beshiri v Albania* (European Court of Human Rights, Second Section, Application No 29026/06, 17 March 2020) [225].
[178] *Stran Greek Refineries and Stratis Andreadis v Greece* (1995) 19 EHRR 293, 323 [49]; *Zielinski v France* (2001) 31 EHRR 19, 551 [57].
[179] *Duncan v Independent Commission Against Corruption* (2015) 256 CLR 83, 98–9 [26]–[27], 101–2 [41]–[42], [46].

# Chapter 10: The extent to which the Commission should be able to report publicly and make statements

I am asked to make recommendations on legislative amendments to enable the Crime and Corruption Commission to report publicly and make public statements in the performance of its corruption functions[1] (and prevention function so far as it concerns corruption), in the process considering how and when reporting and the making of public statements should take place, and with what content.[2] I begin those considerations in this chapter.

The terms of reference require the balancing of certain principles, rights and values, with the aid of information drawn from relevant sources. There are a couple of points to be made about them.

Firstly, those principles, rights and values, although they are contained in two distinct groups, do not necessarily point to opposite conclusions. For example, the need for community confidence in government and public administration so far as it requires accountability and transparency will weigh in favour of reporting; but so far as that confidence is premised on the assurance that citizens will receive procedural fairness and that the right to a fair trial will be respected, will shift the balance towards limits on reporting.

Secondly, the values—accountability, transparency, openness, public trust and community confidence—are expressed, in term of reference 6(c), as applicable in the contexts of government, public administration and integrity bodies (the relevant integrity body here being the Commission). They are three distinct contexts, in which the potency of those values may vary. In other words, transparency and accountability in the way the Commission carries out its investigative functions may be considerably less important (and hence not as weighty a factor) than transparency and accountability in the way public administration operates; which may in turn be less important and weighty as a consideration than the same factors when it comes to the holders of political office at both the State and local government levels. And, as I will go on to discuss, community standards (the subject of term of reference 6(e)) may also dictate a different approach in relation to holders of political office.

## 10.1 Accountability, transparency, openness, trust and confidence in the Commission

The Commission advocated strongly for the power to report publicly, arguing that it provided transparency in relation to the performance of its own functions and served to support its statutory objectives but also allowed for "a transparent accounting of those matters the [Commission] has assessed or investigated".[3]

The Commission referred to the Best Practice Principles for Australian Anti-corruption Commissions, to which it subscribes.[4] Those Principles include (although it is not really a principle), "The ability to report on investigations and make public statements", which extends to the ability to oversee and report on the implementation of any recommendations. This is important, the document says, in providing transparency as to how anti-corruption bodies undertake their work, in giving assurance to the public and public sector that corruption allegations are "appropriately dealt with" and in providing general deterrence.[5]

An examination of the *Crime and Corruption Act 2001* shows, however, that transparency in how the Commission carries out its investigative work is not a primary focus. As earlier observed (chapter 7), the Act's purposes in respect of corruption, unlike those of similar legislation in other jurisdictions, do not include exposing corruption.[6] Those purposes are to be met by the establishment of the Commission to investigate cases of corrupt conduct, particularly more serious ones, and to increase the capacity of units of public administration to deal with corruption.[7] It is reasonable to infer from the Act's purposes that the legislative intent is a greater focus by the Commission on investigation and improvement of systems than on exposure of its activities to that end.

The Commission may only hold a hearing in relation to a corruption investigation in public if it considers that closing the hearing to the public would either be unfair to an individual or contrary to the public interest.[8] The result is that the Commission conducts most of its hearings in private, so they are not accessible to the public, and what happened in them may or may not subsequently come to light. And a great deal else of what the Commission does by way of investigation is designed to be secret. The Commission can obtain warrants to act covertly in different ways: to use surveillance devices;[9] to use covert operatives who may carry out what would otherwise be unlawful acts in the course of an investigation;[10] to allow its operatives to assume fake identities;[11] and to search premises and seize things without the knowledge of the occupiers.[12] Commission officers and anyone else who obtains confidential information from the Commission are subject to secrecy obligations,[13] and any unauthorised publication of Commission reports is prohibited.[14]

Further shielding the Commission from the demands of transparency in relation to those activities and more generally, any documents containing information about its covert activities are excluded from the operation of the *Right to Information Act 2009*,[15] and any information the Commission "obtained, used or prepared" in performing its corruption functions is exempt from the application of that Act.[16] And, so far as accountability is concerned, under the *Judicial Review Act 1991*, the Commission is not required to give reasons for particular decisions, including decisions "in relation to the investigation of persons for corruption".[17]

None of that is surprising in a body whose primary focus is on investigating and uncovering evidence not available by conventional means; but it can be seen that there are statutory limits on the degree of Commission transparency and accountability achievable by publicly reporting on corruption investigations. The Commission's regular public reports to the Parliamentary Crime and Corruption Committee,[18] which outline its activities in assessment and investigation, and detail the numbers of and types of complaints it receives, the numbers investigated, the types of corruption involved and the outcomes, may be a better guide to its activities.

## 10.2 Accountability, transparency, openness, trust and confidence in government and public administration

As chapter 9 explains, in considering the issue of public reporting, one needs to look to a mix of human rights, pointing in different directions. Rights in favour of publication include the right to freedom of expression, which extends to the receipt of information (such as that prescribed by article 10 of the *United Nations Convention Against Corruption*) and the right to take part in public life, which is likely to be enhanced by proper information about matters such as corruption.

The Queensland Human Rights Commission also pointed to a general public interest in being informed of corrupt conduct, because that, among other purposes, enables participation in public life, and the right of freedom to receive information; but those rights, it emphasised, had to be considered against the rights of individuals affected by reporting.[19]

## 10.3 Are rights, public interest and community standards considerations uniform across government and the public sector?

As was pointed out in chapter 9, human rights considerations provide some justification for treating elected officials differently from those who are appointed to or employed in their positions. (And as that chapter also pointed out, there may be a different standard again for private individuals.)

Community standards may also point in this direction. The question of what community standards dictate is not one which lends itself to objective measurement; and as the literature review indicates (see chapter 8) has not been the subject of qualitative or quantitative research. One has to be cautious, therefore, about assuming a consistent standard in relation to any matter. I note, however, that when the Crime and Corruption Commission called for public submissions in its 2016 examination of whether it was in the public interest to make allegations of corrupt conduct public, many members of the public who responded:

> were of the view that elected officials and those seeking to be elected to public office [were], by virtue of their responsibilities to the community, subject to greater accountability and should expect greater public scrutiny than ordinary individuals.[20]

It is not surprising that the public would expect a higher level of transparency and accountability in those who govern them than in the conduct of public sector staff, even senior appointees.

The different situations of politicians, on the one hand, and public sector employees and appointees, on the other, are recognised in the Northern Territory legislation, which provides that if an investigation report is made concerning the conduct of a Minister or Member of the Legislative Assembly it will be made to the Speaker or Deputy Speaker and it must be tabled.[21] There is no requirement to table a report in any other case.[22] Nor can a report on an investigation into a Minister or Member name any other person where the matter involves no more than misconduct or unsatisfactory conduct, unless there are exceptional circumstances making it appropriate or there is a suspicion that the conduct is systemic.[23]

The Together Queensland public sector union argued that there was a different balance to be struck in relation to the rights of individuals to privacy, reputation and other human and employment rights in what were essentially employee conduct matters from that which might be struck where political appointees or senior public officials were subject to serious corruption investigations.[24]

Counter-intuitively, however, the *Crime and Corruption Act*, in a practical sense, deals with Members of Parliament and members of local government more favourably than it does with appointed and employed public servants.[25] That situation arises because of the requirement in the definition of "corrupt conduct" in s 15 that the conduct in question would, if proved, be either a criminal offence or a disciplinary breach providing grounds for terminating the person's services. What does that mean in respect of a Member of Parliament or a local government councillor? The Governor might dismiss a Minister[26] or a local government councillor,[27] and the Legislative Assembly has an

inherent power to expel a member[28] (not something that has happened in Queensland), but it is not likely to occur for conduct short of a criminal offence.[29]

The result is that there is no practical content to the notion of "a disciplinary breach providing reasonable grounds for terminating the person's services" for elected officials. The Commission, in consequence, proceeds on the basis that it has no jurisdiction to investigate conduct of elected officials which would not, if proved, amount to a criminal offence.[30] The anomaly is obvious: the threshold for conduct to meet the description of corrupt conduct is much higher for an elected official than for a public servant, whose conduct may much more readily be described as warranting a termination of their services.

Yet what follows from the significance of the right to take part in public life and the public interest in facilitating that right through reporting of corrupt conduct is that there is a much greater public interest in transparency as it concerns elected officials. (Again, this is not an issue which seems to have received academic attention in the material identified in the literature review, possibly because the study of anti-corruption bodies does not seem to have been human rights-focused.) Moreover, the Commission's public interest responsibility under the Act, of promoting public confidence in the integrity of units of public administration, must be at its highest where highly important and consequential units of public administration, the Legislative Assembly and local government, are concerned.[31]

And from a community standards perspective, the voting public is likely to regard it as much more important that they be informed of the conduct of those whom they elect to govern them than that there be exposure of a public servant, whose conduct, however remiss, may have relatively little impact on their rights or everyday lives.

## 10.4 The need for the Commission to be able to report publicly

Of the submissions sent to the Review, some were against legislative amendment to enable public reporting by the Commission of corruption investigations.

The Queensland Law Society did not support amendments to the existing provisions. It expressed a concern that adverse factual findings could be made against an individual on the basis of evidence which had not been disclosed to them and which they had not had any opportunity to test; those findings would then be broadcast by the media. It was a process which would cause prejudice to the individual and was open to abuse, particularly in the political context.[32] The Department of Education also considered that the current legislative provisions were "adequate to support the functions of the [Commission] without requiring additional broadened authority".[33]

Counsel for Ms Trad made similar points, submitting that the Commission should not be able to make findings except where there had been a public hearing. It was unfair to

make damaging findings about an individual on the evidence of witnesses where the public had not been able to see them give evidence, or cross-examination testing that evidence. A person should not be subject to findings made without proper public scrutiny and it might be questioned why there was a public interest in making findings of the kind when there was not sufficient public interest to warrant a public inquiry.[34]

The Queensland Police Commissioner took the view that the current legislative scheme provided an:

> appropriate balance between the [Commission's] ability to report generally on its functions whilst ensuring reputational and procedural fairness is afforded to individuals who are the subject of [Commission] investigations.[35]

He, however, had confined his attention to the rights which are the subject of term of reference 6(d), preferring not to comment on what he regarded as policy matters.[36]

The majority of submissions did support public reporting, with a range of significant qualifications. The Bar Association accepted that there was a legitimate public interest in the investigation of corrupt conduct and the findings of such an investigation being made available, but additional procedural fairness safeguards were needed, and there should be no public report made where there was a referral for prosecution or disciplinary proceedings.[37] The office of the Information Commissioner (in a submission jointly signed by the acting Information Commissioner, the Privacy Commissioner and the acting Right to Information Commissioner) noted the competing human rights to accountability and privacy involved and expressed a perception that there was a public demand for a level of transparency and accountability greater than would be met by the Commission's annual report.[38] Together Queensland supported the public reporting of serious and systemic corruption matters in a decision-making framework which would balance public interests with individual rights and freedoms.[39]

A common and emphatic feature of many submissions was the point that the Commission should not report on matters which did not amount to corruption, a point to which I will return.

The Department of Tourism and Sport supported legislative amendments enabling the Commission "to conduct public reviews and publish reports both in the future and retrospectively".[40] (Quite what is contemplated in respect of the public reviews is not entirely clear, but the power to hold public hearings, at any rate, is not within this Review's terms of reference.)

Three former chairpersons of the Commission's predecessors, the Criminal Justice Commission and the Crime and Misconduct Commission, expressed views that a reporting power was needed, although to different degrees. Mr Martin KC submitted that the law should be amended so that reports of the kind involved in the *Carne* case

could be made and publicly distributed.[41] Mr Butler AM KC took a more nuanced view, considering that the need related primarily to cases of systemic and serious corruption.[42] Mr Needham also emphasised the importance of public reporting for prevention purposes, particularly where there was systemic corruption, noting that anonymity could not always be ensured. It should also be possible, he considered, to release a public report for the purpose of clearing the names of people against whom no action was to be taken.[43]

As chapter 4 shows, it is a common feature of anti-corruption bodies in Australia that they have a power to report publicly. There are other models of anti-corruption bodies, such as the Serious Fraud Offices in the United Kingdom and New Zealand, where corruption is investigated for the purpose of bringing a prosecution, rather than for the purpose of issuing a report (see chapter 6). But that is not the model of the Crime and Corruption Commission; while the Commission has the power to bring proceedings in the Queensland Civil and Administrative Tribunal under s 50 of the *Crime and Corruption Act*, ordinarily, it investigates corruption and reports to other authorities under s 49 to consider whether to commence proceedings.

As mentioned in chapters 1 and 8, as part of the research for this Report, the review team commissioned a literature review from Professor AJ Brown, Professor Gabrielle Appleby and Associate Professor Yee-Fui Ng.[44] Their research pointed to academic work indicating the general acceptance of a reporting power as both an actual and desirable design feature of anti-corruption commissions. However, they made two important points, the first that "the extent and nature of that public reporting, whether it be annual or with respect to specific investigations, is left at a high level of abstraction",[45] and the second that there is in fact a lack of data on any effectiveness of public reporting in relation to public confidence.

As to the first, the literature review demonstrates a repetition in the literature of the desirability of public reporting without any apparent coming to grips with particular forms of reporting or how they might be conducive to transparency. It is not useful to talk about reporting powers without identifying what type of report one is considering—for example, annual reports, reports on investigations or prevention reports—or the statutory purpose for it. Questions of the relative value of reporting in different circumstances, for example, where there has been an authoritative finding of corruption as opposed to where something more minor is being dealt with, also seem to have been neglected. The "high level of abstraction" manifest in the academic discussion of public reporting makes it of limited practical assistance to this Review.

Presently, the Commission has no power to report publicly on its corruption investigations even though the individuals involved might have been convicted of corruption related offences or there may be substantial evidence of serious and

systemic corruption. A guiding principle for the Commission's exercise of its corruption functions is to give the public confidence that corruption, when it occurs, will be properly dealt with.[46] It is difficult to see how it can inspire that confidence if corruption itself cannot be revealed. Clearly, it should have reporting powers.

## 10.5 Should public reporting be mandatory?

Corruption bodies in Australia are usually required to report publicly on corruption investigations on either a mandatory or a discretionary basis. Where reporting is mandatory, a public report will typically be prepared at the conclusion of every corruption investigation, save in limited circumstances. Bodies that report on a discretionary basis are able to elect—within limits—which investigations are reported upon, and which are not.

The issue of mandatory vis-à-vis discretionary reporting does not seem to have received much academic attention. The literature review mentions one article which advocated mandatory reporting,[47] in respect of the then yet to be established National Anti-Corruption Commission. Its authors considered that requiring the Commission to report its investigations publicly would enhance transparency. None of the other literature summarised in the review seems to distinguish between mandatory and discretionary reporting.

As is noted in chapter 4, public reporting of corruption investigations is in fact mandatory for the now-established Commonwealth National Anti-Corruption Commission, as it is also for the Australian Capital Territory Integrity Commission. Each of those bodies is required to prepare a report after an investigation.[48] (Neither entity is of longstanding or has, at the time of writing, completed an investigation requiring a report, so the burden likely to be imposed by the mandatory reporting requirement is yet to be discovered.) In the Australian Capital Territory, the report must be tabled in Parliament,[49] and at the federal level, any report resulting from a public hearing must be tabled in Parliament.[50]

The Commission in its submissions, while not advocating for mandatory reporting, made the point that it serves the public interest in transparent administration and decision-making and removes the risk of criticism about which investigations are publicly reported and which are not.[51] But as the Court of Appeal noted in *Carne*, there is no provision of the *Crime and Corruption Act* that requires the transparent determination of a corruption complaint.[52] There are also good historical and practical reasons for not requiring the Commission to report publicly on corruption investigations on a mandatory basis.

When it was first enacted, s 2.24 of the *Criminal Justice Act 1989* (later s 33 and framed similarly to s 49 of the present Act) required the Director of the Official Misconduct Division to report on every complaint received or initiated by the Division. In 1991, the

Commission recommended that the provision be amended because the 2,011 complaints received in the Commission's first year of operation alone made the reporting requirement unworkable.[53] The Parliamentary Committee recommended an amendment to the same effect as that proposed by the Commission shortly after.[54] The section was subsequently amended in the terms proposed by the Committee.[55]

It is worth noting that the mandatory requirement in s 2.24 of the *Criminal Justice Act*, as it was enacted, concerned internal reports from the Director of the Division to the Commission or its Chairperson.[56] There is little question that reports of that nature would be less time consuming and costly to prepare than those that are to be made publicly available. In the 2022–2023 period, 3,931corruption complaints were received by the Commission and 39 corruption investigations were completed.[57] Assuming that reports were not prepared in relation to assessments, or stages of the investigation prior to its completion, the preparation of 39 reports would still be a significant imposition on the resources of the Commission, for investigations which may or may not have yielded anything of a serious nature, or may point to problems better resolved by dealing directly with the unit of public administration concerned.

The reporting of corruption investigations should not be mandatory.

## 10.6 Should the discretion to report be at large?

The Commission's preferred approach was for discretionary reporting, with the capacity to report in relation to corruption complaints and investigations at any time in the life of the complaint.[58] Ideally, the Commission said, it should have a discretion to decide the appropriate content of reports on a case-by-case basis, balancing different considerations. The existing statutory regime within which the Commission operated and the legal protections available to individuals investigated provided adequate safeguards.

Mr Nicholls' Private Member's Bill[59] would amend the *Crime and Corruption Act* to make reporting to the Legislative Assembly about complaints concerning corruption one of the ways in which, under s 35, the Commission performs its corruption functions. There would be no limits on what might be contained in such a report so long as it concerned a complaint of corruption. (Mr Laurie, the Clerk of Parliament, proposed amendment of the *Crime and Corruption Act* to provide for reporting, tabling of reports and procedural fairness in terms identical in effect to those of the Private Member's Bill.[60])

Generally, as already observed, the literature on the topic is pitched at too high a level to grapple with the question of whether and, if so what, limits should be placed on public reporting; although one of the authors of the literature review, Professor AJ Brown, is quoted in it as advocating (albeit a decade ago) freedom for anti-corruption agencies "to report when and what they see fit (subject to law)".[61]

### 10.6.1 Concerns about the Commission's reporting

In tandem with the power to report on corruption investigations, the Commission seeks, effectively, a power to determine for itself what should be tabled, rather than being dependent on the direction of the Parliamentary Committee. For reasons explained later, I recommend that step; but the removal of any gatekeeper makes it all the more important to scrutinise the way in which the Commission has in the past exercised what it perceived as its reporting discretions before considering how free a hand it should have in publicly reporting now.

A number of submissions pointed to concerns about overreach on the part of the Commission. A recurring complaint was that the Commission had made reports in cases where there was no finding of corrupt conduct, taking the opportunity to criticise, nonetheless, the behaviour of the person the subject of the investigation; a practice to which Mr Barbagallo AM, the subject of an investigation in 2020 referred, with some bitterness, as "clear and smear".[62]

The Commission submitted, in relation to public reporting, that:

> Public confidence in public administration can be promoted by demonstrating that conduct which falls below acceptable standards is readily identified and promptly corrected.[63]

That is very similar to the sentiment expressed in the foreword to the Carne report which is set out in part in the judgment of the Court of Appeal in *Carne v Crime and Corruption Commission*.[64] The foreword expressed the Commission's view that where senior public servants and public officials did not meet the standards expected of them, they should be held accountable, which could be achieved by "inform[ing] the people of Queensland of instances where standards have undoubtedly and repeatedly not been met". The Court of Appeal made particular criticism of the foreword as reflecting an excessively wide view of the Commission's functions for corruption, with the Commission seeking "to uphold other standards of conduct and performance by public servants and officials".[65]

Like Mr Barbagallo, Ms Trad was the subject of criticism in the absence of any finding of corruption.[66] Counsel for Ms Trad contended that the making of "critical normative judgments" about persons against whom the evidence, in the Commission's conclusion, did not warrant criminal or disciplinary proceedings, undermined the integrity of the administration of justice.[67] Those persons commented on adversely could have their reputations damaged although the evidence did not justify the commencement of proceedings.[68]

Together Queensland expressed a concern that the Commission had "expanded its corruption remit well beyond the scope intended" and was engaging in matters which

were properly the subject of performance management and discipline under the *Public Sector Act 2022*.[69]

The Local Government Association of Queensland expressed concern about the prospect of the Commission being permitted to publish comments of the kind contained in the foreword to the Carne report, which represented, it said, an:

> unfettered ability (which [the Commission] previously thought it already had) to seriously besmirch the reputations of councillors and Council senior executive officers (including chief executive officers) in circumstances … where there are no findings of corrupt conduct.[70]

Examples of a readiness to criticise conduct, although not corrupt, as below expected standards, can be found throughout Commission reports and statements in observations such as that an individual's conduct was "unwise and entirely inappropriate";[71] that there had been a "failure of leadership, supervision and management";[72] that conduct was "undesirable"[73] or "very foolish".[74]

The Commission's corruption functions do not encompass formulating or expressing opinions on conduct which, while it might be reprehensible, is not corrupt and has no connection to corruption. The Court of Appeal made the point strongly in *Carne*: the Commission's function, set out in s 33(1)(a), of raising standards of integrity and conduct in units of public administration did not imply a function of doing:

> whatever it believes would be likely to promote a standard of conduct to be expected of senior public servants and public officials, beyond raising those standards above a level at which conduct is corrupt.[75]

Section 33(1) defined "corruption functions" as "functions *for corruption*", the Court emphasised.[76]

The Court made the point that the Carne case involved a complaint of corruption and was thus governed by s 33(1), not s 33(2),[77] something which was also true of each of the investigations which produced the examples of critical commentary cited above. But even if the Commission were exercising corruption functions under s 33(2)(a), which, in combination with s 46A, enables it to assess, investigate and deal with matters involving "conduct liable to allow, encourage or cause corrupt conduct", it is still the exercise of a function *for corruption*, and the public interest principle in s 34(d) still applies,[78] requiring primary regard to "the nature and seriousness of the corruption". The exercise of the power, it follows, requires some demonstrated nexus between the specific conduct investigated and a likelihood of corruption occurring; it cannot operate as a general licence for the Commission to express disapproval of unsatisfactory conduct.

More generally, the Court of Appeal observed that:

> the Commission's corruption functions do not extend to addressing conduct which, whilst falling short of a proper standard of performance, is not corrupt conduct.[79]

And while the principles by which the Commission is to perform its corruption functions include a responsibility to promote public confidence, "if *corruption does happen* within a unit of public administration, in the way it is dealt with", it is not for the Commission to make the finding that corruption has occurred.[80] The Commission's ability to reach conclusions in the corruption investigation context does not rise beyond the power to determine that the evidence warrants consideration by another entity to decide if prosecution or disciplinary action should occur.

Nonetheless the Commission has in the past (not during the term of the current Chairperson) made assertions or comments in statements and reports that suggest a view that it is entitled to go further. For example, some of its reports[81] contained an observation that a number of people who had co-operated with the investigation were referred to in the report, followed by this statement:

> No adverse inferences should be drawn about those people or entities, unless the report specifically attributes wrongdoing to the person.

But the attribution (as opposed to the investigation) of wrongdoing is not in fact a function of the Commission under the *Crime and Corruption Act*. Similarly indicative of an unwarrantedly expansive view of the powers conferred by the Act were statements that an individual had breached, or "technically breached" an Act;[82] that a member of local government had misused his statutory powers;[83] that another member of local government had not complied with his obligations under a particular provision of the *Local Government Electoral Act 2011*;[84] and, in one instance, that there was "prima facie evidence" of the commission of an offence under the *Criminal Code* because the conduct in question "technically satisfie[d]" the elements of the offence.[85]

### 10.6.2 Statutory safeguards

The Commission pointed to these features of the legislation as safeguards to protect the privacy and reputation of those investigated.[86] It is subject to a statutory obligation to "act independently, impartially and fairly having regard to the purposes of [the Act] and the importance of protecting the public interest";[87] it need not report in relation to confidential information;[88] the statutory presumption is that hearings will be held in private;[89] and s 332 of the *Crime and Corruption Act* gives an applicant a right to seek judicial review of an investigation they say is unwarranted or being conducted unfairly. Section 71A provides for procedural fairness—a person must be given an opportunity to make submissions about a proposed adverse comment in the report and their submission if not accepted must be fairly stated in the report—in addition to the Commission's common law duty of procedural fairness. Added to all this, it is subject

to the *Human Rights Act 2019*, s 58 of which requires consideration of human rights in any decision-making process.

### Responsibility to act fairly, impartially and according to the public interest

Accepting the significance of the Commission's obligations of fairness, impartiality and regard to the public interest, some caution is nonetheless warranted. Those obligations in s 57 of the *Crime and Corruption Act* are expressed at too high a level of generality to provide concrete guidance to the Commission. For example, it is not clear how the Commission is to weigh the public interest in transparency against the competing public interest in respecting privacy and reputation, if indeed the Commission regards that as an aspect of the public interest.[90] Moreover, powers that must be exercised in the "public interest" are typically treated as conferring a very wide discretion, involving a value judgment to be made by reference to undefined matters, confined only by the subject-matter, scope and purpose of the Act.[91] There is justifiable concern about how the Commission has exercised its perceived powers in the past, quite apart from the issue of its misapprehension that it was entitled to report publicly at all. More than reliance on a statutory statement of principle in general terms is needed.

### Protection of confidential information

The Commission suggested that s 66 of the *Crime and Corruption Act* might provide a safeguard for the privacy and reputation of the subject of an investigation.[92] Section 66 provides that the Commission need not make a report on a matter to which confidential information is relevant, or if the Commission does report on the matter, it need not disclose the confidential information or refer to it in the report. In theory, the Commission could rely upon s 66 to remove private information about the subject of a corruption investigation, such as their name or personal details, but it can probably take those steps independent of s 66. From the context, s 66 appears to be more directed towards confidential information obtained by the Commission in the nature of intelligence or information gathered in the course of an investigation, including from informants and other confidential sources of information. In fact, the protection for confidential information is far more likely to be used against the interests of the person investigated, to prevent them from obtaining information, than for the purpose of protecting information which, from their perspective, is of a sensitive nature.

### Private hearings

The presumption in favour of private hearings in s 177 is an important safeguard of privacy for the subject of an investigation during the investigation phase.[93] However, the holding of hearings in private will do nothing to protect their reputation and privacy when it comes to reporting and it may in fact limit their ability to defend themselves. The person under investigation has no right to cross-examine other witnesses giving evidence in a closed hearing.[94]

### Procedural fairness

Section 71A of the *Crime and Corruption Act*, the procedural fairness provision, is a relatively new provision (as chapter 2 explains) and it is limited in its compass to permitting the person the subject of a proposed adverse comment to making submissions about it. Section 71A does not prevent the making of the adverse comment; as counsel for Ms Trad pointed out,[95] procedural fairness requires a fair process before the making of findings, but not a fair outcome.[96] The section confers no right to be heard on other aspects of the reporting, for example whether the report should be anonymised or whether it should be made at all.

The Queensland Law Society did not consider that the capacity under s 71A to make a submission to the Commission was an adequate means of meeting the risk of unjustified breaches of privacy and damage to reputation.[97] The recent Private Member's Bill also suggested "improv[ing]"[98] the procedural fairness obligations in s 71A.[99] Even the Crime and Corruption Commission accepted that s 71A could be improved.[100]

### *Human Rights Act* protections

Some consideration has already been given in chapter 9 to the efficacy of s 58 of the *Human Rights Act* in ensuring the protection of rights in the Commission's decision-making processes. Submitters to the Review regarded s 58 as an important safeguard, but one which must be seen as a complement to other safeguards.[101]

In particular, the Queensland Human Rights Commission submitted that while s 58:

> operates to condition decisions made under the [*Crime and Corruption Act*], past reports that have been issued by the [Commission] since the [*Human Rights Act*] was passed suggest that stronger protections are required within the structure of any new reporting provisions.[102]

That appears to have been the approach in designing anti-corruption legislation in the other two human rights jurisdictions in Australia: the Australian Capital Territory and Victoria. In those jurisdictions, while an equivalent of s 58 serves as an important overlay,[103] human rights protections are still built into the reporting power itself.[104]

Case law from the United Kingdom also suggests that, while the equivalent obligation on public authorities under s 6 of the *Human Rights Act 1998* (UK) is important,[105] it is not always effective in guiding decision-makers to exercise broad statutory discretions in a way that is compatible with human rights.[106]

The Human Rights Commission expresses a valid concern. Section 58 of the *Human Rights Act* is an important safeguard, but it is not enough to guarantee that the Crime and Corruption Commission will only report and make public statements in a way that

strikes a fair balance between the rights of individuals and competing public interest considerations.

### Section 332 right of review

Section 332 of the *Crime and Corruption Act* does give the right to seek judicial review of an investigation on the ground that it is unwarranted or is being conducted unfairly. The provision can be traced back to the Fitzgerald Inquiry Report.[107] It was intended to "act as a balance by allowing individuals affected by a specific activity to call it into question and have it impartially reviewed".[108]

On the face of s 332, the grounds of review extend beyond the traditional grounds of judicial review: whether an investigation is being conducted "fairly" and whether it is "warranted" appear to involve questions that go to the merits of decisions about whether to investigate, and if so, how to investigate. However, the standard to be applied when considering whether the investigation is "fair" is elusive. If the Commission is investigating corrupt conduct within the scope of its powers, it is difficult to imagine a scenario in which the Commission would nonetheless be acting "unfairly".[109] And if the complaint or information on which the investigation is based meets the s 15 criteria for corrupt conduct, again the Commission will be acting within its powers, and it is difficult to see how the investigation could be unwarranted. That is, s 332(1)(a) does not appear to cover much, if any, additional ground not already covered by judicial review.

To add to those issues, in circumstances where the prospective applicant has no right to obtain information from the Commission or reasons for its decision making, it is likely to be extremely difficult to mount a case.[110] Finally, s 332 only applies where an investigation into corrupt conduct "is being" or "is about to be" conducted. It has no work to do where there is no "ongoing investigation", either because the investigation has been finalised or put into abeyance.[111] Once a report has been issued, s 332 offers no relief.

Only three decisions concerning the provision could be identified,[112] in addition to two which involved a similar provision in the *Criminal Justice Act 1989*.[113] On none of those occasions was the application based on s 322, or its predecessor, s 34(1)(a), successful.[114]

The other aspect of s 332 which bears commenting on is that it provides for closed hearings and allows a review to proceed in a way that would prevent an applicant from knowing the case against them.[115] That is a significant limit on the right to fair hearing in s 31 of the *Human Rights Act*. Similar restraints overseas have been found to breach that human right unless safeguards are put in place to ensure a fair hearing, such as requiring the litigant to be provided with the "gist" of the case against them, or the ability to appoint a "special advocate" to act in the excluded litigant's interests.[116]

However, that issue is not a focus of the Review. It is noted merely to point out that further consideration may need to be given to whether ss 332 and 334 in their current form are compatible with the right to a fair hearing.

#### Judicial review

There is, of course, the possibility of judicial review of the Commission's decision to report, under the *Judicial Review Act*. However, it is difficult to seek review of a decision when no reasons for it are available. As some submitters noted, judicial review cannot examine the merits or fairness of findings or do anything to remedy findings which are wrong or involve errors of fact.[117] And of course, there is no recourse at all to be had for a wrong accusation once the report is tabled in Parliament.[118]

Sarah Howe and Yvonne Hague in their article, "Anti-corruption watchdog accountability", note that in addition to the limitations on forms of review as an obstacle are the costs in money and time associated with proceeding in the Supreme Court.[119] The result, they say, is that it is usually only high-profile applicants with a good deal to lose and sufficient monetary resources who seek review, which as a result is infrequent.

The authors make the point that anti-corruption "watchdogs" are generally exempt from the very accountability mechanisms that are otherwise regarded as inherent to a properly functioning integrity system.[120] They are free from ministerial direction, exempt from freedom of information requirements, can maintain confidentiality of information, need not provide reasons for decisions, and their decisions are not subject to merits review. Their increase in independence is accompanied by a decrease in accountability.[121] Howe and Hague make this observation:

> There is a real tension between the independence watchdogs enjoy and the mechanisms that hold these watchdogs to account. This tension must be recognised. It is not enough to simply say, the judiciary guards the guardians. Judicial review is limited in its ability to hold watchdogs to account. These unique limitations must be acknowledged and addressed in our evaluation of mechanisms for keeping our watchdogs leashed.[122]

### 10.6.3 Conclusions

There is reason to prescribe the circumstances in which the Commission should be able to report publicly, rather than leaving it to the Commission's discretion to determine when and what it should report, subject only to what it identifies as statutory safeguards. As the Local Government Association of Queensland remarked in its, submission:

> Queensland needs to have a fearless [Commission] 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.[123]

The Commission has extraordinary powers, some of which it can exercise covertly. Individuals subject to investigation, or even the assessment process, have very little recourse. During the assessment or the investigation itself, they have little opportunity to be involved in the fact-finding process; they have no right to cross-examine or otherwise challenge those who accuse them of corruption; they have no right to see the evidence against them; and access to information connected with the assessment or investigation is not available to them under the *Right to Information Act*, because it is exempt from production under that Act. (In theory, the Commission can decide to grant access to exempt information, but that depends on the Commission's willingness to exercise its discretion.[124])

When the investigation is complete, the subject of an investigation has no right to reasons for any decision to report by the Commission, because it need not provide them under the *Judicial Review Act*;[125] and the only form of review they can seek in connection with that decision is not by way of an appeal, but by an application for review to the Supreme Court for legal error on specified grounds. The last is fraught with difficulty because of the provisions which protect the Commission from having to produce operational documents and explain its decisions, because of the limited nature of the review available and because of the stress and expense of bringing proceedings. There is no opportunity to seek to correct a report of the Commission which makes errors of fact.

The prospective consequences of public reporting for individual rights are significant. The Commission's factual conclusions in the course of an investigation are not binding, but, obviously, they can have an enormous impact. As the High Court observed in *Ainsworth v Criminal Justice Commission*, although an integrity body's report may have no legal effect or consequence, it may nonetheless have "the practical effect of blackening [its subject's] reputation".[126] The right to privacy is likely to be severely impaired and other rights—to the presumption of innocence, and to a fair trial—too may be adversely affected.

Against that background, the Commission's approach in the past to its perceived reporting powers has not always been one of circumspection. As Mr Fitzgerald AC KC observed in the Fitzgerald Inquiry Report:

> There is the risk that any autonomous body, particularly one infused by its inevitable sense of importance and crusading zeal, may become increasingly insensitive to the delicate balance between conflicting public and private interests, which is traditionally and best struck by judges.[127]

The discretion to report publicly should not be at large.

## 10.7 Public statements

Issuing a formal report is not the only way that anti-corruption commissions can convey information. They can also release information in a less formal way by making public statements; for example, through media releases or through the holding of press conferences about individual corruption matters. Making statements of the kind might be thought to fall within the Commission's power to do anything incidental to the performance of its corruption and prevention functions.[128] However, the High Court's decision in *Crime and Corruption Commission v Carne* has called that proposition into question;[129] if making a public statement is a form of reporting, currently, the Commission does not have that power. Its only power to report on individual corruption matters is by a report to a prosecuting authority or another person listed in s 49 of the *Crime and Corruption Act*. The Commission has identified 256 media releases since January 2006 that it would not have issued had it known *Carne* would be decided as it was.[130]

### 10.7.1 Submissions to the Review

Most of the submissions to the Review focused on the Commission's power to report, though many of the observations made in that context also apply to the Commission's power to make public statements. Only two submissions specifically dealt with public statements.

Counsel for Ms Trad accepted that "of course" the Commission should have a power to make public statements about matters that it is investigating or has investigated. However, that power should be subject to two caveats. First, the Commission should not be permitted to express opinions about whether particular individuals have committed criminal offences or corrupt conduct. Second, the Commission should not be permitted to express opinions about the conduct of particular individuals at all, except to the extent that those opinions are contained in a public report. Otherwise, the constraints on the Commission's ability to report publicly on individual corruption matters would be "illusory".[131]

The other substantive submission came from the Crime and Corruption Commission. The Commission submitted that it must have a power to make public statements in order to be accountable and transparent, particularly to the public.[132] While it might already have that power, introducing an express power would remove any doubt following *Carne*.[133] The Commission asserted it should have a broad power to make statements whenever appropriate in relation to both its crime and corruption functions.[134] One circumstance where it would be appropriate to intervene early and make a public statement would be where there were inaccuracies in the media's

reporting of a corruption complaint and the public record needed to be corrected.[135] The Commission also gave as an example the open-ended circumstance where public statements would "enhance transparency in the public sector" or "mitigate a corruption risk".[136]

By way of safeguard, the Commission said, the discretion would still be subject to considerations of natural justice and compatibility with human rights.[137] Implicitly, it contends that those safeguards are sufficient and that it has been responsible when making public statements in the past. For example, according to the Commission, a review of its past media releases shows that it "has not commented on any investigations or assessments prior to their completion except where the matters have already been in the public domain".[138]

### 10.7.2 What should be the Commission's power to make public statements?

The starting point is that, of course, the Commission must have a power to make public statements. Anything less would be contrary to the principles of transparency and accountability underpinning the design of anti-corruption bodies. It would also be inconsistent with the role anti-corruption bodies are to have in "[i]ncreasing and disseminating knowledge about the prevention of corruption" in accordance with the *United Nations Convention Against Corruption*.[139] As noted in chapter 9, preventing the Commission from making public statements would also undermine the right of the public to seek and receive information about corruption, which is an aspect of the freedom of expression.[140]

The real question is not *whether* the Commission should have a power to make public statements, but rather *what* that power should be.

Whatever the power should be, according to counsel for Ms Trad, public statements should not include any findings about whether a person has engaged in corruption.[141] That is a perfectly reasonable proposition, but as pointed out earlier in this Report, the Commission does not have a power to make such findings.

It is clear that there must be some constraints on the Commission's power to make public statements. What is said in a media release or a press conference can be just as devastating to a person's reputation and career as what might be said in a report. For those reasons outlined in chapter 9, allowing the Commission to release public statements without any restriction is likely to come at too high a cost to the rights to privacy and reputation,[142] and also, possibly, the rights to a fair hearing and to be presumed innocent.[143]

The existing safeguards may not be sufficient to ensure that public statements are only made in appropriate circumstances. Human rights cases from overseas provide examples of how strong language at press conferences can be fraught with risk.[144] Press conferences are an uncontrolled environment, where things can easily be said to harm a person's reputation as well as blur the line between a conclusion that there is sufficient evidence to charge a person and a statement about the prospects that they will be found guilty. Media releases present less risk because the agency has more control, but human rights cases from overseas are also replete with examples of careless statements made to the media outside of a press conference, which can do just as much damage to a person's reputation and the presumption of innocence to which they are entitled.[145]

Accepting that the power to make public statements should not be at large, what should be the parameters of the power? Different considerations apply depending on the purpose of the public statement and the stage of the investigation. I will return to those considerations and how they should be accommodated in chapter 13.

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1 Terms of reference, [3].
2 Terms of reference, [4](a)–(b).
3 Crime and Corruption Commission, first submission, dated 12 March 2024, 1.
4 Crime and Corruption Commission, first submission, dated 12 March 2024, 2.
5 'Best Practice Principles for Australian Anti-Corruption Commissions', *Independent Broad-based Anti-Corruption Commission* (December 2022) 2 [8] <https://www.ibac.vic.gov.au/media/1090/download>.
6 *Crime and Corruption Act 2001*, ss 4(1)(b), 33.
7 *Crime and Corruption Act 2001*, s 35.
8 *Crime and Corruption Act 2001*, s 177.
9 *Crime and Corruption Act 2001*, s 121.
10 *Crime and Corruption Act 2001*, s 132.
11 *Crime and Corruption Act 2001*, s 146ZJ.
12 *Crime and Corruption Act 2001*, s 155.
13 *Crime and Corruption Act 2001*, s 213.
14 *Crime and Corruption Act 2001*, s 214.
15 *Right to Information Act 2009*, s 11, sch 1, s 3.
16 *Right to Information Act 2009*, s 48 sch 3, ss 10(4), (9). The Commission has a discretion to release exempt information: ss 39(3), 47(2)(b), 48(3). However, the Office of the Information Commissioner points out that "agencies may be reluctant to give access to information where a ground to refuse access is established" so the possibility that the discretion will be exercised may be limited in practice: Office of the Information Commissioner submission, dated 19 March 2024, 2.
17 *Judicial Review Act 1991*, s 31, sch 2, ss 3–5.
18 See, eg, Crime and Corruption Commission, *Public Report to the Parliamentary Crime and Corruption Committee: Activities of the Crime and Corruption Commission for the period 1 October to 30 November 2023* (12 January 2024).
19 Queensland Human Rights Commission, first submission, dated 4 April 2024, 1–3.
20 Crime and Corruption Commission, *Publicising allegations of corrupt conduct: Is it in the public interest?* (Report, December 2016) 21. A further description of the submissions appears at 21–22.

[21] *Independent Commissioner Against Corruption Act 2017* (NT) ss 50(1), (6), (7).
[22] *Independent Commissioner Against Corruption Act 2017* (NT) s 50A(1).
[23] *Independent Commissioner Against Corruption Act 2017* (NT) s 50(6A).
[24] Together Queensland submission, dated 21 March 2024, 6.
[25] See, eg, Crime and Misconduct Commission, *The Palm Island Airfare Controversy: A CMC report on an investigation into allegations of official misconduct arising from certain travel arrangements authorised by the Minister for Aboriginal and Torres Strait Islander Policy* (8 March 2005).
[26] *Constitution of Queensland 2001*, s 43. Although there is a variety of views, arguably, the Governor has a reserve power to dismiss the Premier on the grounds of illegality or corruption in certain circumstances. A Minister, other than the Premier, may only be removed on advice from the Premier: Anne Twomey, *The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems* (Cambridge University Press, 2018) 227–31, 306–19.
[27] Acting on advice: *Local Government Act 2009*, s 122(3).
[28] See Committee of the Legislative Assembly of Queensland, Parliament of Queensland, *Guide to the Code of Ethical Standards and Rules Relating to the Conduct of Members* (Code of Ethical Standards, November 2023) 9–40. Section 9 of the *Constitution of Queensland 2001* confirms that the House has the powers of the House of Commons as at 1 January 1901, while s 39(1) of the *Parliament of Queensland Act 2001*, in relation to contempt powers, also grants it House of Commons powers as at 1 January 1901. Those powers include the power to expel members found to be unfit or unworthy: David Natzler and Mark Hutton (eds), *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament* (25th ed, 2019) 232–3 [11.33]. Cf *Obeid v The Queen* (2015) 91 NSWLR 226, 231–2 [14].
[29] For a discussion of the difficulty, see *Greiner v Independent Commission against Corruption* (1992) 28 NSWLR 125, 145–7.
[30] Crime and Corruption Commission, 'CCC finalises assessment of Minister Bailey's emails' (Media Release, 19 July 2017); Crime and Corruption Commission, 'CCC determines not to investigate the Deputy Premier but calls for improvements to Cabinet processes and legislative reform' (Media Release, 6 September 2019).
[31] *Crime and Corruption Act 2001*, s 34(d).
[32] Queensland Law Society submission, dated 27 March 2024, 1, 3–4.
[33] Department of Education submission, dated 20 March 2024, 2.
[34] Trad submission, dated 20 March 2024, 48–9.
[35] Queensland Police Service, first submission, dated 15 March 2024, 1.
[36] Queensland Police Service, second submission, dated 24 April 2024, 1.
[37] Bar Association of Queensland submission, dated 16 April 2024, 1–2.
[38] Office of the Information Commissioner submission, dated 19 March 2024, 1, 3–4.
[39] Together Queensland submission, dated 21 March 2024, 3 [6].
[40] Department of Tourism and Sport submission, dated 14 March 2024.
[41] Martin submission, dated 20 March 2024, 2.
[42] Butler submission, dated 11 March 2024, 1.
[43] Conversation with Mr Robert Needham, in his capacity as the former Chairperson of the Commission (the Review, 12 March 2004).
[44] Gabrielle Appleby, Yee-Fui Ng and A J Brown, *Public Reporting of Corruption Matters: Research Report for the Independent Crime and Corruption Commission Reporting Review* (30 April 2024).
[45] Gabrielle Appleby, Yee-Fui Ng and A J Brown, *Public Reporting of Corruption Matters: Research Report for the Independent Crime and Corruption Commission Reporting Review* (30 April 2024) 9.
[46] *Crime and Corruption Act 2001*, s 34(d).
[47] Marie J dela Rama, Michael E Lester and Warren Staples, 'The Challenges of Political Corruption in Australia, the Proposed Commonwealth Integrity Commission Bill (2020) and the Application of the APUNCAC' (2022) 11(1) *Laws* 1, 10–11; Gabrielle Appleby, Yee-Fui Ng and A J Brown, *Public Reporting of Corruption Matters: Research Report for the Independent Crime and Corruption Commission Reporting Review* (30 April 2024) 15.

[48] *National Anti-Corruption Commission Act 2022* (Cth) s 149(1); *Integrity Commission Act 2018* (ACT) s 182(1).
[49] *Integrity Commission Act 2018* (ACT) s 189.
[50] *National Anti-Corruption Commission Act 2022* (Cth) s 155.
[51] Crime and Corruption Commission submission, first submission, dated 12 March 2024, 12.
[52] *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 360 [56] (McMurdo and Mullins JJA).
[53] Parliamentary Criminal Justice Committee, Parliament of Queensland, *Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission* (Report No 13, 3 December 1991) app G, 36–9.
[54] Parliamentary Criminal Justice Committee, Parliament of Queensland, *Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission* (Report No 13, 3 December 1991) 67–9.
[55] See *Criminal Justice Amendment Act 1992*, s 4.
[56] Cf *Criminal Justice Act 1989*, s 2.24(2) (as enacted).
[57] Crime and Corruption Commission, *2022–23 Annual Report* (30 August 2023) 6–7.
[58] See, eg, evidence to Community Safety and Legal Affairs Committee, Parliament of Queensland, Brisbane, 27 March 2024, 5 (Bruce Barbour).
[59] Crime and Corruption Amendment Bill 2023, cl 3.
[60] Laurie submissions, dated 19 March 2024, 9.
[61] Gabrielle Appleby, Yee-Fui Ng and A J Brown, *Public Reporting of Corruption Matters: Research Report for the Independent Crime and Corruption Commission Reporting Review* (30 April 2024) 30, discussing A J Brown, 'The Integrity Branch: A "System", an "Industry", or a Sensible Emerging Fourth Arm of Government?' in Matthew Groves (ed) *Modern Administrative Law in Australia: Concepts and Context* (Cambridge University Press, 2014).
[62] Barbagallo submission, dated 22 March 2024, 2.
[63] Crime and Corruption Commission, first submission, dated 12 March 2024, 20.
[64] *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 360 [58].
[65] *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 360 [58].
[66] Crime and Corruption Commission, *An investigation into allegations relating to the appointment of a school principal* (Report, July 2020) 80 [615], 81 [638], 82 [643] 87 [684]. See also Crime and Corruption Commission, 'CCC determines not to investigate the Deputy Premier but calls for improvements to Cabinet processes and legislative reform' (Media Release, 6 September 2019).
[67] Trad submission, dated 20 March 2024, 3 [4].
[68] Trad submission, dated 20 March 2024, 3 [4].
[69] Together Queensland submission, dated 21 March 2023, 5 [23].
[70] Local Government Association of Queensland submission, dated 18 March 2024, 2.
[71] Crime and Corruption Commission, *An investigation into allegations relating to the appointment of a school principal* (Report, July 2020) 81.
[72] Crime and Corruption Commission*, Investigation Arista, a report concerning an investigation into the Queensland Police Service's 50/50 gender equity recruitment strategy* (May 2021) 53.
[73] Crime and Corruption Commission, 'No criminal action relating to Mark Bailey's email account' (Media Release, 22 September 2017).
[74] Jessica van Vonderen, 'Queensland Labor MP Mark Bailey avoids criminal charges over deleted private email account' *ABC News* (online, 22 September 2017) <https://www.abc.net.au/news/2017-09-22/queensland-labor-mp-mark-bailey-avoids-criminal-charges-ccc/8974374>, quoting what Alan MacSporran, Chairman, Crime and Corruption Commission said during a press conference.
[75] *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 352 [26]. In his final report on the culture and accountability in the Queensland public service, Peter Coaldrake made some observations of a similar, although milder, tenor. He noted a perception of "mission creep" on the part of the Commission: that it saw itself "as the conscience of the whole integrity sector" and undertook tasks which other integrity bodies might have been more suited to manage. There were also contentions of overreach of its functions, an example of which was said to be its report *Investigation Arista, a report*

*concerning an investigation into the Queensland Police Service's 50/50 gender equity recruitment strategy* (May 2021). Professor Coaldrake, while not suggesting that the Commission had acted outside its legislative functions, encouraged it to give priority to serious and systemic corruption matters: Peter Coaldrake, *Let the sunshine in: Review of the culture of accountability in the Queensland public sector* (Final Report, 28 June 2022) 38–9.

[76] *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 352 [26] (emphasis in original).

[77] *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 361 [62].

[78] *Crime and Corruption Act 2001*, s 46A(2)(c).

[79] *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 360 [58].

[80] *Crime and Corruption Act 2001*, s 34(d) (emphasis added). See also *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 354 [34].

[81] See Crime and Corruption Commission, *An investigation into allegations relating to the appointment of a school principal* (Report, July 2020) 10; Crime and Corruption Commission*, Investigation Keller: an investigation into allegations relating to the former chief of staff to the Honourable Annastacia Palaszczuk MP, Premier of Queensland and Minister for Trade* (Report, September 2020) 11; Crime and Corruption Commission*, Investigation Arista, a report concerning an investigation into the Queensland Police Service's 50/50 gender equity recruitment strategy* (May 2021) 14.

[82] See Crime and Corruption Commission*, Investigation Keller: an investigation into allegations relating to the former chief of staff to the Honourable Annastacia Palaszczuk MP, Premier of Queensland and Minister for Trade* (Report, September 2020) 33, 47; Crime and Corruption Commission, 'No criminal action relating to Mark Bailey's email account' (Media Release, 22 September 2017); Crime and Corruption Commission, *An investigation into allegations relating to the appointment of a school principal* (Report, July 2020) 63, 83. The phrase "technical breach" was used by Alan MacSporran during a press conference on 22 September 2017 about the Hon Mark Bailey's usage of his private email account, of which a transcript was obtained.

[83] Crime and Corruption Commission, *Operation Yabber: an investigation into allegations relating to the Gold Coast City Council* (Report, January 2020) 22.

[84] Crime and Corruption Commission, *Operation Belcarra: Reforming local government in Queensland, October 2017* (Report, October 2017) 27.

[85] Parliamentary Crime and Corruption Commission, Parliament of Queensland, *Review of the Crime and Corruption Commission's activities* (Report No 106, June 2021) 75.

[86] Crime and Corruption Commission, first submission, dated 12 March 2024, 26–27.

[87] *Crime and Corruption Act 2001*, s 57.

[88] *Crime and Corruption Act 2001*, s 66.

[89] *Crime and Corruption Act 2001*, s 177(1).

[90] The Commission's submissions point to the need to balance the public interest against the interests of individuals, rather than balance two competing aspects of the public interest: eg Crime and Corruption Commission, first submission, dated 12 March 2024, 26. Following the enactment of the *Human Rights Act 2019*, respect for human rights now inheres in the "public interest": see *Hogan v Hinch* (2011) 243 CLR 506, 537 [32], 540 [41], 544 [50], 548 [69]-[70]; *Bare v Independent Broad-based Anti-corruption Commission* (2015) 48 VR 129, 202 [231], 232 [317], 306 [554]-[555].

[91] *O'Sullivan v Farrer* (1989) 168 CLR 210, 216; *Harburg Investments Pty Ltd v Mackenroth* [2005] Qd R 433, 436 [3]; *Jones v Commonwealth* (2023) 97 ALJR 936, 943 [21], 956 [93] (in dissent).

[92] Crime and Corruption Commission, first submission, 26.

[93] The explanation for introducing the presumption in 1997 was that "[i]t is considered that the potential damage to an individual's reputation from the conduct of a public hearing is so great, that the general rule ought to be that there be private hearings": Explanatory Notes, Criminal Justice Legislation Amendment Bill 1997 (Qld) 8.

[94] *PRS v Crime and Corruption Commission* (2019) 280 A Crim R 35, 59 [99]. Though it is possible that cross examination of other witnesses may be authorised under s 181(2)(c) of the *Crime and Corruption Act 2001*. Under s 201, evidence given by other witnesses in a hearing, which is

exculpatory, must also be given to a person who has been charged, subject to certain exceptions: see *SQH v Scott* (2022) 10 QR 215, 283 [254].

[95] Trad submission, dated 20 March 2024, 2–3 [3]. See also Crime and Corruption Commission, first submission, dated 12 March 2024, 20.

[96] *Minister for Immigration and Border Protection v WZARH* (2015) 256 CLR 326, 341 [55].

[97] Queensland Law Society submission, dated 27 March 2024, 4.

[98] Explanatory Notes, Crime and Corruption Amendment Bill 2023 (Qld) 2.

[99] Crime and Corruption Amendment Bill 2023, cl 7.

[100] Crime and Corruption Commission, addendum to first submission, 14 March 2024, 2; Crime and Corruption Commission submission No 4 to the Legal Affairs and Safety Committee, *Crime and Corruption Amendment Bill 2023* (29 February 2024) 5.

[101] Together Queensland submission, dated 21 March 2024, 11 [56], 12 [59]; Queensland Human Rights Commission, first submission, dated 4 April 2024, 9.

[102] Queensland Human Rights Commission, first submission, dated 4 April 2024, 9.

[103] *Human Rights Act 2004* (ACT) s 40B; *Charter of Human Rights and Responsibilities 2006* (Vic) s 38.

[104] See, eg, *Integrity Commission Act 2018* (ACT) s 187(2)(a); *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(7).

[105] *R (Roberts) v Commissioner of Police of the Metropolis* [2016] 1 WLR 210, 225 [42].

[106] *Christian Institute v Lord Advocate (Scotland)*, 2017 SC (UKSC) 29, 59 [86], 63 [101], 64–5 [106].

[107] Section 332 was based on s 34 of the *Criminal Justice Act 1989*: Explanatory Notes, Crime and Misconduct Bill 2001 (Qld) 87–8. In turn, s 34 (originally numbered s 2.25) appears to have been based on the recommendation in GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Report, 3 July 1989) 315.

[108] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Report, 3 July 1989) 315.

[109] See *Re Whiting* [1994] 1 Qd R 561, 573; *F v Crime and Corruption Commission* (2020) 284 A Crim R 323, 334 [58]; *F v Crime and Corruption Commission* (2021) 9 QR 451, 467 [51]–[53].

[110] *Judicial Review Act 1991*, s 31, sch 2, ss 3–5.

[111] *PRS v Crime and Corruption Commission* (2019) 280 A Crim R 35, 48 [46]; *Le Grand v Criminal Justice Commission* [2001] QCA 383, [22]–[23], [31].

[112] *F v Crime and Corruption Commission* (2020) 284 A Crim R 323; *Carne v Crime and Corruption Commission* [2021] QSC 228; *PRS v Crime and Corruption Commission* (2019) 280 A Crim R 35.

[113] *Le Grand v Criminal Justice Commission* [2001] QCA 383; *Re Whiting* [1994] 1 Qd R 561.

[114] The provision began life as s 2.25(b) of the *Criminal Justice Act 1989*.

[115] See *Crime and Corruption Act 2001*, ss 332(2), 334(3)–(5).

[116] See, eg, *Charkaoui v Canada (Citizenships and Immigration)* [2007] 1 SCR 350, 384 [53]–[54], 399–400 [85]–[87]; *A v United Kingdom* (2009) 49 EHRR 29, 719–20 [215]–[220]; *Secretary of State for the Home Department v AF [No 3]* [2010] 2 AC 269, 354 [59], 355–6 [64]–[66], 360–2 [83]–[86], 365 [96], 367 [103]; *Canada (Citizenship and Immigration) v Harkat* [2014] 2 SCR 33, 60 [47], 71 [77]; *R (Haralambous) v Crown Court at St Albans* [2018] AC 236, 272–4 [61]–[65]. Cf, outside of a human rights context, *SDCV v Director-General of Security* (2022) 96 ALJR 1002.

[117] Trad submission, dated 20 March 2024, 3, 44–6; Human Rights Commission, first submission, dated 4 April 2024, 7.

[118] Eg *Criminal Justice Commission v Parliamentary Criminal Justice Commissioner* [2002] 2 Qd R 8, 21–2 [23], 24 [34], 29 [51].

[119] Sara Howe and Yvonne Haigh, 'Anti-Corruption Watchdog Accountability: The Limitations of Judicial Review's Ability to Guard the Guardians' (2016) 75(3) *Australian Journal of Public Administration* 305, 308–9, 311.

[120] Sara Howe and Yvonne Haigh, 'Anti-Corruption Watchdog Accountability: The Limitations of Judicial Review's Ability to Guard the Guardians' (2016) 75(3) *Australian Journal of Public Administration* 305, 311.

[121] Sara Howe and Yvonne Haigh, 'Anti-Corruption Watchdog Accountability: The Limitations of Judicial Review's Ability to Guard the Guardians' (2016) 75(3) *Australian Journal of Public Administration* 305, 308, 310–11.
[122] Sara Howe and Yvonne Haigh, 'Anti-Corruption Watchdog Accountability: The Limitations of Judicial Review's Ability to Guard the Guardians' (2016) 75(3) *Australian Journal of Public Administration* 305, 314.
[123] Local Government Association of Queensland submission, dated 19 March 2024, 3.
[124] See endnote 16 above.
[125] *Judicial Review Act 1991*, s 31, sch 2, ss 3–5.
[126] *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 581.
[127] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (Report, 3 July 1989) 302.
[128] *Crime and Corruption Act 2001*, s 174.
[129] Crime and Corruption Commission, first submission, dated 12 March 2024, 28.
[130] Letter from Crime and Corruption Commission to Parliamentary Crime and Corruption Committee, dated 26 August 2022; Letter from Crime and Corruption Commission to Parliamentary Crime and Corruption Committee, dated 20 October 2022.
[131] Trad submissions, dated 20 March 2024, 49 [139].
[132] Crime and Corruption Commission, first submission, dated 12 March 2024, 28.
[133] Crime and Corruption Commission, first submission, dated 12 March 2024, 30.
[134] Crime and Corruption Commission, first submission, dated 12 March 2024, 29.
[135] Crime and Corruption Commission, first submission, dated 12 March 2024, 30.
[136] Crime and Corruption Commission, first submission, dated 12 March 2024, 30.
[137] Crime and Corruption Commission, first submission, dated 12 March 2024, 30 n 88.
[138] Crime and Corruption Commission, first submission, dated 12 March 2024, 28.
[139] *United Nations Convention Against Corruption*, opened for signature 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005). Australia ratified the Convention on 7 December 2005. Preventing public statements would also be inconsistent with the principle that anti-corruption agencies should "communicate and engage with the regularly in order to ensure public confidence in its independence, fairness and effectiveness": *Jakarta Statement on Principles for Anti-Corruption Agencies* (Jakarta, 26–27 November 2012) <https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf>.
[140] *Human Rights Act 2019*, s 21.
[141] Trad submissions, dated 20 March 2024, 49 [139].
[142] *Human Rights Act 2019*, s 25. Cf Explanatory Memorandum, National Anti-Corruption Commission Bill 2022 (Cth) 39 [217], where the impact on privacy of a broad power to make a public statement appears to have been overlooked.
[143] *Human Rights Act 2019*, ss 31–32. Cf Explanatory Memorandum, National Anti-Corruption Commission Bill 2022 (Cth) 19 [88], where the impact on the presumption of innocence of a broad power to make a public statement appears to have been overlooked.
[144] Eg *De Ribemont v France* (1995) 20 EHRR 557.
[145] Eg *R v Coghill* [1995] 3 NZLR 651, 661–2; *GCP v Romania* [2011] ECHR 2231.

# Chapter 11: Recommended circumstances for reporting

This chapter deals with the circumstances in which the Commission should be given a discretion to prepare reports on corruption investigations which may then be published. (The following chapter deals with how they should be published.) The circumstances in which the Commission should be able to make public statements raises different issues and are addressed separately in chapter 13.

In this chapter and the chapters that follow, I have crafted the recommendations primarily with the possible impact on individuals in mind. After all, only individuals have human rights.[1] However, I have framed my recommendations by reference to the impact on a "person", noting that may include an individual as well as an entity,[2] such as a company that may be the subject of adverse comments in a report.[3]

## 11.1 The public interest as the premise for the exercise of the discretion to report publicly and make public statements

Before addressing what powers the Commission should have to prepare reports, there is a preliminary matter that relates to all discretionary powers recommended in this report.

The discretions to prepare, table and publish a report on, and to make public statements concerning, corruption investigations should always be exercised, in the circumstances identified as suitable, in the public interest.[4] The Commission is required by s 57 of the *Crime and Corruption Act 2001* to exercise its functions having regard to the importance of protecting the public interest (reinforced by s 34(d) in the context of its corruption functions). But for the reasons given in the previous chapter, more guidance is needed.

There is a difference, an important one, between public interest in the sense of public curiosity about a matter and the public interest in its reporting,[5] which will include the public interest not only in the exposure of corrupt conduct but in the protection of human rights.[6]

The consideration of what the public interest entails should require the Commission to take into account some matters which are the subject of the terms of reference: the need for accountability, transparency and public confidence in government and the public sector; the effect of reporting on the privacy, reputation and right to a fair trial and presumption of innocence of any person liable to be identified in the reporting or public statement; the need to ensure that any pending legal proceedings are not prejudiced; and the degree of seriousness of the corruption alleged. Whether there has

been significant public controversy about the matter in question is also relevant, though less important. (Controversy is easily manufactured; media attention is readily attracted by claims of corruption, whether well-founded or not;[7] and there have been suggestions in the past of corruption complaints made in the electoral context to attract controversy and thus damage a political opponent.[8])

Specifying the factors to be taken into account in considering the public interest in the exercise of particular discretions is consistent with the approach taken in some of the other jurisdictions canvassed in chapters 4 and 6. For example, the equivalent legislation in the Australian Capital Territory specifies the circumstances in which disclosure of information in an investigation report would be contrary to the public interest,[9] and the equivalent Papua New Guinean law sets out a list of factors that are relevant to whether making a public statement about a corruption investigation would be in the public interest.[10]

The term "public interest" is used throughout the *Crime and Corruption Act*; a different approach might be to define the expression for the purposes of the Act as a whole. Alternatively, consideration might be given to the approach of the Northern Territory legislation, which by schedule lists a series of identified factors relevant to the public interest which the Independent Commissioner Against Corruption must take into account in performing his functions.[11] However, wider questions concerning the meaning or application of the term across the Act are not within the remit of this Review, so they are not reflected in the recommendation which follows.

Human rights would be promoted (not limited) by giving greater content to the public interest test and clarifying that it includes respect for human rights, so the proposed amendment would be compatible with human rights.[12]

### Recommendation 1

The discretions conferred on the Crime and Corruption Commission to prepare a report, to table or otherwise publish a report, and to make a public statement in relation to a corruption assessment or investigation should be exercised only in the public interest; in considering which the Commission should be required to take into account:

- the need for transparency and accountability in government and the public sector
- the effect on the human rights of persons who may be identified, including their rights to privacy, reputation, the presumption of innocence and a fair trial
- the need to ensure that any pending legal proceedings are not prejudiced
- the seriousness of the matter under investigation or assessment

- whether the matter in question has been the subject of significant public controversy.

## 11.2 At what point in an investigation should the discretion to report be exercisable?

The Commission advocated that it be given the power to report "at any time before, during or after the conclusion of an investigation",[13] consistently with provisions governing the Victorian Independent Broad-based Anti-corruption Commission.[14] (South Australia's Independent Commission Against Corruption,[15] the Australian Capital Territory's Integrity Commission[16] and the federal National Anti-corruption Commission[17] all, in contrast, provide investigation reports only at the conclusion of an investigation.) A power to report at any time would, the Commission said, be a "powerful education tool and deterrent to corruption" and there were instances where "early intervention and public comment on an issue … [could] mitigate the impact of the matter under investigation".[18]

Reporting *before* an investigation would, presumably, occur at the assessment stage. "Assessment" is not a term defined in the *Crime and Corruption Act*,[19] although ss 35(1) and 46 of the Act refer to the Commission's function of assessing complaints about corruption. In its submission to the Parliamentary Crime and Corruption Committee's 2019 inquiry into the Commission's performance of its functions to assess and report on complaints about corruption,[20] the Commission explained the assessment stage of an inquiry. It involved: a determination of whether the matter fell within the jurisdiction of the Commission; a categorisation of its seriousness;[21] and the assessment decision as to whether an investigation would be commenced, the matter referred elsewhere for action, or no further action taken.[22] The Commission's usual practice was not to use investigative powers at this stage but to make assessment decisions based on material provided by the complainant and any other information provided voluntarily and thus readily obtained.[23]

Given that at the assessment stage, according to the Commission's description of its procedure, there will have been only a limited gathering of evidence, quite probably including no version from the subject of the assessment, and no testing of the complainant's allegations or evidence, the reporting of what evidence did exist at that stage could hardly produce a fair result. There might be occasion for the Commission in exceptional circumstances to make a statement in relation to an assessment, but it is not a time at which a report should be made.

Accepting that it is necessary to be able to explain what has happened when corrupt conduct is uncovered in order to give the public confidence, reporting is justified at the end of an investigation, not earlier. Public confidence, indeed, is likely to be damaged if a report is prematurely made on an investigation which comes to nothing.[24] Nor is it

clear why reporting on an incomplete investigation is likely to be educative or provide a deterrent—again, it may in fact be counter-productive if the premise of the report proves to be unfounded—or why those results cannot be achieved at the conclusion of the investigation.

It is conceivable that public comment prior to the conclusion of an investigation may perform a useful role in correcting misinformation, and in the process, alleviating public concern. But that result can be achieved by public statements; something which will be discussed in chapter 13 in relation to the statement-making power. That is not a reason to report in advance of the investigation's conclusion.

For those reasons, the Commission should not be able to report on an investigation before it has been completed. Confining the reporting power in that way may limit the right of members of the public to seek and receive information as an aspect of the freedom of expression.[25] However, any limit would be proportionate to the legitimate aim of protecting privacy and reputation[26] at an early stage when the potential for harm is highest, and taking into account that, in particular circumstances, information may still be provided by way of a public statement. Accordingly, allowing the Commission to report on an investigation only after it has been completed would be compatible with human rights.[27]

There are also concerns associated with reporting even when an investigation is complete. The Human Rights Commission pointed to the potential of Commission statements about perceived misconduct to compromise the right of a person charged to a fair trial;[28] a concern which would be even more potent in relation to statements contained in a public report. In interview, Mr Fuller KC, the Director of Public Prosecutions, said that the concern continued to exist even where a person had been convicted, because of the possibility of a successful appeal leading to a retrial.[29]

The Bar Association of Queensland made the point that where a referral for prosecution was made or criminal proceedings brought, any public interest in ventilation of the matter would be achieved through the criminal process; so there was no occasion for the Commission to make a pretrial report. Similar issues arose, the Association suggested, in relation to disciplinary proceedings.[30] If a reporting power applicable in this context were given to the Commission, the Association contended, it should be accompanied by a provision stipulating that the report must not include "any information which would prejudice a known criminal investigation, criminal proceeding or other legal proceeding",[31] similar to s 162(5) of the *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic).[32]

Section 331 of the *Crime and Corruption Act* permits the Commission to give a report in relation to an investigation, despite the fact that there are proceedings pending in a court or tribunal. Against that, s 58 of the *Human Rights Act 2019* requires that the

Commission give proper consideration to the right to a fair trial of the report's subjects. As well, requiring the Commission to exercise the reporting and statement-making powers in accordance with the public interest—and specifically drawing attention to the impact on a fair trial in that context—will reinforce the Commission's obligation to take into account the effect of reporting on the right to a fair trial of anyone who may be identified; which in turn will require consideration of whether the Commission should proceed with the contemplated report before the trial has concluded and any appeal has expired or appeal rights are exhausted, and if it does, what information should be excluded from it in order to avoid jeopardising the fairness of the trial.[33]

There is less reason to wait until the conclusion of an investigation to report where the report is to be made, not on the investigation, but on a public hearing which has been held as part of the investigation.

## 11.3 Reports on public hearings

Section 69 of the *Crime and Corruption Act* is presently expressed to apply to a Commission report on a public hearing and requires that a report signed by the Chairperson of the Commission be given to the chairperson of the Parliamentary Committee, the Speaker and the Minister. Reporting has been considered appropriate in respect of public hearings since the *Criminal Justice Act 1989* was amended in 1997.[34]

A report on a public hearing conducted within a corruption investigation, however, is not identical with a report on the corruption investigation itself. That is clear from the High Court's decision in *Crime and Corruption Commission v Carne*,[35] in which the Court held that the exclusive power to report on the investigation of a corruption complaint was to be found in s 49.[36] It follows that it considered a report on a public hearing, able to be tabled under s 69, to be a different thing from a report on the investigation of a corruption complaint. A report on a public hearing must be just that: a report of the evidence and submissions given and made at the hearing, without reference to information or evidence emerging from elsewhere.

There is a logic to the requirement to table a public hearing report. A public hearing will not be held in a corruption matter unless the Commission considers that closing the hearing to the public would be unfair to an individual or contrary to the public interest.[37] The fact that fairness to an individual has dictated a public hearing or that the public interest has required that the Commission proceed in that way, combined with the fact that there will already have been disclosure of the evidence contained in the report, makes it particularly appropriate for public reporting.

There is good reason, then, to maintain the existing provision in s 69 for tabling reports on public hearings, but there is merit also in making explicit the Commission's power to make such a report, referred to as "a public hearing report" to distinguish it from

investigation reports.[38] For the reasons already given, the evidence elicited in a public hearing should be available for inclusion in investigation reports of the types recommended below, subject to the limitations proposed as applicable to each type of investigation report.

The proposed power to prepare public hearing reports would be compatible with human rights. Any reporting power will have a potential impact on privacy and reputation, and possibly also the rights to a fair hearing and the presumption of innocence.[39] However, the information in such a report will have already been disclosed in a public hearing, so the additional impact on privacy and other rights arising from the report will generally be small.[40] On the other side of the scales, the importance of making the information public will generally be higher. That is because the Commission will have already made an assessment that the investigation raises issues of fairness or public interest warranting a departure from the usual rule that hearings are to be held in private. Allowing that information to be reported to the public would outweigh the relatively small impact on rights, and therefore be compatible with human rights.[41]

Recommendation 2

The Crime and Corruption Commission should be given the express power to prepare a report on a public hearing ("a public hearing report"), and any evidence elicited in a public hearing should be able to be included in an investigation report, subject to any requirements concerning the contents of such a report.

## 11.4 Reporting in relation to investigations of individual corruption matters

The terms of reference draw particular attention to the question of the Commission's ability to report publicly and make public statements in relation to "individual corruption matters" at the various stages of investigation.[42]

There is ample justification for distinguishing between investigations of corruption allegations made against individuals and investigations of public sector entities where the allegation is of individuals combining in corrupt conduct. Plainly, the damage which might be done by the actions of a single individual is likely to be of a very different magnitude from the harm which can result from serious corruption of a systemic kind. And while an individual can readily be dealt with through criminal or disciplinary proceedings, corruption at an institutional level is far more difficult to eradicate.

This was the point made by Mr Butler AM KC, a former chairperson of the Commission in its earlier incarnations, in his submission:

> While there will be instances of individuals engaging in isolated conduct, more concerning is where a number of officeholders are recruited into a corrupt scheme. The development of systemic corruption in a public sector organisation poses the greatest risk for society.[43]

Mr Butler went on to observe that public reports, which were expensive and resource-heavy activities, would normally only be undertaken where the subject matter justified their use: "Individual misconduct will normally be sufficiently addressed by investigation and prosecution".[44]

## 11.5 Reporting on individuals where the investigation has not produced evidence warranting a referral

In the previous chapter I discussed concerns about the Commission's past reporting in relation to individuals against whom no action was to be taken and there was no finding, in any form, of corruption. Consistently with those concerns, a number of submissions opposed public reporting in that context.

The Department of Education challenged the need for granting broader powers to report on individuals, including publication of information about them, where there was no finding of corruption. It stressed the importance of privacy for employees and pointed out that disciplinary proceedings were not designed to be punitive but to correct behaviour.[45]

Mr Barbagallo AM said that the Commission's reporting of the investigation into him and its subsequent reporting in the media had had adverse effects on his mental health and earning capacity as well as harming his reputation. The balance of the right to privacy and protection from reputational damage should, he argued, weigh against the reporting of elements of an investigation where a person had been cleared of corrupt conduct.[46]

The Queensland Law Society opposed amendments to the legislation to enable reporting, but recommended that if they were to be made, they include a provision that any corruption report with adverse findings which did not amount to a criminal offence or misconduct (presumably police misconduct) de-identify those concerned.[47]

Counsel for Ms Trad contended that it could not be in the public interest for the Commission to have the power to make public findings which could destroy an individual's career and livelihood where they had only the limited capacity afforded by judicial review to challenge the findings, and the conclusion had been reached that there was no basis for criminal or disciplinary proceedings.[48]

Together Queensland submitted that there was no case for the public reporting of adverse findings or information identifying individuals where the evidence was not sufficient to warrant the taking of any formal action.[49]

The Director of Public Prosecutions, who confined his comments to term of reference 6(d), emphasised that reporting of individual matters should be circumspect in order "to recognise the presumption of innocence to be accorded to both those who are proceeded against and those who are not". He pointed out the risk that allegations of corruption could be weaponised for political or personal gain and that they could "linger to taint the reputation of an individual".[50]

The rationales which emerged from the submissions *for* reporting in relation to individuals where no corrupt conduct was made out were: to explain how the Commission carried out its investigations, so that the public would have confidence in it; to clear the names of those who had been accused of conduct which either was not corrupt or was not proved; and to draw lessons from investigations which could be used to improve the integrity of the public sector.

I will deal now with the first two of those rationales and return to the third later.

## 11.6 Reporting to instil confidence in the Commission's work

The Commission submitted that public reporting allows for a "transparent accounting" to the public.[51] Similarly, Mr Martin KC, a former chairperson, submitted that public reporting is important to ensure the Commission's work is "not done in the shadows".[52]

The Office of the Information Commissioner expressed the view that transparency and accountability were as relevant where the Commission had decided that prosecution or disciplinary proceedings should not be considered as where it had concluded they should, in order to engender public confidence in the integrity of units of public administration and in how the Commission identified and dealt with corruption.[53]

The Information Commissioner's submission explained that because the Commission was exempt from the requirement to give access to information under the *Right to Information Act 2009*, the community's ability to obtain access to information about an investigation was limited, and the lack of transparency might lead the public to have concerns about whether corruption was properly being dealt with. An "alternative, credible means" of giving the public information was needed.[54] "Openness about the details underpinning the [Commission's] corruption investigations", including "detailed information about the complaints and reasons for not commencing criminal or corruption charges" would enable the community to scrutinise the Commission's exercise of powers and give reassurance that it was performing its anti-corruption function properly.[55]

It would seem impossible to give "detailed information" about a complaint where no proceedings were being considered without identifying the individuals against whom proceedings were not being considered and recounting the allegations against them. Apart from questions of the human rights of those identified, the obvious difficulty with

this approach is that there is no mechanism which can ensure "openness about the details underpinning …corruption investigations", because so much of what the Commission does by way of investigation, it is entitled to do in secret. Reporting is most unlikely to give the public access to information the Commission does not wish, and is not required by the *Right to Information Act*, to disclose. As was explained in the previous chapter, transparency and accountability in relation to the Commission's investigative actions are not prioritised by the provisions of the *Crime and Corruption Act*. And, as the Court of Appeal observed in *Carne*:

> There is no provision in the Act by which an investigation of a complaint of corruption need involve a "transparent determination" of the allegations and an explanation of how an outcome was reached.[56]

To borrow from the Northern Territory Inspector, the best way to meet the concerns about the performance of the Commission's functions "is to ensure the [Commission] carries out its significant investigative functions competently and fairly".[57]

## 11.7 Reporting to dispel allegations of corruption

Mr Needham, former chairperson of the Crime and Misconduct Commission, said it was important that the Commission have the capacity to report publicly to clear the names of those against whom no action was taken, particularly where an individual concerned was a significant public figure or was part of a social, community or work milieu where the allegations were known.[58] Another former chairperson, Mr Martin KC, submitted that where rumours circulating the community prompted an investigation and "that investigation concludes that the rumours are false", a public report would serve the beneficial purpose of "clearing the air".[59]

The Queensland Law Society, on the other hand, expressed the view that the existence of a power generally to report on corruption investigations in order to dispel complaints of corrupt conduct where none was found to exist could not be justified. The fact that there was a statutory presumption against the holding of public hearings indicated that it was unlikely there would be a public interest in the publication of a report simply to elucidate a conclusion that no corruption had occurred.[60]

That is too narrow a view. It is part of the Commission's corruption function to instil confidence in the integrity of the public sector,[61] which may entail confirming that there is no basis for any conclusion of corrupt conduct. There is a role for reporting to make it clear that allegations of corruption have not been made out.

Past reports however, while prepared for the purpose of explaining that there is insufficient evidence to warrant consideration of any action in relation to the conduct in question, have damaged individuals' rights to privacy and reputation to an extent which

cannot be justified by that purpose, by taking the opportunity to criticise their conduct; either explicitly, or, by making recommendations directly based on it, implicitly.[62]

An example of a Commission report which does properly achieve the purpose of dispelling allegations of corrupt conduct, in the process meeting the Commission's responsibility of promoting public confidence in the integrity of the public sector, is the Investigation Workshop report.[63] The report, on an investigation of allegations of improper disclosure of information and some related matters, succinctly outlined the issues, set out the evidence and explained why it did not support the allegations made. No individual was identified, no individual was criticised, and the only recommendation made was of an entirely general nature, in relation to retention periods for certain kinds of information. The report served an important and useful purpose in clarifying what had actually occurred and reassuring the public, while not causing harm to the privacy or reputations of the individuals involved.

A power to report for the purpose of dispelling allegations of corruption would be compatible with human rights. Like any reporting power, it would have some impact on the rights to privacy and reputation; however, a power to clear a person's name is itself a safeguard of those rights. As outlined in chapter 9, a person's right to reputation is strongest when the allegations made against them have been found to be unsubstantiated.[64] Stipulating that such reports are not to include critical comments and opinions about a person may, arguably, limit the public's right to receive information.[65] However, that requirement would be justified by the need to protect the reputation of the person, about whom allegations are being dispelled. The alternative of allowing critical comments to be made would not protect their reputation.[66] Ultimately, a power to report for the purpose of dispelling allegations—without accompanying criticism—would strike a fair balance between openness, on the one hand, and privacy and reputation, on the other.[67]

### Recommendation 3

The Crime and Corruption Commission should have a discretion to prepare a report on a completed investigation for the purpose of confirming that allegations of corrupt conduct are unfounded, provided that it does not identify any person except to the extent reasonably necessary or sought by them, makes no commentary or expression of opinion critical of any identifiable person and does not contain recommendations which are based on the conduct of any identifiable person.

## 11.8 Reporting on allegations against an elected official

There is another circumstance, not the subject of submissions, in which there is a case for reporting evidence from a corruption investigation that does not result in

proceedings, or if there are proceedings, in any finding against the individual concerned.

For reasons discussed in chapter 10, the position of a holder of elected office—that is to say, a member of State Parliament or a local government councillor—is different from that of someone appointed to, or employed in, a public sector position, and the balance of competing factors in considering a reporting discretion falls differently. As Together Queensland pointed out, the balance to be struck for political appointees "is of a potentially different character".[68] Notwithstanding that insufficient evidence exists to justify referral for prosecution, or no prosecution has been successfully concluded, there may still be a case for disclosure of the information that has emerged from an investigation concerning allegations against an elected official. There are public interest and community standard considerations which militate in favour of a greater level of transparency and disclosure where a complaint against an elected representative is involved; and the responsibility to ensure confidence in the integrity of units of public administration assumes greater importance where those units are institutions which form part of the representative branches of government, as do the Legislative Assembly and local councils.

Obviously, a discretion to provide a report of evidence obtained in an investigation of an elected officeholder should be exercised with considerable circumspection, because the revelation of information about conduct which may be discreditable, although not illegal, is likely to be embarrassing and damaging to reputation.[69] But that is only one consideration. As with the exercise of the other proposed discretions, the Commission must ultimately determine the question of whether a report should be made by reference to the public interest. Where there are live, substantial and serious questions about the conduct of a member of Parliament or local government, the public interest may require making the relevant evidence known to the public.

The purpose of such disclosure is, effectively, to recognise the right of members of the public to information which may be relevant to their participation in the democratic process. That is not to say that the Commission should, or could, in any way consider what impact the evidence might have on that process, or more specifically, the electoral prospects of the individual concerned. Those are not matters which can enter into an assessment of public interest in the disclosure of the evidence.

Such a report should not, however, be the occasion for criticism or commentary by the Commission. The reporting should be purely factual and neutral. If the conduct in question is particularly blameworthy, one can be confident members of opposing parties and the media will make that clear. But it is no function of the Commission's in such a case to express its views. As the New South Wales Court of Appeal observed in *Greiner v Independent Commission Against Corruption*,[70] there is a "big difference" between consideration of the facts of a case in relation to the relevant provisions of the

anti-corruption legislation and "an exercise of passing moral or political judgment … A judgment of that kind is for Parliament and the electorate."[71]

I had considered whether there was a case for reporting on an assessment of allegations, as opposed to an investigation, where an elected official was concerned, because complaints in that situation often proceed no further than the assessment stage. For the reasons given earlier, concerning the unfairness of reporting on incomplete evidence, I have concluded that any reporting should take place only when an investigation has been completed.

Such a reporting power would be compatible with human rights. Although the reporting power would have an impact on privacy and reputation, it would nonetheless strike a fair balance taking into account that, on the individual rights side of the scales, privacy assumes less weight for politicians, given that they lay themselves open to scrutiny,[72] and, on the other side of the scales, the value of transparency assumes greater weight because the information may have a bearing on electoral choice.[73]

Recommendation 4

Where a subject of a completed corruption investigation is the holder of an appointment to which they have been elected and has not been found guilty of any related offence, the Crime and Corruption Commission should be able to prepare a report on the investigation so far as it concerns that person, provided that it contains no critical commentary or expression of opinion concerning them or recommendation based on their conduct, other than (if applicable) that the allegations of corruption investigated are unsubstantiated or that the evidence does not support consideration of prosecution proceedings against them.

## 11.9 Reporting on serious corrupt conduct

Other than in the case of an elected official, the reputational harm and loss of privacy that reporting on a corruption matter can occasion to the individual concerned cannot be justified in cases where there has been no outcome effectively confirming that they have engaged in serious corrupt conduct. The mere fact that the conduct of a public sector employee or appointee has not met expected standards, or even that they have been disciplined in some way short of dismissal as a result of a referral by the Commission, should not of itself suffice to warrant a report into the investigation of their conduct.

Instead, the reporting focus should be on instances where serious or systemic corrupt conduct is made out,[74] conforming with the public interest principles for the Commission's performance of its functions, which emphasise its responsibility to promote public confidence in the way corruption is dealt with if it does happen, and to

exercise its power to deal with corruption cases having primary regard to the nature and seriousness of the corruption.[75]

## 11.10 Findings of corrupt conduct

That leads to the question of who should be the arbiter of when corrupt conduct at an individual level has occurred. The Commission's submission expressed the view that it would be appropriate for it to have powers to make findings of corrupt conduct akin to that of the National Anti-Corruption Commissioner, who, under s 149(3) of the *National Anti-Corruption Commission Act 2022* (Cth) is required, if they form the opinion that a person investigated has engaged in corrupt conduct of a serious or systemic nature, to make a statement to that effect in their investigation report; although the Commission argued that a discretion to make positive findings that a person had or had not engaged in corrupt conduct was preferable.[76]

I have considerable doubt that the Commission's proposal falls within this Review's terms of reference, which concern the ability to report, and exclude examination of issues relating to the Commission's other functions and powers. It seems to me that power to *report* a finding cannot be conferred on a Commission which does not already have power to *make* the finding, and a recommendation for creation of the latter power is outside the terms of reference. But in any event, there are arguments against the bestowing of such a power.[77]

The New South Wales Independent Commission Against Corruption did not always have the power to make serious corruption findings. The *Independent Commission Against Corruption Act 1988* (NSW) in its original form gave the Commission reporting powers similar in some respects to those of the Queensland Commission under s 49. It was to investigate circumstances indicating that corrupt conduct might have occurred, or be about to occur, and to communicate the results of its investigations to the appropriate authorities.[78] In *Balog v Independent Commission Against Corruption*,[79] the High Court considered that the Independent Commission Against Corruption's function under the New South Wales legislation was to investigate and assemble evidence, not to evaluate the evidence for itself, except for "the limited purpose of deciding whether it warrants further consideration".[80] It was then for other authorities to evaluate the evidence to determine what action was warranted. It was no part of that role for the Commission to express views or make findings that corrupt conduct may have occurred, let alone criminal liability findings.[81] There was, the Court observed:

> a distinction between the revelation of material which may support a finding of corrupt conduct or the commission of an offence and the actual expression of a finding that the material may or does establish those matters.[82]

The Court went on to make some observations which aptly describe Queensland's present-day Crime and Corruption Commission and to elucidate reasons for not giving

investigative bodies of the kind such powers. The New South Wales Commission, the Court said, was (as the Queensland Commission is now):

> primarily an investigative body whose investigations are intended to facilitate the actions of others in combating corrupt conduct. It is not a law enforcement agency and it exercises no judicial or quasi-judicial function. Its investigative powers carry with them no implication, having regard to the manner in which it is required to carry out its functions, that it should be able to make findings against individuals of corrupt or criminal behaviour.[83]

As to the Commission's investigative powers, the Court remarked:

> Although the pernicious practices at which the Act is aimed no doubt call for strong measures, it is obvious that the Commission is invested with considerable coercive powers which may be exercised in disregard of basic protections otherwise afforded by the common law. Were the functions of the Commission to extend to the making of findings, which are bound to become public, that an individual was or may have been guilty of corrupt or criminal conduct, there would plainly be a risk of damage to that person's reputation and of prejudice in any criminal proceedings which might follow.[84]

Those observations on the functions of the Independent Commission Against Corruption are no longer applicable to it. It was subsequently given the power to make findings of corruption, the exercise of which has been dogged by controversy (see chapter 7) and was later confined to a power to make findings only in the case of serious corrupt conduct, as the result of a recommendation of the Gleeson and McClintock review.[85]

But the High Court's observations in *Balog* remain true of the Queensland Commission. That is particularly so now it has a greater responsibility to avoid damage to reputation and prejudice to trial proceedings by virtue of its obligations under the *Human Rights Act*; legislation which had, when *Balog* was decided, and still has, no New South Wales equivalent.

## 11.11 The threshold for a discretion to report serious corrupt conduct

There should, however, be some starting point by way of independent findings on the basis of which the Commission can exercise a discretion to report on serious corrupt conduct at the individual level. There are three circumstances in which it can be said that corrupt conduct has been made out after a referral or application by the Commission. The first, and most obvious, is where conduct has been the subject of a finding of corrupt conduct by the Queensland Civil and Administrative Tribunal under ch 5, pt 2 of the *Crime and Corruption Act*. The second and third are where the elements of the definition of corrupt conduct in s 15(1)(c) of the Act are met either by proof of a

criminal offence in relation to the conduct, because an individual has been found guilty, or by the fact that a disciplinary breach is shown to have provided reasonable grounds for termination of the person's services, because they have in fact been dismissed or a disciplinary declaration has been made declaring that their employment would have been terminated, had they not resigned.

The last two would not ordinarily involve any explicit finding of corrupt conduct, but in each of those instances there is a nexus between the conduct investigated and the result; the result being determined by an authority independent of the Commission.

The Commission should have the discretion to report in such instances where the conduct in question is, in its view, properly characterised as serious corrupt conduct; which might be a reasonable inference where it amounts to a criminal offence or where it has resulted (or would have resulted) in termination of a person's employment or appointment.

The identified circumstances should address any concern that an individual could avoid a finding of the kind by resignation from an appointment in the public sector. The point is that resignation need not end disciplinary proceedings. The Commission can report to the chief executive officer of a unit of public administration that there has been a complaint of corrupt conduct and evidence which would support a disciplinary proceeding. If that occurs, s 50 of the *Crime and Corruption Act* gives the Commission power to apply to the Queensland Civil and Administrative Tribunal for an order under s 219I of the Act.[86] That power extends not only to a person holding an appointment, but to a person who held an appointment, regardless of whether it ended before or after the start of a disciplinary proceeding.[87] Where the person in question has resigned, the Tribunal, if it finds corrupt conduct proved against them, can make a disciplinary declaration under s 219IA of what the disciplinary finding against them would have been and what order would have been made, had their employment or appointment not ended. (No application for any such order was made in Mr Carne's case.)

Where the Commission does not use the s 50 power in respect of someone who has resigned, the chief executive of the unit of public administration in which they are employed can, under s 95 of the *Public Sector Act 2022*, make a disciplinary declaration, which can include declaring that a disciplinary ground is made out and that the person's employment would have been terminated had it not already ended. That event might become the subject of an investigation report in two ways: because the disciplinary proceedings resulted from the Commission's referral, or, if they were initiated without the Commission's involvement, because an official in the unit of public administration, reasonably suspecting corrupt conduct in respect of the matter which gave rise to the disciplinary proceeding, then complied with their duty under s 38 of the *Crime and Corruption Act* to notify the Commission.

If it is thought that the threshold for the exercise of the discretion might prove unduly limiting, it does not appear that the Commission's capacity to report on serious corrupt conduct would have been disrupted in the past even if that threshold had applied. A review of the Commission's reports over the last decade, since the *Crime and Corruption Act* was amended to require the Commission to focus on serious and systemic cases of corrupt conduct, yields only four reports which could be described as relating to individual corruption matters.[88] (Reports on allegations of systemic corrupt conduct are far more common.) Of those, only one involved what could be described with confidence as serious corrupt conduct; it resulted in criminal convictions and if the proposed threshold were applied, could be reported on that basis. Two concerned elected officials and might, depending on the Commission's assessment of the public interest, warrant reporting purely for that reason. The fourth did not, it is apparent from the discussion in the report, involve corrupt conduct, let alone serious corrupt conduct.

It is conceivable that evidence of serious corrupt conduct might not result in any outcome by way of a finding of guilt or disciplinary action because it has been obtained under compulsion and thus cannot be admitted in disciplinary or criminal proceedings.[89] (It may be noted that a review of the Commission's pre-*Carne* reports does not suggest that this is a scenario which has previously occurred.) If, however, compelled evidence given in closed session disclosed serious corruption but there was no prospect of proceedings, there would be a strong public interest in taking the evidence again at a public hearing; in which event a report could be prepared in relation to it (in accordance with Recommendation 2 above).

At the point at which a finding supporting a conclusion of corrupt conduct of any of the three kinds has been made, the individual's rights to reputation and privacy, as chapter 9 explains, are of much reduced weight. At that point the balance will tip in favour of transparency and freedom of expression about matters of such public importance as corruption. A finding by a court or tribunal will mean that the hearing has come to an end, so that the risk posed to a fair hearing will be much reduced. The right to a fair hearing, however, must be factored into the equation as long as the possibility of appeal remains, and will require consideration of whether and why any reporting should take place before any appeal rights have been exhausted or the appeal period has expired (as required by the public interest test proposed in Recommendation 1).[90] Overall, allowing reporting in these circumstances would strike a fair balance, and would be compatible with human rights.

### Recommendation 5

Where a subject of a completed corruption investigation has

- been found guilty of an offence related to the matter investigated

- been the subject of a finding by the Queensland Civil and Administrative Tribunal that corrupt conduct has been proved against them under ch 5, pt 2 of the *Crime and Corruption Act 2001* or
- had their appointment or employment terminated as a result of a disciplinary breach based on conduct which was a subject of the investigation or been the subject of a disciplinary declaration pursuant to s 95 of the *Public Sector Act 2022*, declaring that a disciplinary ground based on such conduct exists, and that had their employment not already ended, it would have been terminated

the Crime and Corruption Commission should have a discretion, if it considers the corrupt conduct which has led to that result to be serious, to prepare a report on the corruption investigation so far as it concerns that person.

## 11.12 Identification in investigation reports of persons not the subject of the report

Where reporting on an investigation involves identifying its subject, it is likely that there will be reference to the actions of other persons who are not responsible for any serious corrupt conduct and are not elected officials. (The public interest may, in some circumstances, require identification of elected officials.) Every effort should be made to avoid the identification of those individuals, and the reporting should not, for the reasons already discussed, diverge into commentary which may affect their rights to privacy and reputation.

Submissions from the Queensland Law Society, the Local Government Association of Queensland and Together Queensland all called for reports to be de-identified for any person who had not been found to have engaged in corrupt conduct, extending beyond the subject of the report to other people involved, such as a witness.[91] The Crime and Corruption Commission and Mr Martin noted that it can be difficult to anonymise reports. Providing sufficient detail to enable readers to understand the roles various people played carries the risk that the reader will recognise a person they know.[92] That observation finds some support in the Fitzgerald Inquiry Report, which noted that identifying information sometimes needs to be disclosed, for example, "where reference to detail is essential to an understanding of the overall pattern".[93]

As can be seen from chapter 4, other jurisdictions have addressed this issue by allowing the Commission to include identifying information about a person only if they are to be the subject of an adverse comment, and otherwise requiring the Commission to exclude identifying information about anyone else, unless it is reasonably necessary to include that information. In particular, in Victoria and the Australian Capital Territory, the Commission cannot include identifying information about a person who is not the subject of adverse comment unless satisfied that it is necessary or desirable to do so in

the public interest, and it will not cause unreasonable damage to the person's reputation, safety or wellbeing. If the report does include that information, it must state that the person is not the subject of any adverse comment.[94]

A stronger approach which protects individuals who are not the subject of the investigation in question should be taken in Queensland. This approach would be compatible with human rights, given that the value of identifying peripheral figures is minimal, and conversely, the value of the privacy and reputation of those people is much higher.

Recommendation 6

It should be a requirement that where an investigation report which concerns a person or persons identified pursuant to a recommended reporting power makes reference to the actions of other persons, it must not, except to the extent reasonably necessary, identify those other persons, and it must contain no critical commentary or expression of opinion concerning those other persons or recommendation based on their conduct.

## 11.13 Reporting on systemic corrupt conduct

The other area of corrupt conduct in relation to which reporting is warranted is where the corrupt conduct can be described as systemic, for example, because it involves individuals in a unit of public administration acting in combination for a corrupt purpose, or regular and frequent corrupt practices within such an organisation. The *Crime and Corruption Act* emphasises the primary importance in corruption investigations of:

> the nature and seriousness of the corruption, particularly if there is reason to believe that corruption is prevalent or systemic within a unit of public administration.[95]

Corruption of the systemic kind was, of course, the reason for the setting up of the Fitzgerald Inquiry which gave rise to the creation of the Commission in the first place. The reasons for regarding systemic corruption as generally more serious and requiring a greater level of transparency than individual corrupt conduct have been discussed earlier in this chapter.

As already mentioned, Mr Butler emphasised the need for an ability to highlight systemic corruption, which, he said, might not be met by the fact that prosecutions had put the allegations in the public domain. The point was to inform the public, the public sector workforce and Parliament; which could be achieved if public reports could "fully demonstrate the extent of detected corruption and … highlight why there is a real risk of its continuation or recurrence".[96] That meant it would be necessary on occasion, where the subject matter justified the making of the public report, to outline the Commission's

investigations and the extent of corruption detected. Typically, however, Commission reports had avoided identifying individuals the subject of allegation.[97]

In relation to reporting of investigations of complaints of systemic corruption, as opposed to complaints of serious individual corrupt conduct, I do not propose any threshold by way of actual or effective finding. Firstly, it is unrealistic, having regard to the fact that numbers of individuals may be involved. Secondly, the greater concerns which systemic corrupt conduct raises, and the heightened public interest in its disclosure, justify the setting of a lower bar for the exercise of the reporting discretion. The Commission should be able to report where there is evidence of systemic corruption.

However, given that lower bar, the rights of those who may feature in such a report require some protection beyond the public interest test for reporting, at least in the form of non-disclosure of their identities to the greatest extent possible. The Commission has in the past prepared numerous reports in relation to systemic corrupt conduct. As Mr Butler says, usually in those reports the individuals are not identified (for example through the use of pseudonyms) in order to preserve their anonymity;[98] not always successfully.[99] Mr Needham, while stressing the importance of public reporting on systemic corruption, acknowledged that anonymity could not always be ensured.[100]

The effort should nonetheless be made not to identify people who have not previously had their identities revealed through a public hearing and who have not been the subject of any formal finding or sanction arising out of the conduct investigated; recognising that it will not always be possible.

Again, those considerations show why allowing the Commission to report on systemic corrupt conduct would be compatible with human rights. The impact on privacy and reputation is mitigated to the greatest extent possible by requiring the Commission not to identify anyone unnecessarily. With that safeguard in place, ultimately, the importance of privacy and reputation will be outweighed by the importance of revealing systemic corrupt conduct, which itself undermines the enjoyment of human rights.[101]

### Recommendation 7

Where a completed corruption investigation reveals evidence of systemic corrupt conduct the Crime and Corruption Commission should have a discretion to prepare a report on the corruption investigation, provided that information which might identify a person is only included if and to the extent

- they have already been named in a public hearing
- they fall into one of the categories listed in Recommendation 5 or
- it is reasonably necessary.

## 11.14 Reports made in the exercise of the prevention function so far as it concerns corruption

As an example of the third line of reasoning in support of reporting in the absence of evidence warranting a referral, Mr Laurie, the Clerk of Parliament, advocated for public reporting of investigation outcomes so that an investigation which did not result in proceedings but held lessons for the public sector would be revealed, and recommendations to reduce corruption or misconduct could be made. There might be matters investigated where although no wrongdoing to a criminal or disciplinary standard was exposed there were systemic lessons.[102] Mr Martin also pointed out that reporting on a failed case could enable the advancing of reasons for reform to the law.[103]

The High Court's decision in *Crime and Corruption Commission v Carne*[104] cast some doubt, however, over whether the Commission could, in reporting for prevention purposes, include details of corruption investigations, given the Court's conclusion that the exclusive power to report on the investigation of a complaint lay in s 49.[105] (Hence, in part, my request for an extension of the terms of reference, as explained in chapter 1.)

It can be accepted that there is a role for reporting publicly after an investigation which has not resulted in any action against an individual, in the exercise of the prevention function insofar as it concerns corruption. Such a report may illustrate a corruption risk or make recommendations to avoid such a risk, or both, and that may involve including some investigation detail. But a report for prevention purposes should not be made at the expense of individual reputations, and a report which explains that there is no conduct warranting any referral should not be the vehicle by which an individual is made an example of what not to do.

There is, too, unfairness in making examples of individuals against whom no corrupt conduct is made out for the purpose of demonstrating a need for legislative action. It seems improbable, in any event, that a case cannot be made for legislative action without example; or if there must be an example, it should be possible to frame it in sufficiently abstract terms to ensure that individuals are not identified. The Commission's recent report on the need for legislative change in relation to confiscation of assets[106] shows how an argument can be made by pointing to the inadequacies of the existing legislation, without reference to particular cases.

Some of the academic work referred to in the literature review expresses enthusiasm for "naming and shaming" as a way of achieving "behavioural, cultural, organisational or political change",[107] but there does not seem to be any consideration given to whether that is consistent with the human rights of those named and shamed. Nor,

concerningly from the perspective of those who prefer evidence-based policy, is any research identified which would support a relevant deterrent effect.[108]

The ability to make recommendations arising from investigations without naming or identifying individuals has been recognised elsewhere. In South Australia a report setting out recommendations from a completed investigation cannot, where there have been no criminal proceedings, identify any person involved in the investigation.[109] And as counsel for Ms Trad pointed out,[110] the former commissioner of the Independent Broad-based Commission against Corruption, Mr Redlich AM KC, in giving evidence to a parliamentary committee gave support to that approach.[111] Emphasising the need for the Victorian Commission to be given the power to publish recommendations made to councils and departments identifying institutional failings, he was at pains to make clear that he was not suggesting that recommendations concerning individuals should be published.

The Crime and Corruption Commission itself acknowledged that it was not always necessary to include investigation details, including identifying information, in prevention publications. Information in prevention publications could usually be presented at a level of generality which avoided identification of individuals, with some limited exceptions, such as where a public report had already issued or where there had been a concluded prosecution.[112]

The identification and accompanying reputation and privacy concerns, of course, arise from the prospect of publication to the world at large. Should the Commission wish to provide specific recommendations to a unit of public administration, it can do so without preparing a report; providing whatever details, including identification of individuals, are needed, in performance of its prevention function under s 24 of the *Crime and Corruption Act*. Alternatively, it can provide a report to a unit of public administration without making it public. In chapter 12, I recommend that the Commission have a power to publish a report separate from a power to table it; in the exercise of that power it could publish the report to a limited number of people who needed to see it.

There is an additional issue. The High Court, in *Crime and Corruption Commission v Carne*,[113] suggested that a letter the Commission had written to the Acting Public Trustee, making recommendations as to the operation of the Public Trust Office, might qualify as a report under s 64 of the Act. (It is not evident from the judgment how specific or general those recommendations were.) That was because advice was given and recommendations were made in the exercise of its prevention function, and s 64 permitted the Commission to make a report in the performance of its functions.[114] A report made under s 64 could, at the direction of the Parliamentary Committee, be given to the Speaker and tabled.[115]

At first blush, then, it would seem appropriate that the discretion which I propose in relation to prevention reports in relation to corruption, including those which outline investigations, would be incorporated into the section. But s 64 is problematic.

Firstly, the compass of s 64 is not immediately obvious. It does not apply to the Commission's performance of its crime functions; that much is clear.[116] But it otherwise neither identifies, nor distinguishes between, the functions to which it does apply. It is expressed in such general terms—"the Commission may report in performing its functions"[117]—that one can understand how the Commission assumed that it extended to reports on corruption investigations. (The High Court, of course, on the basis that there existed a specific power in s 49 to report on corruption investigations, concluded to the contrary.[118])

Excluding the crime and corruption functions, s 64 would still appear to apply to the research and intelligence functions, the witness protection and civil confiscation functions, the prevention function (with possible limitations where details of corruption investigations are concerned) and any function which might be conferred under another Act. As to content, s 64 requires the inclusion in reports of any recommendations, with summaries of the matters for and against those recommendations, and permits comments on the recommendations. What else might be entailed in reporting in relation to each of the functions is not elucidated. There is no requirement that the reporting undertaken identify what function is being performed. The High Court recognised some potential for a blurring of functions, acknowledging that in some cases, whether a report should be characterised as made under s 64 or as a report on the investigation of a corruption complaint would involve "evaluative questions".[119]

And s 64 does not make it clear what may be done with a report prepared pursuant to it; there is no definition of the term "report" which would shed light on its permitted distribution. If there is to be a recommendation for a direction from the Police Minister to the Police Commissioner, the report must go to each of them. Beyond that, the intended destination of s 64 reports is unclear. Whether they are ultimately published will depend on the direction of the Parliamentary Committee.

There is an argument for amendment of s 64 to clarify the reporting power relating to each function, but that is beyond the scope of this Review. For present purposes, the Commission should be given a specific discretion, independent of s 64, to prepare prevention reports which may include investigation details, provided they are de-identified to the greatest extent possible. With that safeguard in place, the importance of privacy and reputation would be outweighed by the value of providing information designed to help to prevent corruption in the future. The proposed reporting power for prevention function reports would therefore be compatible with human rights.

Care may need to be taken with the relevant provision to avoid a result which by inference affects the Commission's ability to report in the exercise of its prevention function relating to crime.

### Recommendation 8

The Crime and Corruption Commission should, in the exercise of its prevention function as it relates to corruption, have a discretion to prepare reports, including reports which contain details of a completed investigation, provided that information which might identify a person, including a person the subject of the investigation, is only included if and to the extent

- they have already been named in a public hearing
- they fall into one of the categories listed in Recommendation 5 or
- it is reasonably necessary.

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1 *Human Rights Act 2019*, s 11.

2 See *Acts Interpretation Act 1954*, sch 1 (definition of "person"): "person includes an individual and a corporation".

3 Eg the Ainsworth group of companies was the subject of an adverse recommendation in the report considered in *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564.

4 Together Queensland submission, dated 21 March 2024, [11](a), [59](a).

5 As one submitter said, there is a "difference between 'what is in the public interest' and 'what is of interest to the public'": Barbagallo submission, dated 22 March 2024, 5.

6 *Hogan v Hinch* (2011) 243 CLR 506, 537 [32], 540 [41], 544 [50], 548 [69]-[70]; *Bare v Independent Broad-based Anti-corruption Commission* (2015) 48 VR 129, 202 [231], 232 [317], 306 [554]-[555]. See also *Integrity Commission Act 2018* (ACT) ss 6(c), 187(2)(a); *Independent Commission Against Corruption Act 2012* (SA) s 3(1)(c).

7 Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 101.

8 Eg Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Review of the Crime and Corruption Commission* (Report No 97, June 2016) 89 [6.8.3]; Crime and Corruption Commission, *Publicising allegations of corrupt conduct: Is it in the public interest?* (Report, December 2016) viii [9], 10 [62]–[64], 31 [191]–[192].

9 *Integrity Commission Act 2018* (ACT) s 187.

10 *Organic Law on the Independent Commission Against Corruption 2020* (Papua New Guinea) s 57.

11 *Independent Commissioner Against Corruption Act* 2017 (NT) s 20, sch 1.

12 *Human Rights Act 2019*, s 8(a).

13 Crime and Corruption Commission, Submission No 4 to Community Safety and Legal Affairs Committee, Parliament of Queensland, *Inquiry into the Crime and Corruption Amendment Bill 2023* (29 February 2024) 8.

14 *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(1). See, similarly, *Independent Commission Against Corruption Act 1988* (NSW) s 74(1) ("The Commission may prepare reports in relation to any matter that *has been or is* the subject of an investigation" (emphasis added)); *Integrity Commission Act 2009* (Tas) s 11(3) (the Commission "may, *at any time*, lay before each House of Parliament a report …" (emphasis added)); *Corruption, Crime and Misconduct Act 2003*

(WA) s 84(1) ("The Commission may *at any time* prepare a report on any matter that *has been* the subject of an investigation …" (emphasis added)).

15 *Independent Commission Against Corruption Act 2012* (SA) s 42(1)(b) ("The Commission may prepare a report setting out … findings or recommendations resulting from *completed* investigations by the Commission …" (emphasis added)).

16 *Integrity Commission Act 2018* (ACT) s 182(1) ("After *completing* an investigation, the commission must prepare a report of the investigation …" (emphasis added)).

17 *National Anti-Corruption Commission Act 2022* (Cth) s 149(1) ("After *completing* a corruption investigation, the Commissioner must prepare a report … on the investigation" (emphasis added)).

18 Crime and Corruption Commission, first submission, dated 12 March 2024, 25.

19 The Parliamentary Crime and Corruption Committee recommended that the term be defined (Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Review of the Crime and Corruption Commission's activities* (Report No 106, June 2021) 78), a recommendation which the Government adopted in principle (*Queensland Government response, Review of the Crime and Corruption Commission's activities*, 9), but it has yet to be implemented.

20 Crime and Corruption Commission, Submission 8 to Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Inquiry into the Crime and Corruption Commission's Performance of its Functions to Assess and Report on Complaints About Corrupt Conduct* (28 January 2020).

21 Crime and Corruption Commission, Submission 8 to Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Inquiry into the Crime and Corruption Commission's Performance of its Functions to Assess and Report on Complaints About Corrupt Conduct* (28 January 2020) 12.

22 Crime and Corruption Commission, Submission 8 to Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Inquiry into the Crime and Corruption Commission's Performance of its Functions to Assess and Report on Complaints About Corrupt Conduct* (28 January 2020) 16.

23 Crime and Corruption Commission, Submission 8 to Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Inquiry into the Crime and Corruption Commission's Performance of its Functions to Assess and Report on Complaints About Corrupt Conduct* (28 January 2020) 15, 18.

24 Fitzgerald and Wilson made the related point that charges that are later withdrawn due to an insufficiency in evidence can undermine public confidence: Gerald Edward (Tony) Fitzgerald and Alan Wilson, *Commission of Inquiry relating to the Crime and Corruption Commission: Report* (Report, August 2022) 130.

25 *Human Rights Act 2019*, s 21.

26 *Human Rights Act 2019*, ss 13(2)(b), 25.

27 *Human Rights Act 2019*, ss 8, 13.

28 Queensland Human Rights Commission, first submission, dated 4 April 2024, 3.

29 Interview with Todd Fuller, Director of Public Prosecutions (the Reviewer, 20 March 2024).

30 Bar Association of Queensland submission, dated 16 April 2024, 2.

31 Bar Association of Queensland submission, dated 16 April 2024, 2–3.

32 See, similarly, *Integrity Commission Act 2018* (ACT) s 185; *National Anti-Corruption Commission Act 2022* (Cth) ss 48(3), 151(1)(a), 227(3)(k).

33 See endnotes 116–119 in chapter 9.

34 See chapter 2 at [2.3].

35 The High Court noted that the Commission was authorised to hold hearings "in relation to any matter relevant to the performance of its functions": *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 747 [61]. This would include the corruption functions.

36 *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 749 [69].

37 *Crime and Corruption Act 2001*, s 177(2)(c).

38 See Crime and Corruption Commission, first submission, dated 12 March 2024, 26.

39 *Human Rights Act 2019*, ss 25, 31, 32(1).

[40] It assessing the size of the impact on human rights, it is the "incremental" burden that is relevant: *Wallace v Tannock* [2023] QSC 122, [54].
[41] *Human Rights Act 2019*, ss 8, 13, especially s 13(2)(e)–(g). See endnote 4 of chapter 9.
[42] Terms of reference, [2].
[43] Butler submission, dated 11 March 2024, 1.
[44] Butler submission, dated 11 March 2024, 2.
[45] Department of Education submission, dated 20 March 2024,1–2.
[46] Barbagallo submission, dated 22 March 2024, 1.
[47] Queensland Law Society submission, dated 27 March 2024, 4.
[48] Trad submission, dated 20 March 2024, 16 [35].
[49] Together Queensland submission, dated 21 March 2024, 3 [7].
[50] Director of Public Prosecutions submission, dated 19 March 2024.
[51] Crime and Corruption Commission, first submission, dated 12 March 2024, 1. See also at 10 ("the importance of transparency in [Commission] operations to ensure that there is public confidence in the work we do"). See also Laurie submission, dated 19 March 2024, 3–4.
[52] Martin submission, date 20 March 2024, 5.
[53] Office of the Information Commissioner submission, 19 March 2024, 3–4.
[54] Office of the Information Commissioner submission, 19 March 2024, 2.
[55] Office of the Information Commissioner submission, 19 March 2024, 3–4.
[56] *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 360 [56].
[57] Bruce McClintock, Inspector of the Independent Commissioner Against Corruption (NT), *Report by the Inspector Pursuant to Section 140(3) of the Independent Commissioner Against Corruption Act 2017 into a Complaint by News Corp Australia, the Northern Territory News and Matt Williams* (14 December 2021) 10 [33].
[58] Conversation with Robert Needham, former Chairperson, Crime and Misconduct Commission (the Review, 12 March 2024).
[59] Martin submission, dated 20 March 2024, 6. See also Crime and Corruption Commission, first submission, dated 12 March 2024, 25–6.
[60] Queensland Law Society submission, dated 27 March 2024, 3.
[61] *Crime and Corruption Act 2001*, s 34(d).
[62] Eg Crime and Misconduct Commission, *An investigation of matters relating to the conduct of the Hon. Ken Hayward MP* (Report, November 2003) xv–xviii; Crime and Misconduct Commission, *Public duty, private interests: Issues in pre-separation conduct and post-separation employment for the Queensland public sector* (Report, December 2008) viii–xi; Crime and Corruption Commission, *Investigation Keller: An investigation report into allegations relating to the former Chief of Staff to The Honourable Annastacia Palaszczuk MP, Premier of Queensland and Minister for Trade* (Report, September 2020) 47–55 [252] [306].
[63] Crime and Corruption Commission, *Investigation workshop: An investigation into allegations of disclosure of confidential information at the office of the Integrity Commissioner* (Report, July 2022).
[64] *Panioglu v Romania* (2021) 72 EHRR 27, 890–1 [115]–[118]; *Wojczuk v Poland* (2022) 75 EHRR 9, 289–90 [100]–[103].
[65] As outlined in chapter 9 at [9.2], the right to freedom of expression in s 21 of the *Human Rights Act 2019* includes a right to seek and receive information. That includes access to government-held information, though it is unclear in what circumstances it applies to access other information.
[66] *Human Rights Act 2019*, s 13(2)(d).
[67] *Human Rights Act 2019*, ss 13(2)(e)–(g).
[68] Together Queensland submission, dated 21 March 2024, 6 [31].
[69] "[A]nd it goes without saying that reputation-related criteria play an important role in a politician's life": *Butkevičius v Lithuania* [2022] ECHR 471, [99].
[70] *Greiner v Independent Commission Against Corruption* (1992) 28 NSWLR 125.
[71] *Greiner v Independent Commission Against Corruption* (1992) 28 NSWLR 125, 145.
[72] *Craxi v Italy [No 2]* (2004) 38 EHRR 47, 1021 [64]; *Butkevičius v Lithuania* [2022] ECHR 471, [97].

[73] It is generally accepted that freedom of expression is more important when it has a bearing on electoral choice: *Castells v Spain* (1992) 14 EHRR 445, [43]; *Harper v Canada (Attorney-General)* [2004] 1 SCR 827, 839 [11].
[74] *Crime and Corruption Act 2001*, s 35(3).
[75] *Crime and Corruption Act 2001*, s 34(d).
[76] Crime and Corruption Commission, first submission, dated 12 March 2024, 18–9.
[77] See also Trad submission, dated 20 March 2024, 4 [8], 47–8 [136]–[137]; Laurie submission, dated 19 March 2024, 4; Neil Laurie, 'Mount Erebus to Ann Street: Forty years of judicial supervision of ad hoc and permanent commissions of inquiry and the intersection with parliamentary privilege and doctrines of mutual respect' (2023) 38(2) *Australasian Parliamentary Review* 73, 94.
[78] *Independent Commission Against Corruption Act 1988* (NSW) ss 13(1)(a)–(c), pt 8, as enacted.
[79] (1990) 169 CLR 625.
[80] *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625, 633.
[81] *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625, 632–3.
[82] *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625, 635.
[83] *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625, 636.
[84] *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625, 635.
[85] Murray Gleeson and Bruce McClintock, *Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption* (Report, 30 July 2015) xii (recommendation 4).
[86] Asked about applications under s 50, the Commission said in its supplementary submission of 18 April 2024 that it had brought six such applications, five of which related to police officers and three of which were withdrawn. In deciding whether to bring a proceeding, apart from the question of whether the seriousness of the conduct would justify an application, it would consider whether there was a credible alternative disciplinary process, because that was a more efficient way of proceeding than a tribunal proceeding which might be protracted. Delay was a consideration, because disciplinary proceedings were likely to have a "protective and rehabilitative effect" where they occurred close to the conduct in question. Those are reasonable points, but they would not militate against the use of the provision where the Commission considered there to be evidence of corrupt conduct which would otherwise not be dealt with; in particular, the effect of delay on the rehabilitative effect of disciplinary proceedings would not seem to be a consideration where an officer has resigned. See: Crime and Corruption Commission, second submission, dated 18 April 2024, 7–11.
[87] *Crime and Corruption Act 2001*, s 50(3) (definition of "prescribed person", para (b)(ii)).
[88] Crime and Corruption Commission, *Australia's first criminal prosecution for research fraud: a case study from the University of Queensland* (Report, December 2017); Crime and Corruption Commission*, Operation Yabber: an investigation into allegations relating to the Gold Coast City Council* (Report, January 2020); Crime and Corruption Commission*, An investigation into allegations relating to the appointment of a school principal* (Report, July 2020); Crime and Corruption Commission*, Investigation Keller: an investigation into allegations relating to the former chief of staff to the Honourable Annastacia Palaszczuk MP, Premier of Queensland and Minister for Trade* (Report, September 2020).
[89] *Crime and Corruption Act 2001*, s 197(2).
[90] See endnotes 116–119 in chapter 9.
[91] Law Society of Queensland submission, dated 27 March 2024, 4; Local Government Association of Queensland submission, dated 19 March 2024, 3; Together Queensland submission, 3 [11](d), 12 [59](d).
[92] Crime and Corruption Commission, first submission, dated 12 March 2024, 19–22; Martin submission, dated 20 March 2024, 7–8.
[93] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (3 July 1989) 8.
[94] *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162(7); *Integrity Commission Act 2018* (ACT) s 186. See also *Independent Commissioner Against Corruption Act 2017* (NT) s 50(6A).
[95] *Crime and Corruption Act 2001*, s 34(d).
[96] Butler submission, dated 11 March 2024, 2.

[97] Butler submission, dated 11 March 2024, 2.
[98] Butler submission, dated 11 March 2024, 2.
[99] See, eg, Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Report on a complaint by Mr Darren Hall* (Report No 99, November 2016) app A, 16.
[100] Conversation with Mr Robert Needham, former Chairperson, Crime and Corruption Commission (the Review, 12 March 2004). See also Crime and Corruption Commission, first submission, dated 12 March 2024, 21.
[101] Queensland Human Rights Commission, first submission, dated 4 April 2024, 1.
[102] Laurie submission, dated 19 March 2024, 4.
[103] Martin submission, dated 20 March 2024, 5.
[104] *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737.
[105] *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 749 [69].
[106] Crime and Corruption Commission, *Modernising Queensland's asset confiscation regime: A reform agenda for the Criminal Proceeds Confiscation Act 2002 (Qld)* (Report, April 2024).
[107] Gabrielle Appleby, Yee-Fui Ng and AJ Brown, *Public Reporting of Corruption Matters: Research Report for the Independent Crime and Corruption Commission Reporting Review* (30 April 2024) 20.
[108] Gabrielle Appleby, Yee-Fui Ng and AJ Brown, *Public Reporting of Corruption Matters: Research Report for the Independent Crime and Corruption Commission Reporting Review* (30 April 2024) 33–4.
[109] *Independent Commission Against Corruption Act 2012* (SA) s 42(1a)(a)(ii).
[110] Trad submission, dated 20 March 2024, 29–30 [70].
[111] Evidence to Integrity and Oversight Committee, Parliament of Victoria, Melbourne, 31 July 2023, 11 (Robert Redlich), quoted in Victoria, *Parliamentary Debates*, Legislative Council, 16 August 2023, 2496 (David Davis).
[112] Crime and Corruption Commission, second submission, dated 18 April 2024, 11.
[113] (2023) 97 ALJR 737.
[114] *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 748 [62].
[115] *Crime and Corruption Act 2001*, s 69(1)(b).
[116] *Crime and Corruption Act 2001*, s 63.
[117] *Crime and Corruption Act 2001*, s 64(1).
[118] *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 748 [64].
[119] *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 748 [69].

# Chapter 12: Tabling and publishing reports

The previous chapter set out recommendations for giving the Crime and Corruption Commission power to prepare reports on corruption investigations. This chapter deals with how those reports should be published.

## 12.1 Tabling reports

Addressing the question of how and when reports of the Commission should be published[1] requires, first and foremost, considering how and when they should be tabled in the Legislative Assembly. A report which has been tabled is deemed to have been published by order of the Legislative Assembly.[2] There will be a permanent, public record of the report, so providing for Commission reports to be tabled is one way of ensuring the reports are available to the public.[3] Because tabled reports are protected by parliamentary privilege, tabling a Commission report also protects public reporting on the report, helping to ensure an even wider audience.[4]

Presently, s 69 of the *Crime and Corruption Act 2001* provides for certain Commission reports to be given to the Speaker, who must then table them. (There is an alternative mechanism of publishing by the Clerk of Parliament when the Legislative Assembly is not sitting, with parliamentary privilege then attaching as if the report had been tabled.)

However, s 69 only applies to three categories of reports: a report on a public hearing, a research report or "other report that the parliamentary committee directs be given to the Speaker".

In *Crime and Corruption Commission v Carne*, the High Court held that a direction from the Parliamentary Committee under s 69 is not itself a source of power to provide a report.[5] The Parliamentary Committee could only give such a direction if the Commission otherwise had a power to report, and the High Court found the Commission did not have a separate power to report publicly about corruption investigations.[6]

I have, of course, recommended that the Commission be given such a reporting power in a range of circumstances, but unless s 69 is amended, the recommended power would be subject to the existing tabling requirements. The only kind of report made under that power which could be tabled without the direction of the Parliamentary Committee would be a report on a public hearing; and public hearings are the exception rather than the rule.[7] Otherwise, investigation reports made under the recommended power could be tabled only where the Parliamentary Committee gave a direction; tabling would, in other words, be subject to the discretion of the Parliamentary Committee.

### 12.1.1 Submissions to the Review

The Commission submitted that "the mechanism for tabling of reports should allow it to provide reports directly to the Speaker" without the need for direction from the Parliamentary Committee.[8] No other anti-corruption body in Australia, it pointed out, requires the approval of a parliamentary committee to table its reports.[9] The Commission's chief concern was that a situation could arise where it perceived a strong public interest in publishing a report, but the Parliamentary Committee declined to give a direction.

The Commission's predecessor, the Criminal Justice Commission, also held that concern. In 2001, the Commission submitted that it was "inappropriate" that tabling was contingent on a direction from the Parliamentary Committee, saying, "It is not difficult to envisage that the Commission might wish to table a report in circumstances where both sides of politics might have some interest in declining to give such a direction".[10] (It is also conceivable that a government majority might decide to withhold such approval.[11])

At the time, the Parliamentary Criminal Justice Committee was prepared to support the Commission's proposed amendment to remove the requirement for a direction before a report could be tabled. The Parliamentary Committee noted that it did not seek "a right to veto or otherwise prevent the [Commission] from tabling a report in the Parliament". In fact, the Committee was of the "firm[] belie[f] that any such action by a Parliamentary Committee would be highly inappropriate".[12] However, the Parliamentary Committee considered that any amendment should be accompanied by a requirement to provide an advance copy of the report to the Committee, on an embargoed basis, to give the Committee an opportunity to make comments before the report was tabled.[13] Ultimately, the amendment did not proceed. The Commission changed its view, and no longer sought an amendment, because of a concern that it might produce unintended consequences.[14]

The current Parliamentary Committee has given permission for the inclusion of its view in this Report. It expressed a concern that the direction requirement put it in a position where it could exercise, and could be perceived as exercising, control over whether a report was tabled. Moreover, if the report were tabled, this perception could extend to the Committee's being seen to be endorsing the report. The Committee saw that situation as potentially inconsistent with its monitoring and reviewing role in relation to the Commission.[15]

The Commission's position was supported by Mr Laurie, the Clerk of Parliament. He submitted that "[t]he ability to report should not be contingent on the approval of a parliamentary committee".[16] Not only did the current arrangement impinge on the independence of the Commission, but it also placed the Parliamentary Committee in

an invidious position. By acting as a gatekeeper, effectively, the Parliamentary Committee might be seen as warranting that the Commission had provided procedural fairness, an obligation which was owed by the Commission alone.[17] Accordingly, Mr Laurie submitted, s 69 ought to be amended "to revert to a process for tabling [Commission] reports similar to the previous *Criminal Justice Act 1988* [sic] to allow the [Commission] to report directly to parliament, rather than through the [Parliamentary Committee]".[18]

The Queensland Human Rights Commission did not have a strong view on the matter, but it did note that the Parliamentary Committee "could potentially serve a useful oversight role of the justifications for publication of particular information in a particular case".[19]

### 12.1.2 What the tabling requirements should be

There is force in the common argument of the Crime and Corruption Commission and Mr Laurie that s 69 of the *Crime and Corruption Act* should be amended so that the approval of the Parliamentary Committee is not required before the Commission can table a report.

Expanding the Commission's power to report without expanding the tabling requirements for those reports would lead to inconsistencies. It would mean that reports on a public hearing in a corruption investigation would be required to be tabled, but other reports on investigations could be tabled only at the Parliamentary Committee's direction, regardless of whether the Commission considered there was a public interest in the report's being tabled.

The practice discussed in *Carne*, of the Commission seeking a direction from the Parliamentary Committee requiring it to give to the Speaker for tabling a report in order to be able to table that report,[20] was highly artificial and did not reflect the actual intent of s 69(1)(b). When the power of the Parliamentary Committee to give a direction was introduced in 1997, it was intended to be a power to require the Commission to table reports the Commission thought did not need to be tabled (see chapter 2). It was not intended to be a source of power for the Commission to table reports.

Moreover, relying on the Parliamentary Committee to exercise its discretion to give a direction for the residual category of "other reports" does effectively give the Committee a power to decide which "other reports" should be tabled. It is important that the Crime and Corruption Commission be, and be seen to be, independent. Professor Gabrielle Appleby has argued that in order to ensure anti-corruption bodies retain their independence, they must be able to make their reports public without the permission of the government.[21] She and Dr Grant Hoole have also pointed out that government control over reporting may actually undermine an anti-corruption body's purpose of fostering public confidence in government: "It is difficult to conceive of how

a commission can broker confidence in government if government itself exercises control over the release of the commission's findings".[22]

Amending s 69 of the *Crime and Corruption Act* would also bring Queensland into line with most other Australian jurisdictions. As outlined in chapter 4, in most States and Territories, anti-corruption commissions have the power either to table their investigation reports directly or to provide their investigation reports to the Speaker or Clerk for tabling.[23]

The position is slightly different in the Northern Territory and at the federal level. In the Northern Territory, investigation reports are only required to be tabled where the report concerns a Minister or a Member of the Legislative Assembly,[24] and at the federal level, an investigation report is only required to be tabled where a public hearing was held in the course of the investigation.[25] Otherwise, the relevant Minister has a discretion to table the report under the usual parliamentary procedures.[26] To meet the situation where the Minister might decline to table a report that should be tabled, the Northern Territory and federal Commissioners also have a discretion to publish investigation reports, without tabling them.[27] It is difficult to see why a distinction is drawn by the Northern Territory and the Commonwealth between different kinds of investigation reports for the purposes of tabling. If there is a public interest in reporting to the world at large on a corruption investigation, whether or not a public hearing was held, one would expect there would be a public interest in the report's being tabled.

The direct tabling power in each of the States and the Australian Capital Territory is to be preferred to the approach in the Northern Territory and at the federal level.

The solution is not simply to revert to the position prior to the amendment in 1997, which introduced the power of the Parliamentary Committee to give a direction to table reports. That is the approach taken by the recent Private Member's Bill, which proposes amending s 69 so that the Commission must provide *any* Commission report to the Speaker for tabling.[28] The only exception proposed is for annual reports. Echoing submissions made by Mr Laurie, the stated purpose of the amendment is to:

> revert to a process for tabling [Commission] reports similar to the previous Criminal Justice Act 1988 [sic] and which applied to the former Criminal Justice Commission (CJC) and Crime and Misconduct Committee (CMC) to report directly to parliament, rather than through the [Parliamentary Committee].[29]

However, the difficulty with requiring *all* Commission reports to be tabled is that there will be some Commission reports that clearly should not be released to the public, including reports containing confidential information and reports to an appropriate authority to consider what action to take.[30] That was one of the reasons why the precursor provision was amended in 1997. As outlined in chapter 2, there were doubts

about which reports were required to be tabled. Given the nature of the Commission's work, it was thought that the legislature could not have intended that all Commission reports would be tabled.

Removing the power of the Parliamentary Committee to give a direction would also fail to address the other reason for the amendment in 1997. At that time, the Commission had taken the view that some reports did not need to be tabled, whereas the Parliamentary Committee thought they ought to be. The power to give a direction was necessary to ensure those reports were tabled.

Rather than removing the existing tabling requirements, the Commission should be given a separate discretion to provide additional reports to the Speaker for tabling, and the Parliamentary Committee should retain its power of direction. That was the effect of the amendment proposed by the Commission in 2001, which would have seen the tabling requirements apply to:

- a report authorised by the Commission to be given to the Speaker, and
- a report prepared by the Commission that the Parliamentary Committee directs the Commission to give to the Speaker.[31]

Essentially, in the event of a disagreement between the Commission and the Parliamentary Committee about whether a report should be tabled, either would be able to insist that it be tabled, resolving the conflict in favour of transparency.

Under this proposal, the existing carveouts for reports to the appropriate authority under s 49 or the head of jurisdiction under s 65 would continue to apply. The Commission would also still be able to report separately to the Parliamentary Committee on confidential matters under s 66.

The Commission's proposed amendment in 2001 would have removed reports on public hearings as one category of reports that must be tabled. Instead, the tabling of those reports would have also been subject to the discretion of the Commission or the Parliamentary Committee. However, there are good reasons for retaining the existing requirement to table public hearing reports. If there is sufficient public interest to justify a public hearing and then to prepare a report on that public hearing, there will be sufficient public interest in tabling that report. The information will already be in the public domain, having been disclosed in a public hearing, so that the impact on privacy will be smaller. On the other side of the scales, the importance of disseminating the information learned in a public hearing will generally be greater, as public hearings are generally reserved for exceptional cases, such as investigations into allegations of more serious or systemic instances of corruption.[32] If in fact nothing emerges from a public hearing which warrants reporting, under my recommendation, the Commission

would not be required to prepare a report; but if the Commission does prepare a report on a public hearing, that report ought to be tabled.

That also aligns with the impetus for the 1997 amendments that introduced the requirement to table reports on hearings. In 1991, the Parliamentary Committee had identified a report resulting from public hearings into allegations of significant corruption within the prison system as an example of the kind of report that should be tabled.[33] It is difficult to see any circumstance in which a report of that kind, resulting from a public hearing, should not be tabled.

Giving the Commission the power to table reports without oversight from the Parliamentary Committee may remove one of the few existing safeguards for the rights of the person under investigation. Currently, requiring the approval of the Parliamentary Committee means that the Committee has an opportunity to review reports and suggest changes and if the report contains an adverse comment about a person, to confirm that the Commission has afforded procedural fairness to that person. The important oversight role played by the Parliamentary Committee[34] is reinforced by the fact that it is a public entity under the *Human Rights Act 2019* and required to exercise its oversight powers in a way that is compatible with human rights.[35] However, as Mr Laurie pointed out, responsibility for the Commission's compliance with its own legal obligations rests first and foremost with the Commission rather than the Parliamentary Committee.[36]

The risk that reports will be tabled although they are inappropriate for public release is the price of giving the Commission greater independence in deciding whether its reports should be tabled. The existence of that risk, though, reinforces the need to strengthen safeguards in the preparation of the report, including the Commission's decision-making processes about whether to report and what to include in the report. As the Parliamentary Inspector who oversees the West Australian Corruption and Crime Commission observed, upon tabling, a report becomes a public document likely to be read by many people, not all of whom will appreciate "the nuances of the Commission's jurisdiction and the different uses [for] … evidentiary material"; which requires "great care" in preparing investigation reports.[37]

A further complication is that the Commission's proposal in 2001 did not address the position of annual reports. Currently, s 69 does not apply to the Commission's annual reports. That appears to be because s 2.18 of the *Criminal Justice Act 1989*—upon which s 69 was based—also did not apply to the Commission's annual reports. Originally, that exclusion from s 2.18 was accompanied by a separate requirement in the Act to prepare and table an annual report under s 7.10. For unknown reasons, that requirement was omitted in 1993.[38] Curiously, since that time, the Commission has not had an express power to prepare annual reports, even though the Parliamentary

Committee is required to consider them.[39] However, the preparation and tabling of the Commission's annual report is outside the terms of reference of the Review, so I do not propose to recommend any change to the status quo in that regard.

On balance, I consider that s 69 of the *Crime and Corruption Act* should be amended in the way the Commission proposed in 2001, save that the existing requirement to table reports on public hearings should be retained, as should the existing exception for the Commission's annual reports.

If the Commission is given a discretion to table reports, that discretion will have to be exercised in accordance with the public interest test (set out in Recommendation 1) and after giving procedural fairness to affected persons under s 71A of the *Crime and Corruption Act* (as proposed to be amended in Recommendation 13).

It should be pointed out that s 69 applies to all reports of the Commission generated in the exercise of any of its functions apart from its crime functions.[40] In this Review I have only considered the changes that should be made to s 69 as it relates to reports within the terms of reference; that is, reports made in the exercise of the Commission's corruption function and prevention function so far as it concerns corruption. Accordingly, the recommendation is confined to the tabling of reports that the Commission would have power to prepare in accordance with the recommendations made in chapter 11.

### 12.1.3 Compatibility with human rights

By removing the oversight of the Parliamentary Committee, the proposed amendment to s 69 of the *Crime and Corruption Act* would increase the prospect of harm to the rights of individuals to privacy, reputation and a fair hearing. However, giving the Commission the power to table reports without vetting by the Parliamentary Committee serves the legitimate aims of transparency and ensuring greater independence of the Commission. There is no alternative way of achieving those aims that does not involve removing the Parliamentary Committee as an intermediary in the tabling process. Ultimately, with the increased safeguards recommended elsewhere in this Report, the proposed amendment would be a proportionate way of ensuring greater independence and transparency.

#### Recommendation 9

Section 69 of the *Crime and Corruption Act 2001* should be amended so that the Crime and Corruption Commission

- may give a report prepared under one of the recommended reporting powers to the Speaker for tabling, and

- must give a report to the Speaker for tabling if it is a report on a public hearing or a report prepared by the Commission that the Parliamentary Committee directs the Commission to give to the Speaker.

The existing exclusion of annual reports and reports under ss 49, 65 or 66 from the application of s 69 should continue to apply.

## 12.2 Publishing reports other than by tabling

Tabling should not be the only way that a report about corruption may be published. For each of the reporting powers recommended in chapter 11, the Commission should have the power to publish the report without tabling it, for example, by providing it to a limited number of people who need to see it. As the Queensland Human Rights Commission submitted, in each case the Crime and Corruption Commission should "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)".[41] Providing the Commission with a separate power to publish a report, without necessarily tabling it, would help to ensure the Commission can tailor the impact on privacy to what is necessary to achieve a legitimate aim. The separate publishing power could be based on s 156 of the *National Anti-Corruption Commission Act 2022* (Cth) or s 50A of the *Independent Commissioner Against Corruption Act 2017* (NT). Like the power given by s 156(2) of the Commonwealth Act, this power to publish reports should be subject to the procedural fairness requirements set out in s 71A of the *Crime and Corruption Act*. It should also be subject to the public interest test, taking into account the factors set out in Recommendation 1.

For tabling, s 69 of the *Crime and Corruption Act* excludes reports about corruption complaints to appropriate authorities under s 49, reports to the head of jurisdiction under s 65 and confidential reports under s 66. The proposed power to publish reports should not disturb the existing position with respect to those reports. That is, the Commission should not be able to rely on this new power to publish those reports to anyone other than as provided in ss 49, 65 and 66.

Where a report must be tabled—because it is a report on a public hearing or the Parliamentary Committee has directed that it be tabled—this additional publication power would allow the Commission to publish the report in other ways, for example, on its webpage, in addition to providing it to the Speaker for tabling.[42]

It would not be prudent to specify that reports published in this way are protected as though they had been tabled in Parliament.[43] The Commission already enjoys immunity from liability,[44] and protecting reports in this way may inadvertently give cover to wider publication of the report than is appropriate in the circumstances.[45] It is only recommended that this power to publish apply to reports prepared under one of the

reporting powers recommended above. It may be that the power to publish reports would also be appropriate in relation to reports prepared by the Commission in the exercise of its other functions, but that is outside the scope of this Review.

### 12.2.1 Compatibility with human rights

The proposed power to publish reports without necessarily tabling them would engage the rights to privacy, reputation and a fair hearing. It would authorise reports being published that could potentially harm those rights. However, the purpose is to give the Commission greater flexibility in how it disseminates information so that any limits on privacy are as proportionate as possible in the circumstances of the case. There is no alternative way to give the Commission greater flexibility without giving it a power to publish. Again, with the safeguards discussed elsewhere, the power to publish investigation reports would strike an appropriate balance between the competing considerations.

Recommendation 10

The Crime and Corruption Commission should be given a separate power to publish reports prepared under one of the recommended reporting powers, without necessarily tabling the report, similar to s 156 of the *National Anti-Corruption Commission Act 2022* (Cth) or s 50A of the *Independent Commissioner Against Corruption Act 2017* (NT).

The power should not affect the limits on publication of reports under ss 49, 65 or 66 of the *Crime and Corruption Act 2001*.

## 12.3 Protection of reports prior to tabling or publishing

Section 214 of the *Crime and Corruption Act* prevents unauthorised publication of Commission reports. It provides that a person must not publish or give a report to which s 69 applies to anyone unless the report has been published, or taken to have been published by order of the Legislative Assembly (which will be the case where it has been tabled, or, where the Legislative Assembly is not sitting, the Clerk has authorised its publication) or the publication is otherwise authorised under the Act.

Section 214 should extend to protect the confidentiality of any report prepared under one of the proposed new reporting powers, until the report is tabled or otherwise published. As is currently the case under s 214, publication would still be permitted if the *Crime and Corruption Act* authorises the publication. For example, the Commission would be authorised by s 71A to provide a draft report to ensure procedural fairness. But s 214 would prevent anyone who receives the report in that circumstance from providing it to others. There should be this exception, however: the recipient of a draft report should be able to publish it for the limited purposes of seeking legal advice and applying for judicial review.

Such an amendment to s 214 would limit the right to freedom of expression, as it would expand the prohibition on a form of expression. However, that limit would be justified by the need to ensure that the operations of the Commission are not jeopardised. Protecting the confidentiality of a draft report is a necessary limit on free expression if people are to be provided copies of draft reports for comment. Amending s 214 in this way would strike a fair balance between the need for confidentiality and the incursion on free expression. It would therefore be compatible with human rights.

### Recommendation 11

Section 214 of the *Crime and Corruption Act 2001* should be amended to prevent unauthorised publication of reports prepared under one of the powers recommended in Recommendations 2 to 8, until the report is tabled or published under the tabling and publishing powers recommended in Recommendations 9 and 10 (unless the publication is authorised by the *Crime and Corruption Act 2001*); with the exception that a person who receives a draft report, or part of a report, may publish it for the purposes of seeking legal advice and applying for judicial review.

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1 Terms of reference, [4](a).
2 Parliament of Queensland, *Standing Rules and Orders of the Legislative Assembly*, r 33 (at 13 February 2024).
3 *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 361 [66]; Parliamentary Criminal Justice Committee, Parliament of Queensland, *A Report on the Accountability of the CJC to the PCJC* (Report No 38, 1997) 35–6.
4 *Parliament of Queensland Act 2001*, ss 8–9, 54.
5 *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 747 [58], 753 [97].
6 *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 743 [26], 749 [69], 754 [104].
7 *Crime and Corruption Act 2001*, s 177.
8 Crime and Corruption Commission, first submission, dated 12 March 2024, 13.
9 Crime and Corruption Commission, first submission, dated 12 March 2024, 13. See also the Commission's submissions in relation to the Private Member's Bill: Crime and Corruption Commission, Submission No 4 to the Legal Affairs and Safety Committee, Parliament of Queensland, *Crime and Corruption Amendment Bill 2023* (29 February 2024) 5.
10 Parliamentary Criminal Justice Committee, Parliament of Queensland, *Three Yearly Review of the Criminal Justice Commission* (Report No 55, 2001) 321 <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/TYRCJC2001-460A/Report55-3yrReview.pdf>. See also the Commission's earlier consistent position in 1997: Criminal Justice Commission, *Submission to the Attorney-General on the Draft Criminal Justice Legislation Amendment Bill 1997 and the Draft Misconduct Tribunals Bill 1997* (September 1997) 23–4 <https://documents.parliament.qld.gov.au/tp/1997/4897T3742.pdf>.
11 Laurie submission, dated 19 March 2024, 8.
12 Parliamentary Criminal Justice Committee, Parliament of Queensland, *Three Yearly Review of the Criminal Justice Commission* (Report No 55, 2001) 322 <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/TYRCJC2001-460A/Report55-3yrReview.pdf>.

[13] Parliamentary Criminal Justice Committee, Parliament of Queensland, *Three Yearly Review of the Criminal Justice Commission* (Report No 55, 2001) 322 <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/TYRCJC2001-460A/Report55-3yrReview.pdf>.

[14] Parliamentary Criminal Justice Committee, Parliament of Queensland, *Three Yearly Review of the Criminal Justice Commission* (Report No 55, 2001) 322 (recommendation 80) <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/TYRCJC2001-460A/Report55-3yrReview.pdf>.

[15] Private hearing, 27 March 2024.

[16] Laurie submission, dated 19 March 2024, 8 (underlining removed). See also Neil Laurie, 'Mount Erebus to Ann Street: Forty years of judicial supervision of ad hoc and permanent commissions of inquiry and the intersection with parliamentary privilege and doctrines of mutual respect' (2023) 38(2) *Australasian Parliamentary Review* 73, 94; Neil Laurie, Submission No 36 to the Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Five-year review of the Crime and Corruption Commission's activities* (27 April 2021) 13–15 <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/RCCC-21CB/submissions/00000036.pdf>.

[17] Laurie submission, dated 19 March 2024, 6.

[18] Laurie submission, dated 19 March 2024, 9.

[19] Queensland Human Rights Commission, second submission, dated 17 April 2024, 5.

[20] As the *Carne* litigation shows, when the Commission thought that a direction was a source of power to report, the practice was not so much that the Parliamentary Committee directed the Commission what to do as it was that the Commission sought a direction to do what it wanted to do: *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 741 [12], 749 [74]. As the High Court noted in *Carne* (in the context of considering whether parliamentary privilege applied), the Commission prepared a report in relation to Mr Carne not for the purposes of the Parliamentary Committee, but for the Commission's own purposes: at 742 [24], 744 [39], 756 [114].

[21] Gabrielle Appleby, 'Horizontal Accountability: The Rights-protective Promise and Fragility of Executive Integrity Institutions' (2017) 23(2) *Australian Journal of Human Rights* 168, 181–2, 184.

[22] Grant Hoole and Gabrielle Appleby, 'Integrity of Purpose: A Legal Process Approach to Designing a Federal Anti-Corruption Commission' (2017) 38 *Adelaide Law Review* 397, 437.

[23] *Integrity Commission Act 2018* (ACT) s 189; *Independent Commission Against Corruption Act 1988* (NSW) ss 74, 78; *Independent Commission Against Corruption Act 2012* (SA) s 42; *Integrity Commission Act 2009* (Tas) s 11(3); *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 162; *Corruption, Crime and Misconduct Act 2003* (WA) ss 84, 93.

[24] *Independent Commissioner Against Corruption Act 2017* (NT) s 50.

[25] *National Anti-Corruption Commission Act 2022* (Cth) s 155.

[26] Explanatory Memorandum, National Anti-Corruption Commission Bill 2022 (Cth) 203 [8.56].

[27] *Independent Commissioner Against Corruption Act 2017* (NT) s 50A; *National Anti-Corruption Commission Act 2022* (Cth) s 156.

[28] Crime and Corruption Amendment Bill 2023 (Qld) cl 6, replacing s 69.

[29] Explanatory Notes, Crime and Corruption Amendment Bill 2023 (Qld) 2.

[30] *Criminal Justice Commission v News Ltd* [1994] QSC 7, 25–6; *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 748 [63]; Parliamentary Criminal Justice Committee, Parliament of Queensland, *Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission Part B – Analysis and Recommendations* (Report No 13, December 1991) 65 <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/R-9ED4/rpt-13-031291.pdf> ("It is clearly not appropriate for all reports prepared by the CJC to be dealt with in the way envisaged by s 2.18"); Criminal Justice Commission, *Submission to the Attorney-General on the Draft Criminal Justice Legislation Amendment Bill 1997 and the Draft Misconduct Tribunals Bill 1997* (September 1997) 24 <https://documents.parliament.qld.gov.au/tp/1997/4897T3742.pdf> ("The CJC is concerned

that the proposed wording of section 26(9) may be construed as also including those types of reports which, clearly, should not be publicly disseminated").

[31] Parliamentary Criminal Justice Committee, Parliament of Queensland, *Three Yearly Review of the Criminal Justice Commission* (Report No 55, 2001) 321–2 <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/TYRCJC2001-460A/Report55-3yrReview.pdf>.

[32] *Crime and Corruption Act 2001*, s 177.

[33] Parliamentary Criminal Justice Committee, Parliament of Queensland, *Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission Part B – Analysis and Recommendations* (Report No 13, 1991) 65 (recommendation 10) <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/R-9ED4/rpt-13-031291.pdf>.

[34] *Crime and Corruption Act 2001*, ss 292, 293, 295.

[35] *Human Rights Act 2019*, ss 9(1)(g), (4)(a). It is only a public entity insofar as it exercises an administrative function, but it is clear that many of the Parliamentary Committee's functions are administrative: *Criminal Justice Commission v Nationwide News Pty Ltd* [1996] 2 Qd R 444, 457.

[36] See *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 579: "It may be that, in a particular case and as an incident to the discharge of its own functions and responsibilities, the Parliamentary Committee will redress an unfairness perpetrated by the Commission. But that is not its function. And certainly it is under no obligation in that regard". See also at 594.

[37] Matthew Zilko, Parliamentary Inspector of the Corruption and Crime Commission of Western Australia, *Corrigendum; The Corruption and Crime Commission's 2019 Report on the WA Commissioner in Japan* (27 November 2023) 5 [23].

[38] *Criminal Justice Amendment Act 1993*, s 2, sch, cl 149. The extrinsic material does not explain why: Queensland, *Parliamentary Debates*, Legislative Assembly, 18 November 1993, 5982–3; Explanatory Notes, Criminal Justice Amendment Bill 1993 (Qld) 7.

[39] *Crime and Corruption Act 2001*, s 292(c). Cf the Monitor's annual report expressly provided for in s 328.

[40] *Crime and Corruption Act 2001*, s 63.

[41] Queensland Human Rights Commission, first submission, dated 4 April 2024, 10.

[42] In that circumstance, the power would be similar to *Integrity Commission Act 2018* (ACT) s 190.

[43] Cf Crime and Corruption Commission, first submission, dated 12 March 2024, 13.

[44] *Crime and Corruption Act 2001*, s 335.

[45] *Parliament of Queensland Act 2001*, s 54.

# Chapter 13: Recommended circumstances for making public statements

As outlined in chapter 10, the Commission should have a separate power to make public statements in performing its corruption functions. However, like the power to report, the power to make public statements should not be at large. It should be tailored to a legitimate aim, such as promoting public confidence in the integrity of the public sector. Tailoring the power requires at the outset an understanding that the public interest in transparency is of less weight and the rights to privacy and reputation assume greater weight in the stages before an investigation has been finalised, compared to the situation after a person has been charged or convicted.

## 13.1 Competing considerations that apply at different stages

### 13.1.1 Public statements during assessment or investigation

As was explained in chapter 9, the rights to privacy and reputation are weightier at the early stages of an investigation, before the veracity of the allegations has been determined.[1] The harm done then to a person's reputation can be irreversible and substantial, even though the allegations may eventually be found to be unsubstantiated.

Arguably, the public interest in naming a person is also not as great in the early stages. According to Callinan and Aroney in their 2013 Review, generally, there is little to no public interest "in publishing that a person is being investigated or is under suspicion".[2] The reason is that there is little value in revealing that information before knowing whether there is anything of substance to be uncovered. That may be why the longstanding[3] policy of the Commission has been to neither confirm nor deny that a matter is under investigation, unless the matter is exceptional; in that category it includes the circumstance that the existence of the complaint is already in the public domain. That is reflected in the Commission's current media policy (publicly available on its website),[4] though not in the internal policies and procedures provided to the Review.[5]

However, Callinan and Aroney were not convinced that the Commission would be justified in making a public statement simply because a complainant or someone else had made an allegation public.[6] They reasoned that if the Commission were justified in issuing a public statement whenever the matter was in the public domain, the exception would become the rule. If the Commission were to deny every false report that a matter was under investigation, its silence in response to a report would be taken

as confirmation that the matter was indeed under investigation.[7] Either way, the Commission would be making a statement.

Callinan and Aroney pointed out that other investigating agencies, such as the police, do not comment on investigations merely because they are in the public domain or there is public misconception about a matter under investigation.[8] That is also consistent with the practice of at least some anti-corruption bodies in other jurisdictions. For example, as chapters 4 and 6 show, anti-corruption bodies in the Australian Capital Territory and Quebec have a general policy of neither confirming nor denying that they have received an allegation of corrupt conduct or whether a matter is under investigation.[9] That the matter is in the public domain will not necessarily mean there are exceptional circumstances warranting a departure from that rule.[10] The anti-corruption bodies in Western Australia and Hong Kong also generally avoid issuing press releases before an investigation has been finalised.[11]

Callinan and Aroney were also of the view that a public statement could not be justified on the basis that it would encourage witnesses and other complainants to come forward: "publication of a name of a person under investigation very rarely produces any new or useful information or witnesses" particularly in relation to corruption "because in almost all such cases all or most of the relevant witnesses and evidence are likely to be known or accessible".[12]

Against that, it may be said that there are scenarios in which a public statement during the investigation stage would be in the public interest. For example, it may be in the public interest for the Commission to make a statement correcting a public misconception,[13] not merely because the matter is in the public domain and not merely because there is some inaccuracy in the reporting by the media, but because a failure to correct the record at an early stage could cause irreversible harm to a person's reputation (for example, where there is a pending election).[14] In an investigation into systemic corruption, there may also be public interest in a statement for the purpose of encouraging other witnesses or complainants to come forward. Contrary to the view expressed by Callinan and Aroney, the experience of the Fitzgerald Inquiry was that the publication of allegations "brought forward more information and witnesses".[15]

The crafting of any power to make public statements needs to take into account that there are circumstances in which it would be appropriate for the Commission to make a public statement about a matter being assessed or under investigation. However, taking into account the greater impact on human rights, public statements about a matter while it is still being assessed or investigated should be the exception rather than the rule.

### 13.1.2 Public statements regarding referral

Similar considerations apply to a public statement that a complaint has been referred to a relevant public official of a unit of public administration to deal with,[16] to another integrity body,[17] or to a prosecuting authority.[18] Generally, the public interest in public statements about the referral of matters will be low and the prospective harm to human rights will be high. The person may never be charged or the subject of any other proceedings in relation to the investigation. Again, public statements for the purpose of alerting the public that a matter has been referred to another agency for action should only be made in exceptional circumstances.

### 13.1.3 Public statements about a charge or other proceedings

The Commission should have a power to issue a public statement that an investigation has resulted in a charge[19] or the commencement of disciplinary proceedings (although one would expect that the public interest would rarely require the disclosure of disciplinary proceedings). A person does not have a very strong expectation of privacy in relation to a recent criminal charge, as it is a matter of public record that has not yet receded into the past.[20] However, care is still needed because, once a person is charged, they are entitled to the presumption of innocence.[21] A statement that there was sufficient evidence to warrant an investigation or a charge will not breach the right to be presumed innocent,[22] but any comments beyond that are fraught with risk. As the Director of Public Prosecutions said in a submission to the Review, "[r]eporting more than an individual will or will not be charged tends to lead to a debate about the merits of that decision".[23] That is consistent with the Commission's media policy, which states that, in general, it will not "comment on matters before a court (criminal and civil) or a tribunal".[24]

### 13.1.4 Public statements about a conviction

Public statements following a conviction present the lowest risk to human rights. A person does not have a reasonable expectation of privacy in relation to a conviction, because their conviction took place in a public hearing.[25] By that point, the rights to a fair hearing and to the presumption of innocence will also be spent (subject to any appeal).

On the other side of the scales, public statements that an investigation by the Commission has led to a conviction may serve the public interest. A conviction for corruption can serve as a warning to others, and drawing attention to it can help to prevent corruption in the future.

### 13.1.5 Public statements when a report is released

If the Commission has a power to issue a report, by parity of reasoning, it should have an accompanying power to make a public statement notifying the public that the report has been issued.[26] As the Commission pointed out in its submissions, the way people

consume information is changing.[27] Media releases draw attention to reports that might otherwise not receive attention.

However, there is no need for any such public statement to go further than setting out a summary of the report. A power to do anything more would amount to another reporting power. In this connection, one of the reasons why the Commission asserted it needs a very broad power to make public statements is that preparing reports can be resource-intensive.[28] A detailed public statement, it said, can achieve the purposes of a report without expending the same resources, so the power to make public statements should be made wide enough to embrace comprehensive media releases which could take the place of a report.

An example of such a statement is the lengthy media release issued by the Commission in September 2019, in which it set out its reasons for deciding not to investigate the then Deputy Premier, Ms Trad, in relation to decisions on Cross River Rail and a State secondary school. Despite the Commission's having found no evidence to support a reasonable suspicion of corrupt conduct, the media release went on to identify several areas for improvement to ensure conflicts of interest were declared and managed more effectively, making five recommendations for reform.[29] Issuing a lengthy media release to make these recommendations was said to be a more efficient use of the Commission's limited resources than issuing a report.[30]

Putting aside concerns outlined in chapter 10 about the Commission's approach in such cases, the problem with that submission is that there is no reason why reports need be resource-intensive. It is not uncommon for investigation reports in South Australia and Tasmania to be only a handful of pages.[31] In the Northern Territory, the Inspector of the Independent Commissioner Against Corruption has advocated against lengthy public statements, recommending instead that they consist of no more than a short summary of a report.[32] In the Inspector's opinion, the safeguards set out in the Northern Territory legislation for issuing reports should not be bypassed by issuing public statements instead. I agree with that view. The power to make public statements should not duplicate the power to report.

### 13.1.6 Public statements that exonerate a person

A further consideration is whether the Commission should be able to make a public statement for the purpose of exonerating a person,[33] whether because the Commission has determined that the allegations are unsubstantiated, because charges have been withdrawn, or because a Court has found the person not guilty or a disciplinary proceeding has been dismissed.

A person's right to reputation is strongest when the allegations made against them have been found to be unsubstantiated.[34] A power to clear a person's name is itself a safeguard and serves to promote the rights to privacy and reputation. However,

"making a public statement could compound the damage to a person's reputation by calling greater attention to an issue that is only marginally in the public domain".[35] If the public is unaware that the Commission has investigated a person, announcing that the allegation made against them has not been substantiated will only serve to bring it to the public's attention. It cannot be assumed that a statement exonerating a person will leave their reputation exactly as it was before the allegation came to light.[36] Some members of the public may simply assume the allegation was only found to be unsubstantiated because of a technicality (as was certainly the risk in past instances where the Commission's statement exonerating a person of corruption went on to suggest the person's conduct was nonetheless unsatisfactory[37]).

It might be thought that the person affected is in the best position to know whether an exonerating statement would be in their interests. Accordingly, in South Australia, before making a public statement, the Independent Commission Against Corruption is required to consider "whether any person has requested that the Commission make the statement".[38]

Taking into account these considerations as they apply in different contexts, what should be the legislative model for the power to make public statements? Different ways of designing the power to make public statements are suggested by legislative models in other jurisdictions.

## 13.2 Possible legislative models for public statements

From the overview in chapters 4 and 6, the legislation in other jurisdictions suggests three possible approaches.

At one end of the spectrum, the federal legislation confers a wide discretion on the National Anti-corruption Commissioner to make public statements and trusts that the Commission will exercise restraint in those circumstances where a public statement would be inappropriate. The federal model is that the Commissioner may make a public statement at any time,[39] but there are certain things that cannot go into a statement (for example, information that would prejudice a fair trial),[40] and procedural fairness must be afforded if it is to contain any adverse comment.[41]

The position in Papua New Guinea is similar. There, the Independent Commission Against Corruption is empowered to make public statements about a complaint or investigation if the Commission considers it is appropriate to do so in the public interest, taking into account various factors including the risk of prejudicing a person's reputation or a fair hearing.[42] As with the federal model, the Commission is trusted to exercise the power to make public statements only in appropriate circumstances.

The Northern Territory model offers an intermediate option. In the Northern Territory, the Independent Commissioner Against Corruption may make a public statement, but

only for certain purposes (for example, to address public misconception about a person),[43] and again there are certain things that cannot go into a statement.[44] For example, ordinarily a person cannot be named in a public statement unless their suspected conduct is sufficiently serious or systemic.

At the other end of the spectrum, the South Australian model is to give the Independent Commission against Corruption no discretion to make a public statement at the early stages, when the public interest is lowest and the potential harms are highest. Under that model, no public statement can be made about a particular investigation until after it has concluded.[45] Even then, the Commission should be circumspect if the investigation leads to criminal or disciplinary proceedings.[46] It may make a public statement if no proceedings are likely, but only after taking into account mandatory relevant considerations (such as the risk of prejudicing a person's reputation).[47]

Experience in Queensland suggests that the federal model (as yet untested) would not give sufficient direction as to how a discretion to make public statements should be exercised. The Northern Territory model offers more guidance, by confining the purposes for which a public statement may be made, but it does not draw a distinction between different stages of the investigation. The South Australian model does draw a distinction between public statements made before and after the Commission has concluded its investigation, but in a way that is too rigid. Given that there can be circumstances in which a public statement is warranted in the early stages while a matter is under assessment or investigation, the South Australian model of a blanket ban on public statements before an investigation is finalised is not appropriate.

## 13.3 The recommended power to make public statements

The power to make public statements can be appropriately fashioned by combining the flexibility of the Northern Territory approach with some recognition that the stakes are higher and public comments should be rare before any proceedings resulting from an investigation are commenced.

Accordingly, the Commission should have the power to make public statements in connection with a corruption investigation, if it is in the public interest to do so for one of the following purposes:

- to indicate that it would be inappropriate for the Commission to comment on the matter[48]
- to refuse to confirm or deny anything in relation to the matter[49]
- if the matter is publicly known and with the consent of the person affected, to inform the public that the evidence does not warrant an investigation or a referral
- to provide a summary of a report that has been tabled or otherwise published, or

- to provide information about a charge, disciplinary proceeding or other proceeding brought as a result of the investigation, and the outcome of the proceeding.

These purposes would cover uncontroversial public statements, public statements made after a charge or conviction, and exonerating public statements in particular circumstances where it is clear one should be made.

Otherwise, the Commission should have the power to make statements, but only in exceptional circumstances and if it is in the public interest to do so for any of the following purposes:

- to seek evidence in the course of assessing a complaint or investigating a matter[50]
- to address public misconceptions about persons or issues of which the Commission has particular knowledge[51]
- to prevent or minimise the risk of prejudice to the reputation of a person, or to redress prejudice caused to the reputation of a person as a result of an allegation having been made public, taking into account the views of that person[52]
- to provide information about a referral for consideration of prosecution, disciplinary action or other action,[53] or
- to provide information about other action taken or that may be taken by the Commission in relation to the matter.[54]

In considering whether a public statement would be in the public interest, the Commission should take into account the factors set out in Recommendation 1; which means that it would generally avoid statements that would prejudice a fair hearing or the presumption of innocence.[55] That would include, for example, a statement suggesting that a person had committed a crime or that a court was likely to find them guilty.[56]

The power to make public statements should not be enlivened merely because a matter is in the public domain. Other investigative bodies, such as police, do not regard that as sufficient reason to depart from the general rule of neither confirming nor denying that the matter is under investigation, and it should not be seen as a sufficient reason for the Commission to do so. For the reason given by Callinan and Aroney—that if the Commission makes a practice of correcting claims that a matter is under investigation where they are wrong, silence will confirm that they are right—departing from the "neither confirm nor deny" rule carries a risk of harm to the privacy and reputation of anyone about whom an allegation of corruption is made publicly. Taken with other factors, the fact that a matter is publicly known may warrant a public statement; but the combination of factors must still meet the threshold of exceptional circumstances. An

example would be where a failure to correct the record at an early stage could cause irreversible harm to a person's reputation.

As is the case under the federal and Northern Territory models, the power to make public statements should be subject to some qualifications. First, a public statement should not name or identify a person if it is not reasonably necessary to do so.[57] Second, the Commission should only exercise the power to make a public statement after giving procedural fairness to any affected person under s 71A of the *Crime and Corruption Act* (in accordance with its proposed amendment in Recommendation 13).[58]

Finally, the Commission submitted that it should be given an express power to make public statements in relation to its *crime* function.[59] That is outside the terms of reference of this Review, which is only concerned with public statements insofar as they relate to the Commission's corruption and prevention functions. However, an amendment giving the Commission an express power to make public statements in relation to its corruption and prevention functions may give rise to a negative inference that the Commission lacks the power to make statements in relation to its other functions.[60] Consideration should be given to whether any power to make public statements should extend to the Commission's other functions.

## 13.4 Compatibility with human rights

The amendment I propose would permit public statements to be made that could affect individual rights to privacy and reputation. It would also constrain the Commission's ability to make public statements, thus limiting the public's right to seek and receive information. On the other hand, its framing has taken into account that the relative importance of privacy and transparency shifts over the course of an investigation, which may culminate in a proceeding of some kind. For that reason, the proposed amendment is among the available options that strike an appropriate balance between those competing human rights. Accordingly, the amendment would be compatible with human rights.[61]

### Recommendation 12

The Crime and Corruption Commission should be given the express power to make public statements in connection with a corruption investigation, for any of the following purposes:

- to indicate that it would be inappropriate for the Commission to comment on the matter
- to refuse to confirm or deny anything in relation to the matter

- to inform the public that the evidence does not warrant an investigation or a referral, if the matter is publicly known and with the consent of the person affected
- to provide a summary of a report that has been tabled or otherwise published, or
- to provide information about a charge, disciplinary proceeding or other proceeding brought as a result of the investigation, and the outcome of the proceeding.

The Commission should also be given an express power to make public statements in connection with a corruption investigation, for one of the following purposes, but only in exceptional circumstances:

- to seek evidence in relation to the matter in the course of preliminary inquiries into, or an investigation of, the matter
- to address public misconceptions about persons or issues of which the Commission has particular knowledge
- to prevent or minimise the risk of prejudice to the reputation of a person, or to redress prejudice caused to the reputation of a person as a result of an allegation having been made public, taking into account the views of that person
- to provide information about a referral for consideration of prosecution, disciplinary action or other action, or
- to provide information about other action taken or that may be taken by the Commission in relation to the matter.

The power to make a public statement should be subject to the requirement that the public statement must not name or identify any person unless it is reasonably necessary to do so, for example, where the public statement relates to a report that names a person, or where other exceptional circumstances make it appropriate to identify the person.

1 *Denisov v Ukraine* [2018] ECHR 1061, [121].
2 Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 88.
3 See Parliamentary Crime and Misconduct Committee, Parliament of Queensland, *Three Yearly Review of the Crime and Misconduct Commission* (Report No 86, May 2012) 73–4 [5.10]; Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 100.
4 Crime and Corruption Commission, *Media policy* (Web Page, 1 July 2021) <https://www.ccc.qld.gov.au/media/media-policy >.
5 Cf Crime and Corruption Commission, second submission, dated 18 April 2024, Annexure 9 (CCC Communications policy and procedure).

[6] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 102.
[7] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 101–2.
[8] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 91.
[9] Australian Capital Territory Integrity Commission, *Media enquiries* (Web Page) <https://www.integrity.act.gov.au/media/media-enquiries>; Permanent Anticorruption Unit, *Foire aux Questions* [*Frequently Asked Questions*] (Web Page, 2024) <https://upac.gouv.qc.ca/faq>.
[10] ACT Integrity Commission, *ACT Integrity Commission Media Policy* (Web Page) <https://www.integrity.act.gov.au/__data/assets/pdf_file/0020/2302931/ACT-Integrity-Commission-Media-Policy-2023.pdf> ("Even where a party to a matter makes it publicly known, the Commission may still not provide information to the media, including confirming the existence of the matter").
[11] Conversation with Emma Johnson, Chief Executive Officer and Kirsten Nelson, Executive Director Legal Services, Corruption and Crime Commission (WA) (the Review, 17 April 2024); Independent Commission Against Corruption (Hong Kong), *Press Releases* (Web Page) <https://www.icac.org.hk/en/p/press/index.html>.
[12] Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 91.
[13] Similar to *National Anti-Corruption Commission Act 2022* (Cth) s 48(2); *Independent Commissioner Against Corruption Act 2017* (NT) s 55(2)(f).
[14] Eg, the Crime and Misconduct Commission released an exonerating media release on 16 March 2012, shortly before the State government election on 28 April 2012: Crime and Misconduct Commission, 'CMC concludes no official misconduct by Newman in assessment of three BCC-related matters' (Media release, 16 March 2012) <https://www.ccc.qld.gov.au/news/cmc-concludes-no-official-misconduct-newman-assessment-three-bcc-related-matters>.
[15] GE Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct* (3 July 1989) 11 [1.4.1].
[16] *Crime and Corruption Act 2001*, s 46(2)(b).
[17] Eg, *Human Rights Act 2019*, s 66; *Ombudsman Act 2001*, s 15.
[18] *Crime and Corruption Act 2001*, s 49.
[19] Eg, Crime and Corruption Commission, 'Former police officer to appear in court on six charges' (Media release, 27 May 2022) <https://www.ccc.qld.gov.au/news/former-police-officer-appear-court-six-charges>.
[20] Cf *MM v United Kingdom* [2012] ECHR 1906, [187]-[188].
[21] Human Rights Committee, *Views: Communication No 3088/2017*, UN Doc CCPR/C/138/D/3088/2017 (7 July 2023) [7.6] ('*Kazal v Australia*').
[22] *Yeung Chung Ming v Commissioner of Police* (2008) 11 HKCFAR 513, 526 [23]; *GCP v Romania* [2011] ECHR 2231, [58]; *Burzo v Romania* (European Court of Human Rights, Third Section, Application Nos 75109/01 and 12639/02, 30 June 2009) [163].
[23] Director of Public Prosecutions submission dated 19 March 2024, 1.
[24] Crime and Corruption Commission, *Media policy* (Web Page, 1 July 2021) <https://www.ccc.qld.gov.au/media/media-policy >.
[25] *R (T) v Chief Constable of Greater Manchester Police* [2015] AC 49, 65–6 [18]; *R (L) v Commissioner of Police of the Metropolis* [2010] 1 AC 410, 427 [27].
[26] Eg, Crime and Corruption Commission, 'CCC report on Investigation Workshop tabled in State Parliament' (Media release, 4 July 2022) <https://www.ccc.qld.gov.au/news/ccc-report-investigation-workshop-tabled-state-parliament>.
[27] Crime and Corruption Commission statement, dated 12 March 2024, 17.
[28] Crime and Corruption Commission statement, dated 12 March 2024, 17.
[29] Crime and Corruption Commission, 'CCC determines not to investigate the Deputy Premier but calls for improvements to Cabinet processes and legislative reform' (Media release, 6 September 2019)

<https://www.ccc.qld.gov.au/news/ccc-determines-not-investigate-deputy-premier-calls-improvements-cabinet-processes-and>.

30 Crime and Corruption Commission, Submission No 8 to Parliamentary Crime and Corruption Commission, Parliament of Queensland, *Inquiry into the Crime and Corruption Commission's performance of its functions to assess and report on complaints about corrupt conduct* (28 January 2020) 29, referred to in Crime and Corruption Commission submission, dated 12 March 2024, 17.

31 Eg, Independent Commission Against Corruption (SA), *Yes Minister: Corruption risks associated with unsolicited proposals* (Report, February 2023) <https://www.icac.sa.gov.au/documents/Yes-Minister.pdf>; Integrity Commission, Tasmania, *Report No 1 of 2022* (Report, 29 September 2022) <https://www.integrity.tas.gov.au/__data/assets/pdf_file/0004/678550/report-1-of-2022-investigation-fisher.pdf>.

32 Bruce McClintock, Inspector of the Independent Commissioner Against Corruption (NT), *Annual Report of Inspector Pursuant to section 137 of the Independent Commissioner Against Corruption Act 2017 of Evaluation of the Independent Commissioner Against Corruption pursuant to section 136 of the Act* (September 2022) 25 [51].

33 Similar, but not identical, to *National Anti-Corruption Commission Act 2022* (Cth) s 48(2); *Independent Commissioner Against Corruption Act 2017* (NT) s 55(2)(f).

34 *Panioglu v Romania* (2021) 72 EHRR 27, 890–1 [115]–[118]; *Wojczuk v Poland* (2022) 75 EHRR 9, 289–90 [100]–[103].

35 Explanatory Memorandum, National Anti-Corruption Commission Bill 2022 (Cth) 124 [6.69].

36 See by analogy, the point that an acquittal will not necessarily leave a person's reputation in the same position before a charge: *R v BA* [2009] 1 NZLR 293, [41], quoting Nigel Walker, 'Curiosities of Criminal Justice' (1975) 38 *Police Journal* 5, 9.

37 Eg, Crime and Corruption Commission, 'CCC finalises assessment of Minister Bailey's emails' (Media release, 19 July 2017) <https://www.ccc.qld.gov.au/news/ccc-finalises-assessment-minister-baileys-emails>; Crime and Corruption Commission, 'No criminal action relating to Mark Bailey's email account' (Media release, 22 September 2017) <https://www.ccc.qld.gov.au/news/no-criminal-action-relating-mark-baileys-email-account>.

38 Similar to *Independent Commission Against Corruption Act 2012* (SA) s 25(4)(e).

39 *National Anti-Corruption Commission Act 2022* (Cth) s 48.

40 *National Anti-Corruption Commission Act 2022* (Cth) ss 48(3), 227(3)(k), (n), 230(4)–(5); Explanatory Memorandum, National Anti-Corruption Commission Bill 2022 (Cth) 124 [6.70].

41 *National Anti-Corruption Commission Act 2022* (Cth) s 231.

42 *Organic Law on the Independent Commission Against Corruption 2020* (Papua New Guinea) s 52.

43 *Independent Commissioner Against Corruption Act 2017* (NT) s 55(2).

44 *Independent Commissioner Against Corruption Act 2017* (NT) s 55(4).

45 *Independent Commission Against Corruption Act 2012* (SA) s 25(2).

46 *Independent Commission Against Corruption Act 2012* (SA) s 25(3)(a).

47 *Independent Commission Against Corruption Act 2012* (SA) ss 25(3)(b), (4).

48 *Independent Commissioner Against Corruption Act 2017* (NT) s 55(2)(b).

49 *Independent Commissioner Against Corruption Act 2017* (NT) s 55(2)(c).

50 *Independent Commissioner Against Corruption Act 2017* (NT) s 55(2)(d).

51 *Independent Commissioner Against Corruption Act 2017* (NT) s 55(2)(f).

52 *Independent Commission Against Corruption Act 2012* (SA) ss 25(4)(b), (d), (e).

53 *Independent Commissioner Against Corruption Act 2017* (NT) s 55(2)(e).

54 *Independent Commissioner Against Corruption Act 2017* (NT) s 55(2)(a).

55 See also *Human Rights Act 2019*, ss 31, 32(1), 58. The safeguards for the right to a fair trial in Recommendation 1 and the *Human Rights Act* would achieve a similar result to *National Anti-Corruption Commission Act 2022* (Cth) ss 48(3), 227(3)(k); *Independent Commissioner Against Corruption Act 2017* (NT) ss 55(4)(a)–(b).

56 See chapter 9 at [9.4].

[57] *National Anti-Corruption Commission Act 2022* (Cth) s 227(3)(n); *Independent Commissioner Against Corruption Act 2017* (NT) s 55(4)(c).
[58] *National Anti-Corruption Commission Act 2022* (Cth) s 231.
[59] Crime and Corruption Commission, first submission, dated 12 March 2024, 29.
[60] *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 748 [66]– [67]; *Anthony Hordern & Sons Ltd v Amalgamated Clothing and Allied Trades Union of Australi*a (1932) 47 CLR 1, 7.
[61] *Human Rights Act 2019*, ss 8, 13.

# Chapter 14: Additional safeguards

Having set out the parameters of what the Crime and Corruption Commission's reporting powers should be, in this chapter I consider whether there should be any additional safeguards on the exercise of those reporting powers, and, if so, what those safeguards should be.

## 14.1 Stronger protection of procedural fairness

Procedural fairness is an important safeguard for any reporting power.[1] That is borne out in the literature review conducted for the Review (see annexure E). However, as indicated in chapter 10, s 71A of the *Crime and Corruption Act 2001* is an insufficient safeguard: it does not capture the full scope of what procedural fairness requires. As will be seen, even the Commission agreed that s 71A can be improved.[2]

Currently, s 71A provides that a report is not to contain an "adverse comment" about a person unless they have first been provided an opportunity to make submissions about the adverse comment (though not the "adverse information" on which the comment is based). If the Commission goes ahead with the report, those submissions from the person affected must be "fairly stated" in the report.

As explained in chapter 2, s 71A was introduced in 2018 following a complaint by a former police officer that he had not been provided procedural fairness in the preparation of a report that had made adverse comments about him.[3] The recent Private Member's Bill suggested further bolstering the procedural fairness obligations in s 71A.[4]

### 14.1.1 Common law requirements of procedural fairness

Any statutory protection of procedural fairness will be construed against the background of what the common law requires,[5] so it is necessary to begin with the common law.

At common law, a person must be afforded procedural fairness where their interests—including their reputational interests—are likely to be affected by an exercise of power.[6] When reporting on an investigation into corruption, the Commission makes several decisions that may affect a person's reputation, including the decision about whether to report at all, the decision about whether to anonymise the report, the decision about whether to table the report or publish it in some other way, and, especially, the decision about whether to include adverse comments or recommendations in a report. Where there are several steps involved, the requirements of procedural fairness will be satisfied where "the decision-making process, viewed in its entirety, entails procedural fairness".[7]

Giving a person procedural fairness means giving them an opportunity to respond to any adverse information the Commission proposes to take into account when deciding how to exercise the relevant power, not merely an opportunity to respond to the adverse comments that are proposed to be included in the report. That does not mean that the person needs to be given an opportunity to respond to every adverse piece of information, irrespective of its credibility, relevance or significance. But it does mean, ordinarily, that the person should be given an opportunity to deal with any adverse information that is credible, relevant and significant to the decision to be made.[8] What is required for procedural fairness will be different in each case, and will depend on what is required to avoid practical injustice in the circumstances of the case.[9]

Procedural fairness is concerned with fair procedures, not fair outcomes.[10] In the words of the Commission, procedural fairness "does not require the decision-maker to uncritically accept the submissions made by the person".[11] But the decision-maker should approach the submissions with an open mind. The point of providing a person an opportunity to make submissions is that, with the benefit of those submissions, the decision-maker might take a different course.[12] On a deeper level, giving a person an opportunity to respond means treating them with the dignity of someone who may be able to explain or contradict the information.[13]

### 14.1.2 Recent decision of the High Court

During the course of the Review, the High Court delivered judgment in *AB v Independent Broad-based Anti-corruption Commission*,[14] in which it considered the procedural fairness obligations that apply to reports under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic). Section 162(3) of that Act provides that if the Commission intends to include in a report "a comment or opinion which is adverse to any person", the Commission must first provide the person with "a reasonable opportunity to respond to the adverse material".

The High Court held that that required the Commission to provide the person with an opportunity to respond to the evidentiary material upon which the proposed adverse comments were based, not merely the proposed adverse comments.[15] However, in the circumstances of a particular case, the obligation to provide adverse material may be satisfied by providing the substance or gravamen of the underlying material rather than the underlying material itself.[16]

That reasoning does not apply to s 71A of the *Crime and Corruption Act*, because it requires the giving of an opportunity to make submissions about a "proposed adverse comment", not the adverse material which gave rise to it. However, following the High Court's decision in *AB*, the Commission has recognised "that statutory prescription of some aspects of procedural fairness obligations" may be appropriate, including those aspects considered in *AB*.[17]

### 14.1.3 The amendment proposed by the Private Member's Bill

In the recent Private Member's Bill, there is a proposal to strengthen s 71A by requiring the Commission, where it proposes to make an adverse comment about someone, to give them a draft of the report (or the relevant part of the report) and invite them to make written submissions within a period of at least 30 days.[18]

The revised s 71A would also make it clear that the requirement to afford procedural fairness applies "regardless of whether the adverse statement is to be stated in the body of, or the foreword to, the report". The reason for that clarification may lie in what happened in the *Carne* case. The first version of the report provided to Mr Carne's solicitors did not include the foreword, which "would be understood to be directed to [Mr Carne] and to be highly critical of him, although the body of the Report contained no findings of corrupt conduct against him".[19] However, the Commission later provided an updated version with the foreword to Mr Carne's solicitors.[20] The High Court did not consider Mr Carne's alternative argument that he had been denied procedural fairness in the preparation of the report; it was unnecessary to do so given the Court's finding that the Commission lacked the power to report at all.[21] Nor did the courts below consider the question.[22]

In written submissions on the Private Member's Bill to the Legal Affairs and Safety Committee, the Commission said it had "no objection" to s 71A being amended to provide more detailed guidance about what is required to afford procedural fairness.[23]

### 14.1.4 Submissions to the Review

The Commission submitted that the obligation to afford procedural fairness serves as an important safeguard for the exercise of its reporting powers,[24] but accepted that improvements could be made to s 71A.[25] The former Chairperson of the Commission, Mr Martin KC, said that the obligation to give procedural fairness "should be extended to persons who might be captured by any proposed extension of powers of reporting".[26]

Other submissions suggested that the protection offered by s 71A should be extended in the following ways:

- Procedural fairness should be afforded at all stages of the investigation and reporting process, not merely when an adverse comment is proposed to be made.[27]
- The subject of the investigation should be given an opportunity to make submissions about whether to publish a report (or part of a report) at all, and whether the report should be anonymised.[28]
- For adverse comments, the person affected should be given an opportunity to respond to the material on which the comments are based, not merely the comments themselves.[29]

- There should be adequate timeframes for a response, with extensions if necessary.[30] The timeframes should also be sufficient to allow the affected person to make an application to the Supreme Court in relation to the report.[31]

Mr Barbagallo AM raised an issue as to how the Commission includes a "fair statement" of submissions made by an affected person in the final report, asserting that simply attaching the submissions to the report as an addendum in all cases would be a "fig leaf to fairness".[32] In his case, he said, his submissions pointed out factually incorrect assertions in the draft report. While the Commission removed those assertions from the final report, it decided to attach his submissions as an addendum, which "necessarily referred to those incorrect assertions".[33]

### 14.1.5 How should s 71A be amended?

Professor Matthew Groves has noted that expressing procedural fairness requirements "in highly prescriptive terms can be counterproductive because they invite decision-makers to approach the requirements of fairness as an exercise in compliance with those rules". On the other hand, "those decision-makers need a level of guidance" that goes beyond what can be drawn from judicial statements made in relation to particular factual and legislative contexts.[34]

Far more guidance is needed than is currently offered by s 71A of the *Crime and Corruption Act*. To better capture the full scope of what procedural fairness requires, the following amendments should be made to s 71A.

First, if the Commission prepares a draft report on a corruption investigation, and the person who is the subject of the report is identifiable, the Commission should be required to provide a copy of the report (or the relevant part) to that person. Just as the Private Member's Bill proposed, that should include any foreword to the report if that is relevant. The affected person should be given an opportunity to make submissions within 30 days, or a longer period agreed by the Commission, including on whether to report, the proposed content of the report, and whether the report should be anonymised.

This would address a number of issues raised in the submissions to the Review and would closely align with s 188 of the *Integrity Commission Act 2018* (ACT). In the Australian Capital Territory, the timeframe for submissions is six weeks. However, I consider that the 30-day period proposed by the Private Member's Bill would allow sufficient time to provide a response.

Second, if the draft report includes an adverse comment, the affected person should be given an opportunity to respond to the adverse material on which the comment was based, not merely the adverse comment itself. That aligns with the common law as well as s 162(3) of the *Independent Broad-based Anti-corruption Commission Act 2011*

(Vic). As the High Court recently held, that would not necessarily require the underlying evidence to be disclosed in all cases. For example, if the Commission decided not to include confidential information in the report pursuant to s 66 of the *Crime and Corruption Act*, it would not necessarily have to disclose that information to the affected person, but it would still need to convey the substance or gravamen of the adverse material.

Third, in accordance with the existing requirement in s 71A(3), after considering any submissions made, if the Commission still proposes to seek to have the report tabled or otherwise publish it, the Commission should be required to include a fair statement of the submissions in the report. The Commission should then be required to provide the final version of the report (or relevant part of the report) to the person affected with a further 14 days to respond.

This would be similar to s 157 of the *National Anti-Corruption Commission Act 2022* (Cth), save that the opportunity should extend beyond the opportunity to make submissions about the publication of an adverse comment, to an opportunity to make submissions about the publication of the report itself, and the period of time for a response would be stipulated. It is necessary to set a 14-day period in which the Commission cannot proceed with tabling or publishing in order to allow an affected person to commence a legal challenge in that time if they wish to do so. Allowing recourse to the courts *before* the report is tabled is particularly important in this context, because once a report is tabled it will be protected by parliamentary privilege, which will prevent any enquiry into whether the subject of the report received procedural fairness.[35]

Fourth, if the Commission proposes to make a public statement in relation to a corruption investigation, and the person who is the subject of the statement is identifiable, that person should be given a reasonable opportunity to make submissions on whether the public statement should be made. Similarly to s 231(2) of the *National Anti-Corruption Commission Act 2022* (Cth), s 71A should provide that a further opportunity is not required if the public statement merely relates to the release of a report, and procedural fairness has already been provided in relation to the report.

Providing for procedural fairness at each stage of the process would recognise that decisions made by the Commission at each of those stages can have serious impacts on a person's reputation and other interests. Other jurisdictions also stipulate that procedural fairness must be provided at multiple stages. For example, at the federal level, procedural fairness must be provided when it is proposed to include a critical comment in a report,[36] when it is proposed to publish a report that contains a critical comment,[37] or when it is proposed to make a public statement that contains a critical comment.[38] That is also consistent with the practice of interstate anti-corruption

bodies, such as in Western Australia, where procedural fairness is afforded in respect of the decisions about whether to report, whether to table the report, and whether those investigated are identified (see chapter 5).[39]

A person who receives a draft report or adverse material should be subject to the secrecy obligations in ss 213 and 214 of the *Crime and Corruption Act*, until the report is tabled or published, or the information is made public. As set out in Recommendation 11, s 214—which prohibits unauthorised publication of reports—should be amended to capture reports under the proposed new reporting and publishing powers, not only reports to which s 69 applies, as is currently the case.

Finally, given the terms of reference of the Review, these recommendations only concern s 71A as it relates to reports or public statements made in the exercise of the Commission's corruption functions (and prevention function so far as it concerns corruption). Section 71A currently applies to reports prepared in the performance of any of the Commission's functions aside from its crime functions. Consideration might be given to whether these recommended changes should also apply to reports and public statements made by the Commission in the exercise of its other functions.

### 14.1.6 Compatibility with human rights

Bolstering procedural fairness requirements would help to protect human rights, particularly the rights to privacy and reputation. As the Queensland Human Rights Commission submitted, the common law right to procedural fairness is closely related to the right to a fair hearing.[40] Seeking submissions from an affected person would also help the Commission to give proper consideration to the impact of its decision on the person's human rights, as required by s 58(1)(b) of the *Human Rights Act*. As the proposed amendments to s 71A of the *Crime and Corruption Act* would promote, rather than limit human rights, the amendment would be compatible with human rights.

#### Recommendation 13

Section 71A of the *Crime and Corruption Act 2001* should provide that, if the Crime and Corruption Commission prepares a draft report on a corruption investigation and the subject of the report is identifiable, the Commission must provide the report (or relevant part of the report) to that person to provide submissions within 30 days (or longer period agreed by the Commission), including on whether to report, the proposed content of the report, and whether the report should be anonymised.

If the draft report includes an adverse comment, s 71A should provide that the affected person must be given an opportunity to respond to the adverse material on which the comment was based.

After the 30-day period for submissions, if the Commission proposes to table or otherwise publish the report, s 71A should require the Commission to:

- finalise the report which is to include a fair statement of the submissions
- provide the version of the report (or relevant part of the report) proposed to be tabled or otherwise published to the person affected, and
- give that person a further opportunity to make submissions within 14 days.

The Commission should not be permitted to table or otherwise publish the report within that 14-day period.

If the Commission proposes to make a public statement in relation to a corruption investigation and the person who is the subject of the statement is identifiable, s 71A should provide that the person must be given a reasonable opportunity to make submissions, unless the public statement merely relates to the release of a report, and procedural fairness has already been provided in relation to the report.

## 14.2 Strengthening review mechanisms is not the answer

The recent case of *Kazal v Australia*[41] shows the predicament a person can find themself in if an anti-corruption commission issues a report that includes findings they have engaged in corrupt conduct, but there is insufficient evidence to warrant a prosecution, so that the person "never gets [their] day in court" and can never clear their name.[42] The potential for that predicament led the Queensland Human Rights Commission to submit that consideration should be given to "including mechanisms to challenge [decisions to report] and/or adverse findings in public reports".[43]

Counsel for Ms Trad similarly submitted that there should be an adequate right of review of any public findings that the Commission is empowered to make.[44] The application for review or appeal might be to the Supreme Court or a tribunal constituted by a serving or retired Supreme Court judge. The review should not be confined to the traditional grounds of judicial review; it should extend to review on the ground that the findings made by the Commission "could not reasonably be supported by the evidence". The submission pointed to a similar appeal avenue to the District Court from findings made by a Coroner at an inquest.[45] According to the submission, the availability of appeal would enhance public confidence in the Commission and the rigour it applies when making findings.

A similar proposal in New South Wales was considered in an independent review by the Hon Murray Gleeson and Mr Bruce McClintock SC in 2015.[46] They considered that introducing a ground that the Independent Commission Against Commission's finding was "not reasonably supported by the evidence" would effectively introduce merits review. That would confuse the role of the Commission and "make it look even more

like a court".[47] That is because the decisions of courts are typically subject to appeal on the basis of a mistake of fact, whereas the decisions of administrative bodies are typically subject only to judicial review, for example, on the basis that there was no evidence or other material to justify the making of the decision.[48] Counsel for Ms Trad suggested that concern may not be as strong in Queensland, given the long experience of the appeal avenue for coronial findings.[49]

However, there is another factor militating against merits review of findings made by the Commission. Unlike the Coroner,[50] and unlike the Independent Commission Against Corruption in New South Wales,[51] the Crime and Corruption Commission does not have an express power to make findings. It is "primarily an investigative body and not a body the purpose of which is to make determinations, however preliminary, as part of the criminal process".[52] That said, when the Commission reports the results of an investigation into allegations of corrupt conduct, it will need to express conclusions of some kind about the evidence or the sufficiency of evidence.[53] Although not amounting to a "finding" of corruption, those conclusions can still have an impact on a person's privacy and reputation. But it would be odd to introduce merits review in order to allow review of incidental conclusions about the facts, rather than ultimate findings. In fact, introducing merits review of the Commission's findings might suggest it has power to make more damaging findings, of the kind one would ordinarily expect to be the subject of merits review.

Apart from the issue of appealing findings of fact, counsel for Ms Trad argued forcefully that the traditional grounds of judicial review do not offer a sufficient protection of a person's reputation. Among other things, those grounds are concerned with the legality of the Commission's decisions and not the merits.[54]

As something of an aside, there are two observations that can be made about the availability (or otherwise) of merits review.

First, s 332 of the *Crime and Corruption Act* does represent an attempt to expand the grounds of judicial review. Under s 332, a person may seek judicial review of an investigation on the ground that it is "unwarranted" or is being conducted "unfairly". But as pointed out in chapter 10, in practice, those additional grounds probably do not add to the traditional grounds, which may point to the difficulty of attempting to do so.

Second, if a person affected by a Commission report applies for judicial review, they can "piggyback"[55] a claim that the Commission has breached its human rights obligations under s 58 of the *Human Rights Act*, for example by preparing a report that arbitrarily interferes with a person's privacy. Assessing whether the Commission has acted compatibly with human rights involves a "heightened standard of justification", requiring the Court to apply "a greater degree of scrutiny of the public authority's conduct than in a conventional judicial review proceeding".[56] That may not amount to

merits review,[57] but it does draw "the court more deeply into the facts, the balance which has been struck and the resolution of the competing interests than traditional judicial review".[58]

Judicial review may be an imperfect safeguard, but the solution is not to introduce stronger review mechanisms, such as merits review. The solution is to confine the scope of the Commission's statutory powers and to strengthen its obligations to provide procedural fairness. Any excess of those powers and any breach of those obligations can then be policed in the usual way by the existing avenues for judicial review. The 14 days I propose for a person affected by a report to respond to the Commission's decision to table or otherwise publish it would also give sufficient time to commence judicial review proceedings—if a ground of judicial review is available to them and they consider it is in their interests to do so—before the report is tabled and becomes cloaked in parliamentary privilege.

## 14.3 A reputational repair protocol is not needed

The possible safeguard of a reputational repair protocol featured in the recent case of *Kazal v Australia*. The United Nations Human Rights Committee noted Mr Kazal's claim that the findings made against him by the New South Wales Independent Commission Against Corruption "left him with a stain on his reputation, as he could not challenge the finding due to the lack of an exoneration protocol under the Independent Commission Against Corruption Act".[59] The Human Rights Committee also noted that in 2017 the Office of the Inspector in New South Wales had "criticiz[ed] the lack of an exoneration protocol available to [Mr Kazal]".[60] While not decisive in the Committee's reasoning, it is clear that the Committee treated the absence of safeguards of that kind as relevant to its conclusion that Mr Kazal's right to privacy had been breached.

The Office of the Inspector in New South Wales has raised the idea of an exoneration protocol in a number of reports starting from 2016.[61] The Parliamentary Committee rejected the idea in 2016,[62] and again in 2021.[63] That appears to be because an exoneration protocol has been conceived of as a form of merits review. Indeed, when it was first proposed in 2016, the exoneration protocol was seen as a way "the person against whom [a] finding was made [could] make an application to the Supreme Court for an expunging of the records of the ICAC or to have the findings set aside".[64] According to the Parliamentary Committee, just as Gleeson and McClintock had concluded in 2015, merits review of that kind would confuse the role played by the Commission with the role played by a court.[65] Moreover, a person is not exonerated just because they are subsequently acquitted or their prosecution is discontinued. A finding of corruption by the Commission on the balance of probabilities does not become "erroneous" merely because a jury was not satisfied of guilt beyond a reasonable doubt.[66]

However, the recommendations of the New South Wales Inspectors were taken up in the Australian Capital Territory. The Select Committee that recommended establishing an anti-corruption body in the Territory considered the experience in New South Wales and recommended that an exoneration protocol be implemented for "circumstances where an individual is subsequently exonerated or cleared of any personal corruption—after a finding of corruption".[67] Rather than an avenue of merits review, it would appear that the Select Committee had in mind "some mechanism for the public acknowledgement of the exoneration or clearance of any person if corruption is not found after the person's reputation has been attacked publicly".[68]

That recommendation was implemented as s 204 of the *Integrity Commission Act 2018* (ACT), which provides:

> **204 Reputational repair protocols**
>
> (1) The commission must make protocols (the ***reputational repair protocols***) about how the commission is to deal with damage to a person's reputation if—
>
> (a) the commission publishes in an investigation report, special report or commission annual report—
>
> (i) a finding or opinion that a person has engaged in, is engaging in, or is about to engage in, corrupt conduct; or
>
> (ii) a comment or opinion which is adverse to a person; and
>
> (b) any of the following happens:
>
> (i) the matter is referred to a prosecutorial body but the person is not prosecuted for an offence arising out of the investigation;
>
> (ii) the matter is referred to a prosecutorial body, the person is prosecuted for an offence arising out of the investigation and—
>
> (A) the prosecution is discontinued or dismissed; or
>
> (B) the person is found not guilty of the offence; or
>
> (C) the person is convicted of the offence but the conviction is quashed, nullified or set aside; or
>
> (D) the person is otherwise cleared of wrongdoing;
>
> (iii) the person is the subject of termination action arising out of the investigation and the person is cleared of wrongdoing.

(2) The reputational repair protocols are a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

As required by s 204, in 2020, the Integrity Commission published its reputational repair protocols. The only redress envisaged by the protocols is a letter to the person affected, or a notification on the Commission's website, which may state: that a report has been published with a finding of corrupt conduct against, or a comment adverse to, them; that one of the events in s 204(b) has occurred; that it is possible that the person has suffered reputational damage; and what measures the Commission considers are required to address that damage.[69] So far, the Commission's reputational repair protocols have not needed to be used.[70] According to counsel for Ms Trad, "[w]hilst no doubt these measures [in the Australian Capital Territory] are laudable, the effects of reputational damage caused by the reports of official inquiries are often irreversible".[71]

A reputational repair protocol is not needed in Queensland, at least in the form proposed in New South Wales or in the form implemented in the Australian Capital Territory. In those jurisdictions, an exoneration protocol was proposed as a way to address concerns about the Commission's power to make findings that ultimately go nowhere, leaving a person subject to an adverse finding they cannot challenge. But in Queensland, the Commission does not have a power to make any findings beyond a conclusion that the evidence is sufficient to refer the matter for consideration of prosecution or disciplinary action.[72] That is, a reputational repair protocol solves a problem that does not loom large in Queensland.

Nonetheless, a conclusion that the evidence is sufficient to warrant a referral can still be damaging. It is true that the Commission's conclusion about the sufficiency of evidence will not prove "erroneous" simply because a charge is not laid, because a charge is later withdrawn, or because the person is ultimately acquitted.[73] But other investigative bodies—such as the police—do not go on to publish a report stating that they found sufficient evidence to refer the matter. Given the risk to reputation, there would be value in the Commission ensuring its reports and public statements reflect the "full story".[74] If the Commission publishes a report or public statement stating that a person has been referred, charged, found guilty or otherwise subject to an adverse outcome in proceedings related to the investigation, it should update the webpage for the report or public statement with a clarifying note if the proceedings are discontinued, the person is acquitted, an appeal is successful or the person is otherwise successful in proceedings related to the investigation. However, there does not appear to be any need to set out such a practice as a requirement in legislation.[75] Occasion for a clarifying statement appears to be rare, and in any event, the Commission has adopted that practice in the past.[76]

Where subsequent events make it appropriate, the Commission should take steps to minimise the impact of its reporting or statements on a person's privacy and reputation—including by exercising its powers to exonerate a person, where that is applicable—but it is unnecessary to legislate for a reputational repair protocol.

## 14.4 Oversight by Parliamentary Commissioner

Finally, a reputational safeguard mentioned in chapter 4, but not raised in any of the submissions, is suggested by the *Independent Commission Against Corruption Act 2012* (SA). That Act requires the South Australian Inspector—who helps to oversee the Independent Commission Against Corruption—to consider whether the Commission has exercised its powers in an appropriate manner, including whether the Commission has invaded privacy unreasonably or caused undue prejudice to a person's reputation (see chapter 4 at [4.8.2]).[77]

But a similar, although less specific, form of protection is already available, at least in theory, in Queensland. The functions of the Parliamentary Commissioner, who plays a similar role to the South Australian Inspector, include considering whether the Commission has exercised its powers in an appropriate way and investigating any complaints made about the Commission, at the direction of the Parliamentary Committee.[78] That would include examining whether the Commission has acted within the scope of its reporting and statement-making powers, and in the process considering whether it has done so compatibly with human rights.[79]

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1 Eg, Crime and Corruption Commission, first submission, dated 12 March 2024, 27; Together Queensland submission, dated 21 March 2024, 3 [11], 12 [59].

2 Crime and Corruption Commission, addendum to the first submission, dated 14 March 2024, 2; Crime and Corruption Commission, Submission No 4 to the Legal Affairs and Safety Committee, *Crime and Corruption Amendment Bill 2023* (29 February 2024) 5.

3 Parliamentary Crime and Corruption Committee, Parliament of Queensland, *Report on a complaint by Mr Darren Hall* (Report No 99, November 2016) 6 (recommendation 1).

4 Crime and Corruption Amendment Bill 2023, cl 7.

5 *AB v Independent Broad-based Anti-corruption Commission* (2024) 98 ALJR 532, 539 [26]–[27].

6 *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 576–8, 591–2.

7 *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 578, quoting *South Australia v O'Shea* (1987) 163 CLR 378, 389.

8 *AB v Independent Broad-based Anti-corruption Commission* (2024) 98 ALJR 532, 538–9 [25], [27].

9 *Minister for Immigration and Border Protection v SZSSJ* (2016) 259 CLR 180, 206–7 [82].

10 *Minister for Immigration and Border Protection v WZARH* (2015) 256 CLR 326, 341 [55].

11 Crime and Corruption Commission, first submission, dated 12 March 2024, 20. See also Trad submission, dated 20 March 2024, 2–3 [3].

12 Subject to where the outcome would inevitably have been the same even if procedural fairness had been given: *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12, [15]–[16].

13 *Pathan v Secretary of State for the Home Department* [2020] 1 WLR 4506, 4538–9 [124]; *MZAPC v Minister for Immigration and Border Protection* (2021) 273 CLR 506, 543 [100]. The statements in

those cases are subject to the threshold requirement of materiality as recently explained in *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2024] HCA 12.

14 (2024) 98 ALJR 532. See also Matthew Groves, 'What's in a Name? Fairness and a Reasonable Opportunity: *AB v Independent Broad-Based Anti-Corruption Commission*' (2023) 45(4) *Sydney Law Review* 525.

15 *AB v Independent Broad-based Anti-corruption Commission* (2024) 98 ALJR 532, 534 [2], 539 [27], 540 [32].

16 *AB v Independent Broad-based Anti-corruption Commission* (2024) 98 ALJR 532, 534 [2], 540 [31]–[32].

17 Crime and Corruption Commission, addendum to the first submission, dated 14 March 2024, 2.

18 Crime and Corruption Amendment Bill 2023, cl 7, replacing s 71A.

19 *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 741 [9], [12]–[13].

20 *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 369 [89](z).

21 *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 743 [27], 750 [79].

22 At first instance, Davis J did not consider the procedural fairness ground on the basis that parliamentary privilege applied: *Carne v Crime and Corruption Commission* [2021] QSC 228, [156]–[158]. On appeal, in dissent, Freeburn J came to the same conclusion: *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 392–3 [196]. McMurdo and Mullins JJA did not consider the procedural fairness ground as their Honours found that the report was not authorised by the *Crime and Corruption Act 2001*.

23 Crime and Corruption Commission, Submission No 4 to the Legal Affairs and Safety Committee, *Crime and Corruption Amendment Bill 2023* (29 February 2024) 5.

24 Crime and Corruption Commission, first submission, dated 12 March 2024, 27.

25 Crime and Corruption Commission, addendum to the first submission, dated 14 March 2024, 2.

26 Martin submission, dated 20 March 2024, 7.

27 Department of Child Safety, Seniors and Disability Services submission, dated 19 March 2024, 2; Bar Association of Queensland submission, dated 16 April 2024, 1–2.

28 Queensland Human Rights Commission, first submission, dated 4 April 2024, 7; Bar Association of Queensland submission, dated 16 April 2024, 2.

29 Local Government Association of Queensland Ltd submission, dated 19 March 2024, 3 (in the context of "advisory" reports). See also Queensland Law Society submission, dated 27 March 2024, 3; Queensland Human Rights Commission, first submission, dated 4 April 2024, 7.

30 Bar Association of Queensland submission, dated 16 April 2024, 2; Laurie submission, dated 19 March 2024, 9.

31 Laurie submission, dated 19 March 2024, 9.

32 Barbagallo submission, dated 22 March 2024, 3.

33 Barbagallo submission, dated 22 March 2024, 4.

34 Matthew Groves, 'What's in a Name? Fairness and a Reasonable Opportunity: *AB v Independent Broad-Based Anti-Corruption Commission*' (2023) 45(4) *Sydney Law Review* 525, 538 (albeit in relation to procedural fairness requirements stated by the courts, rather than those stated by Parliament).

35 Eg, *Criminal Justice Commission v Parliamentary Criminal Justice Commissioner* [2002] 2 Qd R 8, 21–2 [23], 24 [34], 29 [51].

36 *National Anti-Corruption Commission Act 2022* (Cth) s 153.

37 *National Anti-Corruption Commission Act 2022* (Cth) s 157.

38 *National Anti-Corruption Commission Act 2022* (Cth) s 231.

39 Conversation with Emma Johnson, Chief Executive Officer and Kirsten Nelson, Executive Director Legal Services, Corruption and Crime Commission (WA) (the Review, 17 April 2024).

40 Queensland Human Rights Commission, first submission, dated 4 April 2024, 6–7. Though the right to a fair hearing in s 31 of the *Human Rights Act 2019* is not engaged in this situation, because the Crime and Corruption Commission is not acting as a "court" or "tribunal": see endnote 89 in chapter 9.

[41] Human Rights Committee, *Views: Communication No 3088/2017*, UN Doc CCPR/C/138/D/3088/2017 (11 April 2024) ("*Kazal v Australia*").
[42] Paul Pearce, 'Parliamentary Oversight from Parliament's Perspective: the NSW Parliamentary Committee on ICAC' (2006) 21(1) *Australasian Parliamentary Review* 95, 96.
[43] Queensland Human Rights Committee, first submission, dated 4 April 2024, 10.
[44] Trad submission, dated 20 March 2024, 4 [9], 49–50 [140]–[141].
[45] *Coroners Act 2003*, s 50(5)(d), considered in *Hurley v Clements* [2010] 1 Qd R 215, 235 [33]–[34], 242 [48].
[46] Murray Gleeson and Bruce McClintock, *Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption* (Report, 30 July 2015) 19–20 [3.4].
[47] Murray Gleeson and Bruce McClintock, *Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption* (Report, 30 July 2015) 20 [3.4.8].
[48] In Queensland, see *Judicial Review Act 1991*, s 20(2)(h).
[49] Trad submission, dated 20 March 2024, 50 [141].
[50] *Coroners Act 2003*, s 45.
[51] *Independent Commission Against Corruption Act 1988* (NSW) s 74BA (but only where the finding relates to serious corrupt conduct).
[52] Similar to the position in New South Wales when the High Court decided *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625. See at 633. See also *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 354 [34].
[53] Crime and Corruption Commission, first submission, dated 12 March 2024, 18. Cf *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625, 635.
[54] Trad submission, dated 20 March 2024, 43–6 [123]–[129]. Sarah Withnall Howe and Yvonne Haigh have also pointed to additional limitations on the effectiveness of judicial review when it comes to anti-corruption bodies: 'Anti-Corruption Watchdog Accountability: The Limitations of Judicial Review's Ability to Guard the Guardians' (2016) 75(3) *Australian Journal of Public Administration* 305. For example, unlike other executive bodies, they are usually exempt from any obligation to provide reasons as well as right to information requests: *Judicial Review Act 1991*, s 31, sch 2, ss 3–5; *Right to Information Act 2009*, s 48, sch 3, s 10. They can also rely upon confidentiality protections to resist normal obligations to produce relevant information: *Crime and Corruption Act 2001*, ss 213–214. These restrictions on access to information make it more difficult to challenge the decisions of anti-corruption bodies. However, as Howe and Haigh pointed out, those restrictions on access to information are the price of ensuring their independence: at 308.
[55] See the "piggyback" clause in s 59 of the *Human Rights Act 2019*.
[56] *Thompson v Minogue* (2021) 67 VR 301, 321 [72], 326 [97].
[57] *Thompson v Minogue* (2021) 67 VR 301, 327 [99].
[58] *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250, 302 [149], quoting *PJB v Melbourne Health* (2011) 39 VR 373, 444 [317]. Were the person affected by a report to claim that their right to privacy in s 25(a) of the *Human Rights Act 2019* has been breached, they would bear the onus of showing that any interference with their privacy was "arbitrary". However, because some of the matters that go to whether the interference was arbitrary will be solely within the knowledge of the Commission, the person may discharge their onus by pointing to objective circumstances which, in the absence of information from the Commission, would give rise to an inference of limitation: *Thompson v Minogue* (2021) 67 VR 301, 316 [47], 318 [57].
[59] Human Rights Committee, *Views: Communication No 3088/2017*, UN Doc CCPR/C/138/D/3088/2017 (11 April 2024) [8.2] ("*Kazal v Australia*").
[60] Human Rights Committee, *Views: Communication No 3088/2017*, UN Doc CCPR/C/138/D/3088/2017 (11 April 2024) [8.5] ("*Kazal v Australia*").
[61] See the timeline outlined in Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Reputational impact on an individual being adversely names in the ICAC's investigations* (Report 4/57, 25 November 2021) 31 [4.1]–[4.5] <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2595>.

[62] Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports* (Report 2/56, October 2016) 11–13 [2.1]–[2.12] (Recommendation 13) <https://www.parliament.nsw.gov.au/ladocs/inquiries/2397/Report-InspectorsReviewOfICAC.pdf>.

[63] Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Reputational impact on an individual being adversely names in the ICAC's investigations* (Report 4/57, November 2021) 36–40 [4.28]–[4.49] (Finding 11).

[64] David Levine, Inspector of the Independent Commission Against Corruption, *Report to the Premier: The Inspector's Review of the ICAC* (12 May 2016) 4–5 [15] <https://www.oiicac.nsw.gov.au/assets/Uploads/Reports/Other-Reports/Report-to-Premier-Inspectors-Review-of-the-ICAC.pdf>.

[65] Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports* (Report 2/56, October 2016) 13 [2.10]; Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Reputational impact on an individual being adversely names in the ICAC's investigations* (Report 4/57, November 2021) 39 [4.46].

[66] Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports* (Report 2/56, October 2016) 11 [2.2]; Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Reputational impact on an individual being adversely names in the ICAC's investigations* (Report 4/57, November 2021) 38 [4.37], 39 [4.44].

[67] Select Committee on an Independent Integrity Commission, Parliament of the Australian Capital Territory, *Inquiry into an Independent Integrity Commission* (Report, October 2017) 226 [14.49] (Recommendation 40) <https://www.parliament.act.gov.au/__data/assets/pdf_file/0008/1123388/9th-Select-Committee-on-IIC-Final-print-version.pdf>.

[68] Select Committee on an Independent Integrity Commission, Parliament of the Australian Capital Territory, *Inquiry into an Independent Integrity Commission* (Report, October 2017) 225 [14.44].

[69] Integrity Commissioner (ACT), *Integrity Commission Reputational Repair Protocols 2020* (NI2020–594, 4 September 2020) cl 3.2.

[70] Conversation with Judy Lind, Chief Executive Officer, ACT Integrity Commission (the Review, 6 March 2024).

[71] Trad submission, dated 20 March 2024, 43 [122].

[72] *Carne v Crime and Corruption Commission* (2022) 11 QR 334, 354 [34].

[73] Though it can erode public trust and confidence if charges are brought but later withdrawn: Gerald Edward (Tony) Fitzgerald and Alan Wilson, *Commission of Inquiry relating to the Crime and Corruption Commission: Report* (Report, August 2022) 130.

[74] Which is apparently the practice of the New South Wales Independent Commission Against Corruption, see: Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Review of the Independent Commission Against Corruption: Consideration of the Inspector's Reports* (Report 2/56, October 2016) 12 [2.7].

[75] Cf *Integrity Commission Act 2018* (ACT) s 203.

[76] Eg, Crime and Corruption Commission, 'Abuse of Office charge withdrawn' (Media Release, 28 October 2014) <https://www.ccc.qld.gov.au/news/abuse-office-charge-withdrawn>.

[77] *Independent Commission Against Corruption Act 2012* (SA) sch 4, s 9(1)(a)(i).

[78] *Crime and Corruption Act*, ss 314(2)(a)(i), (b).

[79] Especially given that, when acting in an administrative capacity, the Parliamentary Committee and Parliamentary Commissioner are public entities under ss 9(1)(g) and (4)(a) of the *Human Rights Act 2019*, and therefore required to exercise their own powers in a way that is compatible with human rights. It is clear that many of their functions are administrative: *Criminal Justice Commission v Nationwide News Pty Ltd* [1996] 2 Qd R 444, 457.

# Chapter 15: Whether amendments should be retrospective

The terms of reference require me to consider whether the legislative amendments should be made to operate retrospectively.[1]

## 15.1 Submissions to the Review

The Crime and Corruption Commission submitted that all previous reports on corruption matters it had prepared or published (including through tabling) and all public statements it had made should be validated.[2] It sought validation in relation to the preparation of such reports as well as their publication because the High Court had held in *Crime and Corruption Commission v Carne* that it had no statutory power to prepare reports of the kind.[3]

The Commission's submissions advanced two reasons for retrospective validation.

First, the Commission said, validation was required to avoid any doubt about whether previous reports can continue to be disseminated. It asserted that those reports "highlight corruption risks, demonstrate important integrity lessons and in many cases were the impetus for improved processes and procedures in public agencies".[4] According to the Commission, without retrospective validation, it would need to consider removing some reports from publication, including some published on its website.[5]

There is an argument for ensuring that those reports remain in the public domain, on the basis that it would promote freedom of expression. However, the Commission acknowledged that removing previous reports from the Commission's website "would not of course limit their public availability given that they had been tabled and form part of the records of Parliament".[6]

The second reason was the need to ensure public confidence in the Commission's work in preparing corruption investigation reports over many years.[7] This appears to be a submission that it is in the public interest that the reports prepared by the Commission are seen as having been produced lawfully, in order to prevent the erosion of public confidence in the work of the Commission.[8] As an example of the risk to public confidence, the Commission cited a public statement by Ms Trad that the Commission had acted unlawfully when it prepared a report into an investigation in relation to her.[9]

There is a further possible argument, one the Commission did not rely on, for retrospective amendments: to avoid the risk of litigation in relation to the lawfulness of previous reports. The Commission may have considered it unnecessary to advert to

that reason because its risk of liability is greatly reduced by a number of existing protections. The Commission and its officers enjoy protection from liability under s 335 of the *Crime and Corruption Act 2001* when they have engaged in conduct in an official capacity, "including, for example, engaging in conduct under or purportedly under [the *Crime and Corruption Act*]". As well, parliamentary privilege applies to reports tabled in the Legislative Assembly.[10] If the Commission has published a tabled report on its website or prepared a summary of the report, the immunity from liability in s 54 of the *Parliament of Queensland Act 2001* for the publication of a fair report of a document tabled in the Assembly will apply.

According to the Commission, it is not uncommon for retrospective legislation to be passed to correct defects in legislation that have been revealed in litigation.[11] When passing retrospective legislation, Parliament must balance the need for the retrospective amendments against the risk of harm; in this case, validating reports prepared and published on the basis of the Commission's previous understanding of its powers would, it contended, strike an appropriate balance.[12]

That view was echoed in submissions from others, particularly from previous chairpersons of the Commission.[13] Mr Martin KC drew attention to four factors he said supported a conclusion that the amendments should be retrospective. First, amendments that gave the Commission a reporting power would simply place it in the position it had previously thought it was in. Second, previous reports covered matters of "great public significance". Third, the amendments would relate to the conduct of an investigation and therefore might be regarded as procedural amendments, rather than substantive amendments. (The impact of retrospectivity is not as great for procedural amendments.) Finally, retrospective amendments that allowed outstanding reports to be issued would not prejudice anyone named in those reports. The reports would have been published in any event, were it not for the High Court's decision in *Crime and Corruption Commission v Carne*.[14] Mr Needham also expressed support for retrospective validation, because of the importance of the prevention function.[15]

Other submissions to the Review opposed any amendments being made retrospective.[16] In particular, the Queensland Law Society, Together Queensland and Ms Trad noted that rule of law principles underpin the common law presumption that legislation is not intended to operate retrospectively.[17] The reason is that it can be unjust to make someone suffer the consequences of a law that did not previously exist, when they ordered their affairs on the basis of the law as it stood at the time. As a general proposition, the rule of law requires that laws be sufficiently accessible, clear and certain.[18] Retrospective laws are none of those things.

Together Queensland and Ms Trad also pointed out that, under the *Legislative Standards Act 1992*,[19] one of the "fundamental legislative principles" is that legislation

should not adversely affect rights and liberties retrospectively.[20] Ultimately, while Parliament can pass retrospective laws, it should only do so when it is justified.[21] Here, according to some of the submissions, there is no compelling reason why the amendments should operate retrospectively.

As outlined in chapter 9, retrospective legislation also raises human rights issues. Together Queensland noted that retrospective amendments that allow previously unpublished reports to be published would "impinge[] on the rights of people identified in those publications including their human rights, such as rights to privacy and reputation" in s 25 of the *Human Rights Act 2019*.[22] In addition, removing a cause of action retrospectively would also engage the right to property in s 24 of the *Human Rights Act*.

## 15.2 Whether powers to prepare, table or otherwise publish reports should operate retrospectively

A basic requirement of the rule of law is that laws generally be prospective rather than retrospective.[23] Laws that alter the future legal consequences of past actions and events cannot guide human conduct, for the obvious reason that they did not exist at the time the conduct occurred.[24] The traditional resistance of the common law to retrospective legislation[25] is reflected in the presumption against retrospective operation of legislation:

> In a representative democracy governed by the rule of law, it can be assumed that clear language will be used by the Parliament in enacting a statute which falsifies, retroactively, existing legal rules upon which people have ordered their affairs, exercised their rights and incurred liabilities and obligations.[26]

In Queensland, those considerations are reinforced by the fundamental legislative principles in the *Legislative Standards Act*. Section 4(3)(g) directs attention to whether the legislation has sufficient regard to rights and liberties of individuals, in particular, whether the legislation "adversely affect[s] rights and liberties, or impose[s] obligations, retrospectively". Retrospectively reducing civil liability engages this principle.[27] In addition, the *Human Rights Act* directs attention to whether proposed amendments would be compatible with human rights, such as the right to privacy and reputation[28] (in respect of any previous reports that have not yet been published) or the right to property[29] (in respect of any cause of action that might currently exist about a previous report but will effectively be taken away retrospectively).[30]

The Commission's submission that retrospective legislation "will" be justified "where the intent is to be curative or validating" is not quite accurate.[31] Rather,

retrospective legislation that is curative and validating *may* be justified, depending on the circumstances.[32]

There needs to be good reason for departing from the general rule that legislation ought to operate prospectively, and the retrospective operation needs to be justified by reference to that good reason.[33] In this case there is good reason: avoiding the risk of litigation serves the legitimate aim of protecting the State's financial interests.[34] Validating previous reports would also avoid any doubt about whether the reports can remain in the public domain, arguably promoting the right of the public to seek and receive information about corruption investigations in s 21 of the *Human Rights Act*.

The Commission's concern for its institutional reputation is not a good reason for making the amendments retrospective. Protecting government institutions from criticism may not be a legitimate aim at all,[35] or, at the highest, is not one which carries much weight: "In a democratic system the actions or omissions of a body vested with executive powers must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion".[36] Moreover, the reputation the Commission wishes to maintain is its reputation as having acted lawfully. But it has not acted lawfully, however much it may have acted in good faith on the misunderstanding that it was acting lawfully. Following the High Court's ruling in *Crime and Corruption Commission v Carne*, it is uncontroversial that the Commission has in the past acted outside its statutory powers when reporting on individual corruption matters.[37] Retrospective amendments cannot change that historical reality.[38]

The question, then, is whether retrospective amendments are justified by the legitimate aims of protecting the State's financial interests and ensuring previous reports remain in the public domain. Making the amendments retrospective would be rationally connected to those legitimate aims as well as necessary to achieve those aims. The only way to avoid the risk of liability in relation to previous reports and to ensure they can continue to be disseminated is through retrospective legislation of some kind.

However, retrospective amendments can take a number of forms, some more restrictive than others. At one extreme, legislation can validate past acts and decisions even though similar acts or decisions will not necessarily be valid going forward.[39] It is possible that cl 8 of the Private Member's Bill would operate in this way. That clause would insert a provision into the *Crime and Corruption Act* declaring that a report purportedly tabled under s 69 is "taken to be, and to always have been, as validly given, tabled and published as it would have been if the report had been given, tabled and published under section 69".[40] That validation of

past reports would operate independently of the amendments applying to future reports.

What the terms of reference require consideration of is a narrower proposition, that the reporting powers proposed for the future be made to operate retrospectively.[41] The new powers to prepare, table and otherwise publish corruption reports will aim to strike a fairer balance between free expression and privacy going forward. Making those powers retrospective would reflect an endorsement of past reports that would have met that standard of fairness. Since that less restrictive option would largely achieve the objectives, in the fairest way possible, it is difficult to see how the more drastic option of a blanket validation of all previous reports, even had it been within the terms of reference, could be justified. It would hardly be fair to prevent for the future the publication of reports that come at too high a cost to privacy and reputation, but endorse such reports from the past.[42]

Ultimately, while the benefits and harms of retrospective amendments are fairly evenly balanced, my view is that validation of previous reports only where they come within the scope of the new reporting powers would strike an appropriate balance between the competing considerations.

On one side of the scales, there are the negative impacts of allowing the new reporting powers to operate retrospectively. Validating previous reports may harm a person's privacy and reputation if the amendment leads to the publication of reports that have not yet been published. But the harm to privacy and reputation will be relatively confined. The amendments will only allow reports to be published if they would come within the scope of the new reporting powers, which are proportionate to the rights to privacy and reputation. Although making the amendments retrospective might have the effect of removing a cause of action (thus depriving people of a form of property), it is relevant[43] that any litigation would face significant hurdles in any event, given the existing protections from liability.

Of course, the impact on the right to property would be largely mitigated if the amendments were accompanied by compensation for any causes of action that are effectively removed. That is an important consideration in European human rights cases when determining whether validating legislation that extinguishes claims comes at too high a cost to the right to property.[44] However, in considering the weight of that consideration in Queensland, it must be recognised that the right to property in the *Human Rights Act* was not intended to provide a right to compensation.[45]

The proposed amendments would not lie at the more egregious end of the spectrum of retrospective laws. They would not, for example, impose any criminal liability retrospectively, which is "generally considered a great deal more objectionable than retrospective civil legislation".[46] However, the amendments are not merely procedural, as Mr Martin suggested might be the case. To the extent they effectively remove a cause of action, they are substantive, and the full weight of the presumption against retrospectivity would apply.[47]

On the other side of the scales, consideration needs to be given to the benefits of allowing the amendments to operate retrospectively. Given all the protections from liability already in place, validating legislation would further reduce the risks of litigation and liability only in a small, incremental way. The importance of validating previous reports in order to ensure that they remain available to the public is also not so great once it is considered that the public will still be able to obtain access to any reports that have been tabled in the Legislative Assembly. The Commission would also be protected from liability if it were to publish on its website any report already tabled in the Assembly.[48] Validating previous reports would remove doubt about whether those reports can continue being disseminated, but the additional benefits for continued access to the reports would be relatively slight.

Nonetheless, the benefits of retrospective legislation are not negligible. There is value in removing any doubt about the validity of previous reports that would have come within the scope of the new reporting powers proposed. Previous reports that would have met that fair standard should be endorsed as valid in order to reduce the risks of liability for those reports and to ensure continued public access to those reports.[49] While the importance of those legitimate aims is relatively small, it outweighs the negative impacts of making the amendments retrospective.

For those reasons, making the new reporting powers retrospective would strike a fair balance. Accordingly, any interference with privacy and any deprivation of property will not be arbitrary,[50] meaning that the rights to privacy and property in ss 24 and 25 of the *Human Rights Act* will not be limited. Any impacts on other rights will also be proportionate, so that the retrospective amendments proposed would be compatible with human rights. In addition, the detraction from the fundamental legislative principles in the *Legislative Standards Act* would be justified.

### Recommendation 14

The powers to prepare, table and otherwise publish reports recommended in Recommendations 2 to 10 should operate retrospectively. That is, the preparation,

tabling and publication of reports in the past should be valid if the preparation, tabling or publication would have been authorised had the reporting powers proposed in those recommendations applied at the time.

## 15.3 Whether the new power to make public statements should also be retrospective

None of the submissions received by the Review specifically addressed validation of public statements, as distinct from validation of reports. The Commission stated that its submissions in relation to retrospective validation of reports applied equally to public statements.[51] It expressed the view that it may already have had the power to make public statements—in which case, retrospective amendments would not be needed—but it still considered it preferable that an express power be included in any amendments.[52]

Identifying past statements in order to validate them would be a very difficult task. Whereas reports are readily identifiable, public statements can take a variety of forms. However, that difficulty would not arise if the proposed power operated retrospectively (with past statements being authorised retrospectively if they fall within the scope of the power).

The legitimate aims identified above apply equally to a retrospective power to make public statements. There is value in reducing the liability risks from past statements, as well as value in sharing the information in at least some statements made by the Commission in the past. For the reasons given in relation to reporting, past public statements should be retrospectively authorised where they would have come within the scope of the proposed new power to make public statements. Applying the amendment retrospectively in that way would strike an appropriate balance between the competing considerations and would be compatible with human rights.

Recommendation 15

The power to make public statements recommended in Recommendation 12 should operate retrospectively. That is, public statements made in the past should be valid if they would have been authorised had the proposed power to make public statements applied at the time.

## 15.4 Whether the proposed new safeguards should be retrospective

The vice of retrospective laws—that they cannot guide human conduct which has already occurred—applies equally to the conduct of the officers of the Commission. I have concluded that there is a need to raise the standard of

procedural fairness expected from the Commission for the future, but the Commission's past activities cannot reasonably be judged by that standard.

As already observed, there is value in ensuring the public can have continued access to reports and statements that would have come within the scope of the proposed new reporting powers; but if the new procedural fairness obligations were to operate retrospectively it is possible that few, if any, reports and statements from the past would be treated as valid.

That may be why the recent Private Member's Bill proposed a strengthened version of s 71A of the *Crime and Corruption Act*, but on the basis that the Commission would be exempt from having to comply with that higher standard for the reports in relation to Mr Carne and Ms Trad.[53] Subject to two qualifications, that approach should be applied to the amendments I propose to s 71A.

The first qualification is that the amendments should not refer to particular reports or people. Legislation should ordinarily be of general application.[54] Ad hominem legislation is generally to be avoided unless it is necessary, and it is not necessary in this case.

The second qualification is that a report should not be completely immunised from the new procedural fairness obligations merely because the Commission has commenced the reporting process and is part of the way through. Of course, if the Commission has already decided to prepare a report, it cannot be expected to give procedural fairness under the new s 71A for that decision. But if it has not yet published the report, there is no reason why it cannot comply with the new standard set by the proposed amendment to s 71A before tabling or publishing the report. If the Commission has already afforded procedural fairness, but to a lower standard, it may need to afford procedural fairness again, to the proposed standard, before publishing the report.

A purely prospective operation for the proposed amendment to s 71A would be compatible with human rights. The strengthened procedural fairness obligations will help to safeguard human rights, such as the right to privacy and reputation, in the future. For past reports and statements, there may be a tangential impact on privacy and reputation in the sense that, without retrospective amendments, a person may not be able to challenge the report or statement on the basis of a higher standard of procedural fairness, and in that way vindicate their claim that their reputation had been adversely impacted in the past. But that tangential impact would be readily outweighed by the legitimate aim of ensuring the public can have continued access to reports that would have come within the scope of the proposed new reporting powers. The proposed amendment to s 71A does not need to be made retrospective to ensure compatibility with human rights.

## Recommendation 16

The proposed amendment to s 71A of the *Crime and Corruption Act 2001* in Recommendation 13 should not apply retrospectively. Where the Crime and Corruption Commission is part of the way through a reporting process, the proposed amendment to s 71A should apply for any future steps, but not for any steps that have been completed.

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1 Terms of reference, [4](c).
2 Crime and Corruption Commission, first submission, dated 12 March 2024, 30–2; Crime and Corruption Commission, second submission, dated 18 April 2024, 2.
3 Crime and Corruption Commission, second submission, dated 18 April 2024, 2, referring to *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 748–9 [68], 754 [104].
4 Crime and Corruption Commission, first submission, dated 12 March 2024, 30. See also Neil Laurie, 'Mount Erebus to Ann Street: Forty years of judicial supervision of ad hoc and permanent commissions of inquiry and the intersection with parliamentary privilege and doctrines of mutual respect' (2023) 38(2) *Australasian Parliamentary Review* 73, 94–5.
5 Crime and Corruption Commission, second submission, dated 18 April 2024, 3.
6 Crime and Corruption Commission, second submission, dated 18 April 2024, 3.
7 Crime and Corruption Commission, second submission, dated 18 April 2024, 2.
8 Crime and Corruption Commission, second submission, dated 18 April 2024, 3.
9 Crime and Corruption Commission, second submission, dated 18 April 2024, 2, citing @jackietrad (Jackie Trad) (X (formerly Twitter), 3 October 2023, 3:18 PM AEST) <https://x.com/jackietrad/status/1709075334929563958>.
10 *Parliament of Queensland Act 2001*, s 8.
11 In submissions to the Community Safety and Legal Affairs Committee in relation to the Private Member's Bill, the Crime and Corruption Commission raised the examples of *Criminal Code and Jury and Another Act Amendment Act 2008* (Qld) s 12, inserting s 385 following *Witness D v Crime and Misconduct Commission* [2008] QSC 155, as well as *Crime and Misconduct and Summary Offences Amendment Act 2009* (Qld) s 14, inserting ch 8, pt 7 following *Scott v Witness C* (2009) 193 A Crim R 430. See Crime and Corruption Commission, Submission No 4 to Legal Affairs and Safety Committee, Parliament of Queensland, *Crime and Corruption Amendment Bill 2023* (29 February 2024) 7. However, it should be noted that the Scrutiny Committee referred to Parliament the question of whether the retrospective operation of the first example cited above was justified: Scrutiny of Legislation Committee, Parliament of Queensland, *Alert Digest* (Digest No 9 of 2008, 9 September 2008) 24 [52].
12 Crime and Corruption Commission, first submission, dated 12 March 2024, 30–1.
13 In addition to the submissions of former chairpersons, one department supported "the development of appropriate legislative amendments enabling the CCC to conduct public reviews and publish reports both in the future and retrospectively": Department of Tourism and Sport submission, dated 14 March 2024.
14 Martin submission, dated 20 March 2024, 9–11.
15 Conversation with Robert Needham, former Chairperson, Crime and Misconduct Commission (the Review, 12 March 2024).
16 Local Government Association of Queensland Ltd submission, dated 19 March 2024, 3; Trad submission, dated 20 March 2024, 4 [10], 50–2 [142]–[147]; Department of Education submission, dated 20 March 2024, 3; Together Queensland submission, dated 21 March 2024, 3 [12], 12 [60]–[62]; Queensland Law Society submission, dated 27 March 2024, 4–5.
17 Queensland Law Society submission, dated 27 March 2024, 4; Trad submission, dated 20 March 2024, 50–51 [142]–[143]; Together Queensland submission, dated 21 March 2024, 12 [60]–[62].

[18] Together Queensland submission, dated 21 March 2024, 12 [61]. See also *Sunday Times v United Kingdom* (1979) 2 EHRR 245, 271 [49]; *Kracke v Mental Health Review Board* (2009) 29 VAR 1, 46 [174]; *PJB v Melbourne Health* (2011) 39 VR 373, 396 [91].

[19] Trad submission, dated 20 March 2024, 51 [144]; Together Queensland submission, dated 21 March 2024, 12 [61].

[20] *Legislative Standards Act 1992*, s 4(3)(g).

[21] Together Queensland submission, dated 21 March 2024, 12 [61].

[22] Together Queensland submission, dated 21 March 2024, 12 [60].

[23] Lon Fuller, *The Morality of Law* (Yale University Press, revised ed, 1969) 39; Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford University Press, 2nd ed, 2009) 214.

[24] Lisa Burton Crawford, *The Rule of Law and the Australian Constitution* (Federation Press, 2017) 92–3.

[25] *Phillips v Eyre* (1870) LR 6 QB 1, 23; William Blackstone, *Commentaries on the Laws of England* (A Strahan, 15th ed, 1809) vol 1, 46.

[26] *Australian Education Union v General Manager, Fair Work Australia* (2012) 246 CLR 117, 135 [30].

[27] Eg Scrutiny of Legislation Committee, Parliament of Queensland, *Alert Digest* (Digest No 7 of 2002, 20 August 2002) 20 [12]–[14].

[28] *Human Rights Act 2019*, s 25.

[29] *Human Rights Act 2019*, s 24.

[30] On a possible link between the common law position on retrospectivity and human rights, see *R v GT* [2005] QCA 478, [27].

[31] Crime and Corruption Commission, second submission, dated 18 April 2024, 3.

[32] Queensland Government, *The Queensland Legislation Handbook* (6th ed, 2019) 35 [7.2.7]; Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs – Retrospectivity* (June 2013) 15–6 [50]–[51].

[33] "Strong argument is required": Queensland Government, *The Queensland Legislation Handbook* (6th ed, 2019) 35 [7.2.7].

[34] *Pressos Compania Naviera SA v Belgium* (1996) 21 EHRR 301, 335–6 [36].

[35] *R v Zundel* [1992] 2 SCR 731, 764–5 ("prevention of deliberate slanderous statements against the great nobles of the realm" was not a legitimate aim).

[36] *Wojczuk v Poland* (2022) 75 EHRR 9, 284 [72].

[37] Eg *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 754 [104] ("The October Draft was not a lawful action").

[38] The point of a deeming provision is to create a statutory fiction to achieve some objective (such as protecting State finances); "as a rule [a deeming provision] impliedly admits that a thing is not what it is deemed to be": *R v Verrette* [1978] 2 SCR 838, 845.

[39] Eg *Federal Courts (State Jurisdiction) Act 1999*, s 6, considered in *Re Macks; Ex parte Saint* (2000) 204 CLR 158.

[40] Crime and Corruption Amendment Bill 2023, cl 8, inserting s 459.

[41] Eg *Independent Commission Against Corruption Act 1988* (NSW) sch 4, pt 13, cls 34–35, considered in *Duncan v Independent Commission Against Corruption* (2015) 256 CLR 83. Though note that the retrospective operation of this provision may have had the unintended consequence of removing the availability of judicial review for certain people: Joint Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Reputational impact on an individual being adversely names in the ICAC's investigations* (Report 4/57, November 2021) 33–4 [4.12]–[4.20] <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=174>.

[42] This aspect of the impact on human rights appears to have been overlooked in: Community Safety and Legal Affairs Committee, Parliament of Queensland, *Crime and Corruption Amendment Bill 2023* (Report No 6, April 2024) 14. However, whether a retrospective operation was justified was considered through the prism of fundamental legislative principles: at 11–13.

[43] *Wallace v Tannock* [2023] QSC 122, [54] (when assessing the size of the impact on human rights, it is relevant to take into account whether the person's human rights are already inhibited by other measures).
[44] *Pressos Compania Naviera SA v Belgium* (1996) 21 EHRR 301, 336–7 [38]–[39].
[45] Explanatory Notes, Human Rights Bill 2018 (Qld) 22.
[46] *Polyukhovich v Commonwealth* (1991) 172 CLR 501, 642.
[47] *New South Wales v McMullin* (1997) 73 FCR 246, 252A–B, 261E–F, 263A–B; *Repatriation Commission v Keeley* (2000) 98 FCR 108, 122 [40], 123 [46]. Cf *Maxwell v Murphy* (1957) 96 CLR 261, 267.
[48] *Parliament of Queensland Act 2001*, s 54.
[49] Noting that it might be said that the need to bring the law into line with a more proportionate standard is weighty for prospective amendments but not so weighty when it comes to retrospective amendments: *Pressos Compania Naviera SA v Belgium* (1996) 21 EHRR 301, 338 [43]; *Draon v France* (2006) 42 EHRR 40, 835 [85].
[50] *Thompson v Minogue* (2021) 67 VR 301, 318–9 [55]–[58].
[51] Crime and Corruption Commission, second submission, dated 18 April 2024, 2.
[52] Crime and Corruption Commission, first submission, dated 12 March 2024, 30.
[53] Crime and Corruption Amendment Bill 2023, cl 8, inserting s 460.
[54] UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc E/CN.4/1985/4 (28 September 1984) 4 [15].

# Annexures

# Annexure A: Recommendations

## Reports and statements in the public interest

### Recommendation 1

The discretions conferred on the Crime and Corruption Commission to prepare a report, to table or otherwise publish a report, and to make a public statement in relation to a corruption assessment or investigation should be exercised only in the public interest; in considering which the Commission should be required to take into account:

- the need for transparency and accountability in government and the public sector
- the effect on the human rights of persons who may be identified, including their rights to privacy, reputation, the presumption of innocence and a fair trial
- the need to ensure that any pending legal proceedings are not prejudiced
- the seriousness of the matter under investigation or assessment
- whether the matter in question has been the subject of significant public controversy.

## Recommended circumstances for reporting

### Recommendation 2

The Crime and Corruption Commission should be given the express power to prepare a report on a public hearing ("a public hearing report"), and any evidence elicited in a public hearing should be able to be included in an investigation report, subject to any requirements concerning the contents of such a report.

### Recommendation 3

The Crime and Corruption Commission should have a discretion to prepare a report on a completed investigation for the purpose of confirming that allegations of corrupt conduct are unfounded, provided that it does not identify any person except to the extent reasonably necessary or sought by them, makes no commentary or expression of opinion critical of any identifiable person and does not contain recommendations which are based on the conduct of any identifiable person.

### Recommendation 4

Where a subject of a completed corruption investigation is the holder of an appointment to which they have been elected and has not been found guilty of any related offence, the Crime and Corruption Commission should be able to prepare a report on the investigation so far as it concerns that person, provided that it contains no critical commentary or expression of opinion concerning them or recommendation based on their conduct, other than (if applicable) that the allegations of corruption

investigated are unsubstantiated or that the evidence does not support consideration of prosecution proceedings against them.

### Recommendation 5

Where a subject of a completed corruption investigation has

- been found guilty of an offence related to the matter investigated
- been the subject of a finding by the Queensland Civil and Administrative Tribunal that corrupt conduct has been proved against them under ch 5, pt 2 of the *Crime and Corruption Act 2001* or
- had their appointment or employment terminated as a result of a disciplinary breach based on conduct which was a subject of the investigation or been the subject of a disciplinary declaration pursuant to s 95 of the *Public Sector Act 2022*, declaring that a disciplinary ground based on such conduct exists, and that had their employment not already ended, it would have been terminated

the Crime and Corruption Commission should have a discretion, if it considers the corrupt conduct which has led to that result to be serious, to prepare a report on the corruption investigation so far as it concerns that person.

### Recommendation 6

It should be a requirement that where an investigation report which concerns a person or persons identified pursuant to a recommended reporting power makes reference to the actions of other persons, it must not, except to the extent reasonably necessary, identify those other persons, and it must contain no critical commentary or expression of opinion concerning those other persons or recommendation based on their conduct.

### Recommendation 7

Where a completed corruption investigation reveals evidence of systemic corrupt conduct the Crime and Corruption Commission should have a discretion to prepare a report on the corruption investigation, provided that information which might identify a person is only included if and to the extent

- they have already been named in a public hearing
- they fall into one of the categories listed in Recommendation 5 or
- it is reasonably necessary.

### Recommendation 8

The Crime and Corruption Commission should, in the exercise of its prevention function as it relates to corruption, have a discretion to prepare reports, including reports which

contain details of a completed investigation, provided that information which might identify a person, including a person the subject of the investigation, is only included if and to the extent

- they have already been named in a public hearing
- they fall into one of the categories listed in Recommendation 5 or
- it is reasonably necessary.

## Tabling and publishing reports

### Recommendation 9

Section 69 of the *Crime and Corruption Act 2001* should be amended so that the Crime and Corruption Commission

- may give a report prepared under one of the recommended reporting powers to the Speaker for tabling, and
- must give a report to the Speaker for tabling if it is a report on a public hearing or a report prepared by the Commission that the Parliamentary Committee directs the Commission to give to the Speaker.

The existing exclusion of annual reports and reports under ss 49, 65 or 66 from the application of s 69 should continue to apply.

### Recommendation 10

The Crime and Corruption Commission should be given a separate power to publish reports prepared under one of the recommended reporting powers, without necessarily tabling the report, similar to s 156 of the *National Anti-Corruption Commission Act 2022* (Cth) or s 50A of the *Independent Commissioner Against Corruption Act 2017* (NT).

The power should not affect the limits on publication of reports under ss 49, 65 or 66 of the *Crime and Corruption Act 2001*.

### Recommendation 11

Section 214 of the *Crime and Corruption Act 2001* should be amended to prevent unauthorised publication of reports prepared under one of the powers recommended in Recommendations 2 to 8, until the report is tabled or published under the tabling and publishing powers recommended in Recommendations 9 and 10 (unless the publication is authorised by the *Crime and Corruption Act 2001*); with the exception that a person who receives a draft report, or part of a report, may publish it for the purposes of seeking legal advice and applying for judicial review.

## Recommended circumstances for making public statements

### Recommendation 12

The Crime and Corruption Commission should be given the express power to make public statements in connection with a corruption investigation, for any of the following purposes:

- to indicate that it would be inappropriate for the Commission to comment on the matter
- to refuse to confirm or deny anything in relation to the matter
- to inform the public that the evidence does not warrant an investigation or a referral, if the matter is publicly known and with the consent of the person affected
- to provide a summary of a report that has been tabled or otherwise published, or
- to provide information about a charge, disciplinary proceeding or other proceeding brought as a result of the investigation, and the outcome of the proceeding.

The Commission should also be given an express power to make public statements in connection with a corruption investigation, for one of the following purposes, but only in exceptional circumstances:

- to seek evidence in relation to the matter in the course of preliminary inquiries into, or an investigation of, the matter
- to address public misconceptions about persons or issues of which the Commission has particular knowledge
- to prevent or minimise the risk of prejudice to the reputation of a person, or to redress prejudice caused to the reputation of a person as a result of an allegation having been made public, taking into account the views of that person
- to provide information about a referral for consideration of prosecution, disciplinary action or other action, or
- to provide information about other action taken or that may be taken by the Commission in relation to the matter.

The power to make a public statement should be subject to the requirement that the public statement must not name or identify any person unless it is reasonably necessary to do so, for example, where the public statement relates to a report that names a person, or where other exceptional circumstances make it appropriate to identify the person.

## Additional Safeguards

### Recommendation 13

Section 71A of the *Crime and Corruption Act 2001* should provide that, if the Crime and Corruption Commission prepares a draft report on a corruption investigation and the subject of the report is identifiable, the Commission must provide the report (or relevant part of the report) to that person to provide submissions within 30 days (or longer period agreed by the Commission), including on whether to report, the proposed content of the report, and whether the report should be anonymised.

If the draft report includes an adverse comment, s 71A should provide that the affected person must be given an opportunity to respond to the adverse material on which the comment was based.

After the 30-day period for submissions, if the Commission proposes to table or otherwise publish the report, s 71A should require the Commission to:

- finalise the report which is to include a fair statement of the submissions
- provide the version of the report (or relevant part of the report) proposed to be tabled or otherwise published to the person affected, and
- give that person a further opportunity to make submissions within 14 days.

The Commission should not be permitted to table or otherwise publish the report within that 14-day period.

If the Commission proposes to make a public statement in relation to a corruption investigation and the person who is the subject of the statement is identifiable, s 71A should provide that the person must be given a reasonable opportunity to make submissions, unless the public statement merely relates to the release of a report, and procedural fairness has already been provided in relation to the report.

## Retrospectivity

### Recommendation 14

The powers to prepare, table and otherwise publish reports recommended in Recommendations 2 to 10 should operate retrospectively. That is, the preparation, tabling and publication of reports in the past should be valid if the preparation, tabling or publication would have been authorised had the reporting powers proposed in those recommendations applied at the time.

### Recommendation 15

The power to make public statements recommended in Recommendation 12 should operate retrospectively. That is, public statements made in the past should be valid if they would have been authorised had the proposed power to make public statements applied at the time.

### Recommendation 16

The proposed amendment to s 71A of the *Crime and Corruption Act 2001* in Recommendation 13 should not apply retrospectively. Where the Crime and Corruption Commission is part of the way through a reporting process, the proposed amendment to s 71A should apply for any future steps, but not for any steps that have been completed.

# Annexure B: Submissions received; meetings held

## List of written submissions received by the Review

| Submission | Date of submission |
|---|---|
| Mr Brendan Butler AM KC, former Chairperson of the Crime and Corruption Commission | 11 March 2024 |
| Ms Clare O'Connor, Director-General, Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts | 11 March 2024 |
| Mr Bruce Barbour, Chairperson, Crime and Corruption Commission, first submission<br><br>Mr Bruce Barbour, Chairperson, Crime and Corruption Commission, addendum to first submission<br><br>Mr Bruce Barbour, Chairperson, Crime and Corruption Commission, second submission | 12 March 2024<br><br>14 March 2024<br><br>18 April 2024 |
| Mr Andrew Hopper, Director-General, Department of Tourism and Sport | 14 March 2024 |
| Mr Stephen Smith, Acting Commissioner, Queensland Fire and Emergency Services | 15 March 2024 |
| Mr Steve Gollschewski, Acting Commissioner, Queensland Police Service, first submission<br><br>Mr Steve Gollschewski, Commissioner, Queensland Police Service, second submission | 15 March 2024<br><br>24 April 2024 |
| Ms Sally Stannard, Director-General, Department of Transport and Main Roads | 18 March 2024 |
| Ms Alison Smith, Chief Executive Officer, Local Government Association of Queensland | 19 March 2024 |
| Mr Angus Scott KC, on behalf of Ms Jackie Trad | 20 March 2024 |
| Ms Deidre Mulkerin, Director-General, Department of Child Safety, Seniors and Disability Services | 19 March 2024 |
| Mr Neil Laurie, Clerk of Parliament | 19 March 2024 |
| | |
| Ms Stephanie Winson, Acting Information Commissioner, Mr Paxton Booth, Privacy Commissioner, Ms Anna Rickard, Acting Right to Information Commissioner (joint submission) | 19 March 2024 |
| Mr Todd Fuller KC, Director of Public Prosecutions | 19 March 2024 |

| | |
|---|---|
| Mr Michael De'Ath, Director-General, Department of Education | 20 March 2024 |
| Mr Ross Martin KC, former Chairperson of the Crime and Corruption Commission | 20 March 2024 |
| Mr Alex Scott, Secretary, Together Queensland Union | 21 March 2024 |
| Mr David Barbagallo AM | 22 March 2024 |
| Ms Rebecca Fogerty, President, Queensland Law Society | 27 March 2024 |
| Mr Scott McDougall, Queensland Human Rights Commissioner | 4 April 2024 |
| Mr Damien O'Brien KC, President, Queensland Bar Association | 16 April 2024 |
| Ms Neroli Holmes, Queensland Human Rights Deputy Commissioner | 17 April 2024 |

## Meetings held

| **Meeting** | **Date of meeting** |
|---|---|
| Ms Judy Lind, Chief Executive Officer, Integrity Commission (ACT) | 6 March 2024 |
| Ms Anina Johnson, Commissioner, Law Enforcement Conduct Commission (NSW) | 11 March 2024 |
| Mr Robert Needham, former Chairperson of the Crime and Misconduct Commission | 12 March 2024 |
| Mr Michael Riches, Commissioner and Ms Naomi Loudon, Deputy Commissioner, Independent Commissioner Against Corruption (NT) | 18 March 2024 |
| Mr Todd Fuller KC, Director of Public Prosecutions | 20 March 2024 |
| Ms Stacey Killackey, Executive Director (Legal, Assessment & Review, and Compliance), Ms Megan O'Halloran and Dr Linda Timothy, Executive Director (Prevention and Communication), Independent Broad-based Anti-corruption Commission (VIC) | 22 March 2024 |
| Ms Julie-Anne Burgess, Chief Executive Officer, Independent Commission Against Corruption (SA) | 25 March 2024 |
| Mr Scott McDougall, Commissioner and Ms Sarah Fulton, Principal Lawyer, Queensland Human Rights Commission | 28 March 2024 |
| Mr Bruce Barbour, Chair, Mr David Caughlin, Executive Director, Legal, Risk and Compliance, and Ms Brigette Landers, Acting Principal Lawyer, Crime and Corruption Commission | |
| Ms Emma Johnson, Chief Executive Officer and Ms Kirsten Nelson, Executive Director Legal Services, Corruption and Crime Commission (WA) | 17 April 2024 |

# Annexure C: Commission submissions

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Crime and Corruption Commission
QUEENSLAND

Our Reference: AD-24-0310 | 24/044653

12 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**

Thank you for the opportunity to provide this submission to the Independent Review into the Crime and Corruption Commission's (CCC) reporting on the performance of its corruption functions (the Review).

This submission details what the CCC considers the extent and form of its reporting powers should be in corruption matters, and why.[1]

## 1. Introduction

The CCC must be vested with statutory authority to report in performance of its corruption function.

Public reporting provides important transparency in relation to the performance of the CCC's functions, and serves to support the CCC's statutory objectives – particularly as they relate to improving the integrity of the public sector. Public reporting allows for a transparent accounting of those matters the CCC has assessed or investigated.

Noting the CCC's statutory mandate to focus on more serious and systemic matters of corrupt conduct,[2] there are circumstances in which there will be substantial public

[1] As requested in your letter dated 27 February 2024.
[2] *Crime and Corruption Act* 2001 (Qld) s 5(3)(a) ('CC Act').

interest in matters which the CCC investigates. A primary reason for providing a public report is to assist in promoting public confidence in the integrity of the public sector by demonstrating that, regardless of outcome, such matters will be fully investigated and accounted for in an independent and impartial manner. This is particularly the case for matters of controversy or where there are lessons for the public sector and the public more broadly in relation to corruption risks within public sector entities.

The *Crime and Corruption Act 2001* (the Act) states that one of its main purposes is to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector.[3] This is primarily achieved through the establishment of the CCC, which performs its corruption functions and exercises its powers in accordance with the principles set out in section 33 of the Act. The CCC's ability to fulfil one of its main statutory purposes is significantly diminished if it has no power to publicly report in relation to those investigations.

There is a clear public interest in the CCC reporting about corruption matters to ensure public confidence in the public sector, whether by providing a basis for legislative action, identifying systemic or cultural corruption risks endemic to the public sector, allowing for dissemination of reports for the education of the Parliament, elected representatives, the public sector and the public generally, or by dispelling an allegation of corrupt conduct where it is not established on the evidence.

The proposition that integrity bodies ought be empowered to publicly report is supported by the United Nations Convention Against Corruption which provides at Article 10 that state parties (of which Australia is one) are to take such measures as may be necessary to enhance transparency in its public administration, and that such measures may include publishing information, such as periodic reports on the risks of corruption in its public administration.[4] Moreover, the Best Practice Principles for Australian Anti-Corruption Commissions,[5] to which the CCC subscribes, provides that one of the key ways anti-corruption commissions can give insight into their operations is through the ability to report on investigations and make public statements.

The CCC acknowledges that striking the right balance between the public interest factors which underpin its corruption functions[6] and providing fairness to those investigated is a difficult exercise. The CCC has previously noted the complexity of this balancing exercising in relation to both public reports and public statements made in respect of corruption matters.[7]

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[3] CC Act s 4(1)(b).
[4] United Nations Convention Against Corruption Article 10.
[5] Best Practice Principles for Australian Anti-Corruption Commissions. Available at <https://www.ibac.vic.gov.au/media/1090/download>.
[6] CC Act s 34(d).
[7] Submission 027 to Report No 106 57th Parliament, *Review of the Crime and Corruption Commission's activities* <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/RCCC-21CB/submissions/00000027.pdf>; and, Submission 008 to Inquiry into CCC's performance of its functions to assess and report on complaints about corrupt conduct <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/ICCCRCCC-AA17/submissions/00000008.pdf>.

Prior to the High Court's decision in *Crime and Corruption Commission v Carne*[8] (*Carne*), the CCC and its predecessors (the commission) understood that there was a broad power to report in the performance of its corruption function. As the background to the Terms of Reference for this review notes, the CCC's authority to prepare such reports had not been challenged until recently, which could be understood to reflect a common understanding that such a power was available.

The High Court in *Carne* found the CCC does not have a power to report in performing its corruption function other than the limited reporting to identified authorities under section 49 of the Act. The majority said at paragraph 68 of its judgment "*…it might be said that the scheme of the CC Act, and what is to be done under each of ss 49 and 64, point strongly to s 64 having no part to play with respect to reports on investigations as to corrupt conduct.*" The majority went on at paragraph 69 to state that the report was one about "*…the investigation of the complaint about the Respondent outside of the exclusive power to do so in s 49*."

There is an imperative to amending the Act to provide that the CCC has clear public reporting powers in relation to corruption investigations.

## 2. Legislative history of CCC reporting

The CCC and its predecessors have historically undertaken their corruption functions on the understanding that there was a general power to report publicly in performance of functions pursuant to section 64(1) of the Act and the tabling provisions in section 69 of the Act (and their predecessor provisions).

There is a distinct process in section 49 of the Act that applies specifically to the preparation of reports during and following investigations for provision to appropriate entities for action to be taken in respect of matters identified in investigations.[9]

The CCC and its predecessors treated investigation reports and public reports as distinct documents prepared for different purposes. This position is consistent with the legislative history of CCC reporting powers in relation to its corruption function, which is summarised below and detailed in the Legislative Development Table in **Annexure 1** of this submission.

### *2.1 Criminal Justice Act 1989*

Sections 64 and 69 of the Act have their origins in sections 2.18 and 3.21, respectively, of the *Criminal Justice Act 1989* (CJ Act) as passed on 18 October 1989.

[8] [2023] HCA 28.
[9] Historical versions of the Act also included preparation of reports at a divisional level for consideration in particular circumstances by senior officers including the chairperson.

Section 2.18 'Commission Reports' provided that a report of the commission, signed by its chairman, shall be furnished to (a) the chairman of the Parliamentary Committee; (b) the Speaker of the Legislative Assembly; and (c) to the Minister. Subsection (3) provided that the report be tabled and granted all the immunities and privileges of a report so tabled and printed.

Section 2.13 'Functions' provided that, subject to section 2.18, the commission shall report to the parliamentary committee –

> (a) on a regular basis, in relation to the commission's activities;
> (b) when instructed by the parliamentary committee to do so with respect to that matter, in relation to any matter that concerns the administration of criminal justice; and
> (c) when the commission thinks it appropriate to do so with respect to that matter, in relation to any matter that concerns the administration of criminal justice.

Separate to these commission report provisions, under section 2.24 'Reports of Division', the Director of the Official Misconduct Division was required to report internally to the Chairman on every investigation carried out by the Division and every matter of complaint submitted to the Complaints Section. A Report of Division was made to the Chairman with a view to such action by the Commission as considered desirable and, with the Chairman's authority, to such one or more of the list of entities as the Chairman considered appropriate including the Director of Prosecutions or other appropriate prosecuting authority with a view to such prosecution proceedings as considered warranted and the appropriate principal officer in a unit of public administration with a view to disciplinary action being taken in respect of the matter to which the report relates.

In 1991, the Parliamentary Criminal Justice Committee (PCJC) considered the need for a definition of 'report' in section 2.18 of the CJ Act, to address a submission made by the Criminal Justice Commission (CJC): [10]

> *…The Commission has also recommended amendment to section 2.18 which deals with Commission reports (the section provides for reports of the Commission to be furnished to the Chairman of the Parliamentary Committee, the Speaker of the Legislative Assembly and the Minister). One difficulty raised in relation to a "report" is that it is not defined. It is clearly not appropriate for all reports prepared by the CJC to be dealt with in the way envisaged by s2.18. The CJC has recommended that s.2.18 be amended to define "a report of the Commission" for the purposes of the section.*
>
> *The Commission states that the Act gives no indication as to what documents are included as reports for the purposes of this section. However, no suggestion is made as to the actual*

[10] Parliamentary Criminal Justice Committee, *Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission: Part B – Analysis and Recommendations*, Report No. 13, 3 December 1991, p65. Available at <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/R-9ED4/rpt-13-031291.pdf>.

*formulation of the new subsection because the Commission considered that this is a matter which should be discussed with Parliamentary Counsel before such a recommendation is made. However, the Committee suggests that in determining what is a "report of the Commission", a number of factors should be considered. It should not be determined simply by reference to the identity of the signatories, but by reference to the subject matter of the report (Keane, 1991:11). The reports of the various divisions should be analysed to assist in the formulation of a definition. A list of all reports prepared by the CJC, some of which are reports within the meaning of section 2.18, is appended to this report (Appendix D).*

*It could be argued that all documents (except internal memoranda and preparatory materials) prepared by the Research Division should be publishable in some form, as reports, discussion papers or briefing documents. Whether these documents should become tabled reports would be determined by the importance of the subject matter. Reports of the OMD into completed general investigations (that is major investigations in the nature of the Corrective Services Commission and Local Government Reports) should be reports for the purposes of 2.18, however, some major investigations may not appropriately be released. The Committee is of the view that the definition needs to be flexible, while maintaining the principle that the Commission should operate as publicly as possible.*

*RECOMMENDATION 10:*
*In order to clarify the Criminal Justice Commission's obligation to furnish reports under s2.18 of the Criminal Justice Act 1989-1991 the Committee endorses the recommendation of the Criminal Justice Commission to amend s2.18 to include a definition of "a report of the Commission" for the purposes of s2.18…*

The Committee's recommendation for amendment in 1991 was not taken up at that stage.

In 1994, the general report tabling provision in section 2.18 was renumbered as section 26 and the divisional reporting provision in 2.24 was recast as section 33 of the CJ Act.

In 1997, in response to a PCJC report on outstanding committee recommendations,[11] the Minister stated that "*the current situation under which the Commission is able to determine what reports it tables is unsatisfactory. In the* Criminal Justice Amendment Bill, *I propose to amend the section to define "*reports of the commission" *for the purposes of section 26 to include all reports which result from a hearing (other than certain specified reports) and research and other reports, which the PCJC directs should be tabled*".[12]

[11] Parliamentary Criminal Justice Committee, Parliament of Queensland, *Outstanding Parliamentary Criminal Justice Committee Recommendations,* Report No. 34, 23 July 1996. Available at <https://documents.parliament.qld.gov.au/tp/1996/4896T989.pdf>.
[12] 'Ministerial Response to the Parliamentary Criminal Justice Committee Reports numbered 34, 38 and 39' tabled 8 October 1997, p36. Available at <4897T3731.pdf (parliament.qld.gov.au)>.

The *Criminal Justice Legislation Amendment Act 1997* then introduced a definition of 'report of the commission' to section 26(9):

> *report of the commission" means-*
>
> *(a) a report on a hearing conducted by the commission under section 25, other than a report under section 33; or*
> *(b) a research or other report prepared by the commission that the parliamentary committee directs the commission to give to the legislative assembly…*

The CJ Act reporting provisions then remained in substantively the same terms until the CJ Act was repealed in 2001.

### *2.2 Crime and Misconduct Act 2001*

The *Crime and Misconduct Act 2001* (CM Act) repealed the *Criminal Justice Act 1989* and the *Crime Commission Act 1997* and introduced new legislation to merge the CJC and the Queensland Crime Commission.

The commission reporting powers in section 26 CJ Act were recast as section 64(2) by the CM Act, and amended to include an explicit power that the commission may report under subsection (1).

The tabling provisions in section 69 of the CM Act introduced the requirement that reports be provided to the Parliamentary Committee before being tabled. The intent of this provision was to avoid situations where the CMC could choose to not report on a matter. The Minister was not satisfied that the CJC could opt out of its obligation[13] to report, and sought to rectify that by providing that the PCJC could require reports from the CCC. A consequence of that requirement was that the commission's reports could not be tabled without the permission of the Parliamentary Committee.

Shortly prior to the introduction of the CM Act in 2001, the meaning of 'report' had been considered in the Three Yearly Review of the commission by the Parliamentary Criminal Justice Committee (PCJC)[14]:

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[13] The explanatory notes to the *Crime and Misconduct Bill 2001* provided that section 63 of the CC Act *"…provides that the obligation on the commission to report does not apply to the commission's crime functions."*

[14] Parliamentary Criminal Justice Committee, *Three Yearly Review of the Criminal Justice Commission: A report of a review of the activities of the Criminal Justice Commission pursuant to section 118(1)(f) of the Criminal Justice Act 1989*, Report No. 55, 19 March 2001 (PCJC Report No. 55), pages 321 and 322. Available at <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/TYRCJC2001-460A/Report55-3yrReview.pdf>.

*15.6.3 Analysis and comment – definition of 'report of the Commission'*

*The CJC has previously expressed concern about the definition of 'report of the Commission' under section 26(9) Of the Act. The CJC, in a letter dated 23 November 1999, has submitted that section 26(9), as it is presently drafted, 'arguably limits the Commission to tabling reports only where there has been an investigative hearing. Or where the PCJC has directed that a report be tabled'. The CJC has further submitted that it is inappropriate that it cannot table a report in Parliament (Other than a report relating to a matter where investigative hearings were held) without a direction from the Committee.*

*The CJC has further submitted that:*

> *It is not difficult to envisage that the Commission might wish to table a report in circumstances where both sides of politics might have some interest in declining to give such a direction.*

*The CJC has suggested the following amendments to subsections (9)(a) and (9)(b) of section 26 to define 'report of the Commission' as:*

> *(a) a report authorised by the Commission to be furnished in accordance with subsection (I) other than a report under section 33;*
>
> *(b) a report prepared by the Commission that the Parliamentary Committee directs the Commission to furnish in accordance with subsection (1).*

*The CJC had submitted that its suggested amendment:*

- *to section 26(9)(a) would allow the Commission to table any report which it considered should be made public, including reports on matters where investigative hearings had been held (except reports under section 33);*
- *to section 26(9)(b) would allow the Committee to direct that a report prepared by the Commission should be tabled, where it considered it appropriate and where the Commission had not already determined to table the report under subsection (a). Section 27 would still allow the Commission to report separately on confidential matters in the case of such a direction.*

*The Committee gave the CJC's submission careful consideration. The Committee was prepared, in principle, to support the CJC's suggestion, but on one proviso only. The Committee considered that prior to tabling of a report (falling under the redefined section 26(9)(a)), the Committee should be provided, on an embargoed basis, with an advance copy of a CJC report intended for tabling (other than a report on a hearing conducted by the CJC under section 25). This option is consistent with the current practice in respect of research and other reports publicly released by the CJC. The Committee was of the view that if the CJC maintained its position that the definition be*

*clarified, that an embargoed CJC report intended for tabling, should be provided to the Committee, for example five days in advance of tabling (or such lesser period as agreed), and that the Committee simply have a right to make comments to the CJC in respect of any such report, prior to tabling.*

*The Committee is not seeking a right to veto or otherwise prevent the CJC from tabling a report in the Parliament. The Committee firmly believes that any such action by a Parliamentary Committee would be highly inappropriate.*

*The CJC, during the Committee's recent public hearings in respect of this review, has clarified its position in respect of the issue of an appropriate definition of a 'report of the Commission'. The CJC Chairperson, Mr Butler SC stated:*

*The Commission has considered this from time to time. I think our view has changed, because it is a very difficult section. Because of the way in which it is structured, any change to it can give you quite unexpected results in terms of the ability to produce reports. After a great deal of deliberation on it, we determined that it is probably better to leave it the way it is rather than create some further anomaly in attempting to improve it. It seems to have worked in practice in recent times, certainly in the relationship between the CJC and this Committee. I do not see any reason why it could not work in practice in the future. It might be a little inconvenient for the Committee to find that it has to consider some reports before they can be provided to the Speaker, but that might be better than a situation which creates other problems.*

*The Committee considers that, rather than seek an amendment to the Act, a more appropriate course may be to consult with the CJC with a view to issuing an appropriate guideline to the CJC pursuant to section 118A of the Act, to require the CJC, prior to tabling a report pursuant to section 26, to provide the Committee on an embargoed basis with an advance copy of its report intended for tabling (other than a report on a hearing conducted by the CJC under section 25).*

*15.6.4 Recommendations*

***Recommendation 80***

***The Committee recommends that section 26(9) NOT be amended…***

The 'Report of Division' provision in section 33 of the CJ Act was recast in the CM Act as the reporting requirement under section 49 of the CM Act.

One of the primary objectives of the legislative scheme introduced by the CM Act had been to emphasise devolution and capacity building, and to increase the responsibility of agencies to deal with and prevent misconduct within their own agency.[15] In the PCJC Three Yearly Review of the Criminal

[15] See *Crime and Misconduct Bill 2001*, Explanatory Notes. Available at <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2001-762>.

Justice Commission in 2000,[16] the CJC had submitted that there are occasions where the CJC does not consider any action is warranted on a matter, and the report being made under section 33 consists of a report recommending that no action be taken. The CM Act removed subsections (1) and (2) of section 33 which required the Director of the Official Misconduct Division to report to the commission or the chairperson on every investigation carried out by the division. The CJC had previously submitted that the sheer volume of complaints being assessed and investigations being conducted by the Division made this provision entirely unworkable. Subsection (2) was carried over to continue to allow the commission to report to agencies, as appropriate, for action to be taken and introduced a new subsection (1) that section 49 would only apply where the commission had investigated or assumed responsibility for an investigation and decided that prosecution proceedings or disciplinary action should be considered.

It appears that the intent of this provision was to rectify the impracticability of reporting to the Commission or the Chairperson in relation to every investigation in circumstances where the volume of matters being considered by the Commission was far beyond what had originally been envisioned when the CJ Act was introduced, and in light of the commission now focusing on the principle of devolution. It also addressed the concern that reports had to be made to agencies in circumstances where no action was recommended to be taken, by introducing the provision that the report only be made where prosecution proceedings of disciplinary action should be considered.

### *2.3 Crime and Corruption Act 2001*

When the CM Act was renamed the *Crime and Corruption Act 2001* in 2014, section 64(1) was unchanged. The CCC has proceeded since then on the basis that it continued to have a general reporting power under section 64(1) and was authorised to table public reports in accordance with the mechanism set out in section 69 of the Act. Section 49 of the Act remained unchanged.

The CCC submits that the history of reporting powers in the Act and preceding legislation (as summarised in this submission and set out in Annexure 1) indicates an understanding that the CCC had the power to make public reports on its investigations for tabling in parliament.

## 3. Models for public reporting of corruption investigations

The CCC's view is, as expressed in submissions to the High Court in *Carne,*[17] that the CCC has always had a general reporting power to publicly report in performance of its functions pursuant to section 64(1) of the Act (and its predecessor provisions). This power is entirely independent from the divisions reports provision in section 49 of the Act, as evidenced by the legislative history, of the Commission

[16] Parliamentary Criminal Justice Committee, *Three Yearly Review of the Criminal Justice Commission: A report of a review of the activities of the Criminal Justice Commission pursuant to section 118(1)(f) of the Criminal Justice Act 1989*, Report No. 55, 19 March 2001 (PCJC Report No. 55), p321-322. Available at <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/TYRCJC2001-460A/Report55-3yrReview.pdf>.
[17] Crime and Corruption Commission, 'Appellant's Submissions', Submission in *Crime and Corruption Commission v Carne* [2023] HCA 28, 2 February 2023, [74]-[75].

generating reports during and following investigations for the information of the Chairperson, the Commission, or for provision to appropriate entities for action to be taken in respect of findings.

The CCC submits that it is entirely orthodox for an integrity body with investigative powers to have associated public reporting powers. The CCC's historical understanding of its power to make public reports of investigations for tabling is consistent with the powers of other statutory bodies in Queensland which have investigation powers, including:

- the Auditor-General;[18]
- the Ombudsman;[19] and
- as proposed for the Human Rights Commissioner in the *Anti-Discrimination Bill 2024,*[20] which is currently under consideration.

Notwithstanding this, the CCC welcomes the opportunity of this Review to consider the introduction of revised and modernised reporting and statement making powers in the Act which appropriately reflect the complexity of the many and often competing imperatives which the CCC faces including:

- the public importance of the CCC's statutory function as a corruption investigator and the CCC's associated corruption prevention and education functions;
- the importance of transparency in CCC operations to ensure that there is public confidence in the work we do when exercising the exceptional powers of the Commission;
- the sensitive nature of the information which the commission often receives in the course of its investigations, where there is a public interest in the information but there may also be personal interest of witnesses in the information being kept confidential;
- the imperative that the CCC faces to protect witness welfare and protect the integrity of prosecution or disciplinary proceedings which may follow a CCC investigation; and
- the need to maintain public confidence in the integrity of public administration in Queensland.

### *3.1 Cross jurisdictional comparison of integrity agency reporting powers*

The CCC has conducted a cross-jurisdictional comparison reviewing the reporting powers which apply to corruption agencies in other Australian jurisdictions. A jurisdictional comparison table is set out in **Annexure 2** of this submission.

Broadly speaking, there are two models which provide for public reporting of investigations by integrity agencies. The first model is a mandatory reporting provision in relation to corruption investigations, which requires an investigating body to prepare a public report at the conclusion of every investigation (other than in exceptional circumstances). The second model is a discretionary reporting power, which vests the investigating agency with the discretion to choose when and in relation to which matters

[18] *Auditor-General Act 2009* (Qld) s 63.
[19] *Ombudsman Act 2001* (Qld) part 6 div 2.
[20] *Anti-Discrimination Bill 2024* (Qld) s 165.

reports will be prepared and tabled. There are examples of both models in the statutes which empower integrity agencies in the various Australian jurisdictions. The CCC has considered both models, and identifies advantages and disadvantages to each, as discussed below:

### *3.2 Mandated public reporting of corruption investigations*

The enabling legislation which was introduced for the National Anti-Corruption Commission (NACC) in 2023 is an example of the mandatory reporting model.

The NACC must prepare an investigation report after completing a corruption investigation:[21]

- the investigation report must include findings and opinions about the corruption issues, a summary of the evidence, recommendations and reasons for those findings, opinions and recommendations;[22]
- the report must not include information the Commissioner is satisfied is 'sensitive information'[23] or 'certified information' which is information that the Attorney-General has certified would be contrary to the public interest to disclose;[24]
- if the Commissioner excludes certified and/or sensitive information, another report must be prepared called a 'protected information report' which includes all of the excluded information as well as the reasons for excluding the information from the investigation report;[25]
- the Commissioner must give the Minister responsible for administering the Act (the Attorney-General) or the Prime Minister (only where the report concerns the Minister) both the investigation report and the protected information report.[26] The Minister (or Prime Minister, where applicable) is required to table the investigation report in each House of Parliament within 15 sitting days only if public hearings were held in the course of the investigation.[27] Once the Commissioner has given the Minister (or Prime Minister) the reports, the Commissioner may publish the whole or a part of the investigation report if the Commissioner is satisfied it is in the public interest to do so;[28] and
- publication is subject to procedural fairness requirements.[29]

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[21] *National Anti-Corruption Commission Act 2022* (Cth) s 149(1) ('NACC Act').
[22] NACC Act s 149(2).
[23] As that term is defined in NACC Act s 227(3).
[24] Based on the grounds set out in NACC Act s 235(3).
[25] NACC Act s 15.
[26] NACC Act s 154(1).
[27] NACC Act s 155.
[28] NACC Act s 156.
[29] NACC Act s 157.

The public reporting powers of the Integrity Commission (ACT) are another example of the mandatory reporting model. The Integrity Commission (ACT):

- must prepare a report after the completion of an investigation, which may include findings, opinions and recommendations, and reasons for those findings, opinions and recommendations;[30]
- once completed the report must be given to the Speaker, who either must table the report if the Parliament is sitting or otherwise give the report to each member of the Legislative Assembly;[31]
- the Commission must publish the report on its website after providing parliament with a copy of the report, unless it is a confidential report or the Speaker directs otherwise;[32] and
- a confidential report prepared by the Commission must be given to the relevant Assembly Committee.[33]

### *3.3 Comment on the mandatory reporting model*

#### *A. No discretion about how or when to report*

It generally serves the public interest in transparency of public administration and transparency of decision making within an integrity commission to have a mandatory requirement to report, other than in exceptional cases.

The mandatory model leaves limited opportunity for an integrity agency to determine when or whether it is not appropriate to report on a corruption investigation. The default position that a report will be prepared at the conclusion of every investigation presents a significant impost on the resources of an integrity agency, and would be an issue particularly for the CCC which has historically undertaken many more investigations each year than were reported upon.

The mandatory model may not allow flexibility of reporting in circumstances other than at the conclusion of a corruption investigation. There may be instances, for example, where an integrity agency would consider it necessary and in the public interest to report before an investigation had been concluded, or to report on a decision not to undertake an investigation. The CCC considers that there is advantage to a reporting model that is sufficiently flexible to allow for alternative approaches to reporting in appropriate cases.

The mandatory model does serve to remove the complaint that is sometimes made that integrity agencies should report on all investigations, or have cherry picked a particular investigation for reporting.

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[30] *Integrity Commission Act 2018* (ACT) s 182 ('IC Act').
[31] IC Act s 189.
[32] IC Act s 190.
[33] IC Act s 192(3).

### *B. Discretion in tabling*

The CCC interprets the *NACC Act* to mean that where public hearings are not held in relation to a corruption investigation, after the investigation and protected information reports are provided to the Minister as required, the Minister has discretion as to whether the investigation report is tabled.

While this ultimately vests in a Member of Parliament the discretion to determine whether a report is tabled, the CCC considers this is preferable to the current approach whereby section 69 of the Act includes a requirement that reports must first be directed by the Parliamentary Committee to be given to the Speaker. The CJC raised its concerns regarding this provision in its submission to the Attorney-General on the *Criminal Justice Legislation Amendment Bill 1997*.[34] The major concern was of the possibility that the CJC would be unable to have a report tabled which it considered should be tabled in circumstances where the PCJC could refuse to give a direction to the CJC to give the report to the Speaker if the PCJC did not agree to the publication of the report.

The CCC considers that the mechanism for tabling of reports should allow it to provide reports directly to the Speaker. While in some jurisdictions reports are provided to the Minister prior to tabling, this appears to arise where there is provision for information to be excised from a report where it is confidential in nature, but there is no Ministerial discretion as to whether a report will be made public and the Minister does not receive a report where the subject matter of the investigation concerns the Minister in any way. In the CCC's view, the appropriate mechanism for reporting is by tabling with the Speaker without reference to the Minister at all.

The NACC Act adopts an alternative approach to the issue by providing that the Commissioner may publish the whole or a part of the investigation report if the Commissioner is satisfied it is in the public interest to do so.[35] It is unclear to the CCC whether such a report would attract all of the same privileges and immunities as if the report had been laid before a House of *Parliament*. It is preferable, in the CCC's view, for reports to attract parliamentary privilege and that this be expressly stated in legislation,[36] though any such provision ought be considered in the context of section 335 of the Act.

### *C. Contents of report*

There are examples across Australian jurisdictions where the reporting powers of integrity agencies contain prescriptions for content and proscribed content.

For example, the NACC Act sets out a mechanism for determining whether there is 'sensitive information' in a proposed public report, and allows for the delivery of a separate report on

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[34] Criminal Justice Commission, *Submission to the Attorney-General on the Draft Criminal Justice Legislation Amendment Bill 1997 and the Draft Misconduct Tribunals Bill 1991,* tabled 8 October 1997. Available at <https://documents.parliament.qld.gov.au/tp/1997/4897T3742.pdf>.

[35] NACC Act s 156.

[36] As is the case under the *Independent Commission Against Corruption Act 1988* s 78(3) ('NSW ICAC Act').

'confidential information'. The term 'sensitive information' in the NACC Act includes considerations such as whether the information could endanger a person's life or physical safety, prejudice the fair trial of any person or the impartial adjudication of a matter, involve unreasonably disclosing a person's personal affairs or unreasonably disclosing confidential commercial information.[37] While these considerations are broad, the threshold for the information not being included in the report is that the Commissioner is able to consider and must be satisfied the information is of that character. The CCC considers that it is important to maintain this discretion, rather than making a blanket prohibition on information within those categories being included in a report. The CCC notes that to the extent that the proscribed matters in the *NACC Act* related to national security and 'certified information', this is specific to the jurisdiction of a national agency and would not be required to be addressed in the Act which governs the CCC.

The CCC observes that there are existing proscriptions in the Act[38] which provide that if the CCC considers that confidentiality should be strictly maintained in relation to information in its possession (*confidential information*), the CCC need not make a report on the matter to which the information is relevant, or if the CCC makes a report on the matter, it need not disclose the confidential information or refer to it in the report.[39] If the CCC decides not to disclose confidential information, it must still disclose the confidential information in a separate document to the parliamentary committee unless a majority of the commissioners considers confidentiality should continue to be strictly maintained in relation to the information and the CCC gives the committee reasons for the decision in as much detail as possible.[40] These provisions are an important, albeit seldom used, safeguard and the CCC considers that any amendments to the Act should be consistent with these requirements.

### *D. Maintaining general reporting power*

Where legislation contains a mandatory reporting framework in relation to particular investigations, the CCC considers it is an imperative that the legislation also set out a general reporting power in relation to other statutory functions (for example the prevention and research functions under the Act).[41] As has been noted, until the *Carne* decision, the CCC understood itself to have a broad power to report in performing its functions pursuant to section 64(1) of the Act. Given the broad conception of the power, the CCC and its predecessors, as a matter of course, did not necessarily differentiate, or if it did, often did not specifically record, which statutory function the CCC was reporting in performance of. This is the case because a binary determination of a public report either in exercise of the corruption or prevention function was not capable of being made, as, in most cases, such reports involve the exercise of more than one function.

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[37] NACC Act s 227(3).
[38] Criminal Justice Commission, *Submission to the Attorney-General on the Draft Criminal Justice Legislation Amendment Bill 1997 and the Draft Misconduct Tribunals Bill 1991,* tabled 8 October 1997. Available at <https://documents.parliament.qld.gov.au/tp/1997/4897T3742.pdf>.
[39] CC Act s 66(1).
[40] CC Act ss 66(2)(b) and (4).
[41] CC Act ss 23 and 52.

A relevant example is the 'Forensic Under the Microscope: Challenges in Providing Forensic Science Services in Queensland' report prepared by the CMC in October 2002.[42] In the Foreword to that report, then Chairperson Brendan Butler SC stated:

> *"The CMC has a statutory function to help prevent misconduct. It may perform this function by analysing the results of its investigations and the information it gathers, and by providing information to the general community. Hence, while the catalyst for this report was the Commission's investigation of a wrongful conviction, the major purpose of this report is to identify for wider public scrutiny those systemic concerns not addressed as part of the formal Commission investigation".*

The CCC submits that a reporting power which requires it to categorise whether a report is made pursuant to the corruption or prevention function is likely to be an artificial distinction as frequently, an investigation into particular allegations of corruption is likely to be the catalyst for public reporting with broader application across the public sector. Instead, a reporting power which sits alongside the mandatory investigation reporting will allow the prevention and research functions to support the corruption function, and allow reports with broader learnings and general application across the public sector to still be prepared and published.

### *3.4 Discretionary public reporting of corruption investigations*

The *Independent Commission Against Corruption Act 1988* (NSW) (NSW ICAC Act) and the *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic) (IBAC Act) are each examples of the discretionary reporting model.

The New South Wales Independent Commission Against Corruption (NSW ICAC):

- may prepare reports in relation to any matter that has been or is the subject of an investigation,[43] and shall prepare a report in relation to a matter referred to it by the Houses of Parliament and which a public inquiry was conducted unless otherwise directed by Parliament;[44]
- shall furnish a report made under section 74 to the Presiding Officer of each House of Parliament[45] which shall be laid before that House within 15 sitting days;[46] and

[42] Available at <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CMC/Forensics-under-the-microscope-Report-2002.pdf>.
[43] NSW ICAC Act s 74(1).
[44] NSW ICAC Act s 74(2)-(3).
[45] NSW ICAC Act s 74(4).
[46] NSW ICAC Act s 78(1).

- may include in a report a recommendation that the report be made public forthwith,[47] and the Presiding Officer of a House of Parliament may make the report public whether or not the House is in session and whether or not the report has been laid before the House.[48]

The Victorian Independent Broad-based Anti-Corruption Commission (IBAC):

- may, at any time, cause a report to be transmitted to each House of the Parliament on any matter relating to the performance of its duties and functions ('a special report'), including after conducting an investigation;[49]

- if the IBAC decides a report is to be transmitted, it must, at least one business day before, give an advance copy of the report to the Minister and the Secretary of the Department of Premier and Cabinet; [50] and

- the clerk of each House must cause the report to be laid before the House on the day on which it is received or the next sitting day of that House.[51] If neither house is sitting, IBAC can give notice of the intention to give the report to the clerk of each House and then publish the report on the IBAC's website and the report will attract the privileges as if the document were published under the authority of the Parliament.[52]

The Western Australia Corruption and Crime Commission (WA CCC) adopts a similar discretionary reporting power and tabling provisions under the *Corruption, Crime and Misconduct Act 2003* (WA)[53] as does the South Australian Independent Commission Against Corruption (SA ICAC) per the *Independent Commission Against Corruption Act 2012* (SA).[54]

### *3.5 Comment on the discretionary reporting model*

*A. Flexibility of approach to reporting in the public interest*

The discretionary model for reporting allows an integrity agency to report on a broad subject matter including investigation reports, but also other public reports with a mixed purpose which include information in relation to particular investigations as well as information with broader application such as corruption risks and corruption prevention strategies identified by reasons of the particular

[47] NSW ICAC Act s 78(2).
[48] NSW ICAC Act s 78(3).
[49] *Independent Broad-based Anti-Corruption Commission Act 2011* Vic s 162 ('IBAC Act').
[50] IBAC Act s 162(1)-(2).
[51] IBAC Act s 162(10).
[52] IBAC Act s 162(11).
[53] *Corruption, Crime and Misconduct Act 2003* (WA), ss 84, 85, 89 and 93.
[54] *Independent Commission Against Corruption Act 2012* (SA) ('ICAC SA Act') s 42.

investigation. The 'Forensic Under the Microscope: Challenges in Providing Forensic Science Services in Queensland' prepared by the CMC in October 2002 and mentioned previously is an example of this.

*B. Responsible use of public resources*

The CCC noted in its submission to the PCCC Inquiry into the 'CCC's performance of its functions to assess and report on complaints about corrupt conduct' made in January 2020 that any trend which may have been seen in recent times towards the CCC issuing comprehensive media releases or statements rather than reports in the form that have historically been produced by the CCC reflects an effort to be more transparent, to communicate its work more effectively, and to make the most effective use of its limited resources.[55] The CCC observed that a lengthy public report requires a substantial investment of resources. The mutable nature and volume of corruption matters, coupled with the changing information landscape in which members of the community consume information, requires the CCC to remain agile and examine whether such reports are the most effective option of communication.

For example, in the 2022-23 financial year, the CCC received 3,931 complaints of suspected corruption (involving 8,398 separately distilled allegations) and finalised 39 corruption investigations.[56] While the number of complaints received and allegations distilled remains relatively constant[57] across financial years, the number of corruption investigations commenced and finalised may vary considerably year-to-year. In contrast to the 39 finalised corruption investigations in 2022-23, the CCC finalised 21 investigations in 2021-22 and finalised 65 investigations in 2018-19.[58] The variation in volume and urgency of these investigations may often result in a less resource intensive method of public communication being appropriate, such as by way of public statement.

*C. Impact on transparency*

The discretionary model for public reporting will inevitably lead to challenges in balancing the public interest in transparent operations of an integrity agency and public education function that reporting serves with the resourcing pressures of reporting on each and every investigation which is undertaken. The model can lead to public criticism and complaints by the subjects of investigation that the integrity agency has cherry picked a particular investigation for reporting or has failed in its statutory responsibilities by not reporting on a particular matter.

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[55] Submission 008 to Inquiry into CCC's performance of its functions to assess and report on complaints about corrupt conduct, p 29. Available at <https://documents.parliament.qld.gov.au/com/PCCC-8AD2/ICCCRCCC-AA17/submissions/00000008.pdf>.

[56] CCC 2022-23 Annual Report, pages 20 and 21. Available at <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/CCC-Annual-Report-2022-23.PDF>.

[57] There has been a steady increase per year of received corruption complaints between 2018-19 (3,109) and 2022-23 (3,931) but relatively minor variation in allegations received between 2018-19 (8,329) and 2022-23 (8,398), noting some fluctuations in the intervening years.

[58] CCC 2022-23 Annual Report, page 21. Available at <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/CCC-Annual-Report-2022-23.PDF>.

### *3.6 Inclusions and prohibition on particular report content*

In terms of the content of public reports, integrity agencies across Australian jurisdictions generally have a broad discretion as to those matters which should be included and those which must not be included in public reports although in some cases there are mandated requirements in the legislation. Those matters generally include:

- findings (whether of fact; that a person has engaged in 'corrupt conduct', criminal conduct or committed a disciplinary breach; or that disciplinary or criminal proceedings should be commenced against a person);
- anonymisation of persons whose conduct is discussed in a report;
- information which is, in some way, prejudicial to public or governmental interests;
- coerced or covertly obtained information; and
- information which may prejudice a person's right to a fair trial.

#### *A. Findings*

##### *i. Findings of fact*

It is the very nature of a public report that it will set out findings of fact which have been arrived at from the information obtained during an investigation. For example, section 149(2) of the NACC Act provides that a report must contain the Commissioner's findings or opinions on the Corruption issue and, *inter alia*, a summary of the evidence and other material on which those findings are based.

Section 74A of the NSW ICAC Act similarly authorises NSW ICAC to include in its reports statements as to any of its findings, opinions and recommendations, and statements as to the Commission's reasons for any of its findings, opinions and recommendations.

The CCC is of the view that any prescription of the contents of a public report should include an express authorisation to include findings of fact.

##### *ii. Findings of corruption*

The NSW ICAC Act provides that the NSW ICAC may include a finding that a person has engaged in corrupt conduct, where the conduct is 'serious corrupt conduct'. The NSW ICAC may also make a finding about the conduct of a person that may be corrupt conduct (presumably not 'serious corrupt conduct') if that finding does not describe the conduct as corrupt conduct. Finding that a person has engaged in corrupt conduct is an issue which has attracted judicial scrutiny since the introduction of the ICAC.[59]

Section 149(3) of the NACC Act provides that, if the Commissioner forms the opinion that a person whose conduct has been investigated has engaged in corrupt conduct of a serious or systemic nature,

[59] *Greiner v Independent Commission Against Corruption* (1992) 28 NSWLR 25.

the Commissioner must include a statement to that effect in the investigation report. If the Commissioner forms the opinion that a person has not engaged in corrupt conduct the Commissioner must set out that opinion in the report (section 149(4)).

The CCC is of the view that the provisions in s149 of the NACC Act regarding findings of corrupt conduct would be suitable in relation to the CCC's reporting powers, with one caveat. The NACC Act provides for findings that a person has engaged in corrupt conduct of a serious or systemic nature, or a finding that a person has not engaged in corrupt conduct, and makes such findings mandatory (where the Commissioner is satisfied of those matters). The CCC considers that such a provision may leave ambiguity as to whether persons did, or did not, engage in corruption which falls short of 'serious or systemic corruption' or where there was simply not enough evidence to positively exonerate them. The CCC considers that it should be within its discretion to make a positive finding that a person has engaged in corrupt conduct within the meaning of the Act, or to make a positive finding where a person has not engaged in corrupt conduct. Making such a provision discretionary would avoid this ambiguity.

*iii. Opinion that charges or disciplinary proceedings should be brought against a person*

As set out above, where legislation prescribes or proscribes the content of a public report, it generally prevents declarative statements that disciplinary or criminal proceedings should be commenced. However, such legislation generally permits including a recommendation that consideration should be given to such proceedings.

Under the Queensland legislation, as it was understood prior to *Carne*, this distinction was achieved by the differentiation between reports under section 49 (formerly known as 'Reports of Division') and reports under section 64 as it was understood to operate (formerly known as 'Commission Reports'). A report under section 49 was provided to the relevant official for consideration of criminal or disciplinary action. A public report, under section 64, was for a different purpose, and as such, did not make such recommendations.

*B. Anonymisation/identification of persons*

An issue in relation to public reporting on matters arising from investigations is whether, and to what extent, persons may or should be identified in those reports.

As a general proposition, the CCC has publicly reported on its investigations where it considers there is some overarching public benefit in exposing matters identified through its investigations for reducing corruption in the public sector. It is inevitable that such public reports will involve a degree of criticism of the unit of public administration (UPA), or officers, the subject of investigation, including elected representatives. In turn, it is inevitable that this may have some adverse impact on public confidence in the UPA, or damage to individual reputations. However, this is always balanced against the overarching objective of raising standards of integrity in the public sector. It is to be hoped that identifying failings in public administration – including those considered sufficiently important to report publicly – will also provide the UPA an opportunity to review its practices and improve them.

Public confidence in public administration can be promoted by demonstrating that conduct which falls below acceptable standards is readily identified and promptly corrected.

A related complaint which has been made in relation to public reporting of this kind is that the use of a pseudonym (for example, describing an unnamed person as 'POI-2') is insufficient to anonymise a person, and may lead to reputational damage within their workplace, or more broadly in their profession.

The CCC is acutely aware of the potential for harm which may be caused by adverse comment in its public reporting. As the High Court of Australia noted in *Ainsworth*'s case,[60] while a report by a body such as the CCC may not affect a person's legal rights, it may impact on a person's reputation in such a way as to require procedural fairness to be observed.

Consistent with this, section 71A of the Act requires the CCC, if it proposes to make an adverse comment about a person in a report to be tabled or published under the Act, to provide the person with an opportunity to make submissions about the proposed comment, and ensure the person's submissions are fairly stated in the report.

Of course, an obligation to afford a person procedural fairness does not require the decision-maker to uncritically accept the submissions made by the person.

In some previous matters, persons have not taken issue during the procedural fairness process with anonymisation, only to later complain when others have ascertained their identity. That said, the CCC also accepts that this does not absolve itself of responsibility to consider the potential impact of a report on a person's reputation.

Under section 57 of the Act the CCC "must, at all times, act independently, impartially and fairly having regard to the purposes of this Act and the importance of protecting the public interest." The importance of protecting the public interest will always require the balancing of competing public interest considerations.

In deciding whether, and to what extent, a person should be identified in a public report, the CCC is mindful not to unnecessarily interfere with a person's privacy, nor to improperly harm a person's reputation. This is consistent with the protection of those rights under section 25 of the *Human Rights Act 2019*.

An illustration of the approach taken to anonymisation of persons may be found in the CCC's report 'Investigation Workshop: An investigation into allegations of disclosure of confidential information at the Office of the Integrity Commissioner'.[61] The report outlined the general approach to this issue:

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[60] *Ainsworth v Criminal Justice Commission* [1992] HCA 10 ('*Ainsworth*').
[61] Available at <https://www.ccc.qld.gov.au/publications/investigation-workshop-investigation-allegations-disclosure-confidential-information>.

"revealing the identity of relevant persons only when it is necessary to understand and/or give context to the report". The CCC also recognises that, notwithstanding anonymisation, those people may nevertheless be able to be identified.

The approach taken in that report sought to balance the need to, so far as possible, protect an individual's right to privacy and reputation, with the need to provide sufficient detail to enable a reader to understand the roles of persons said to have engaged in relevant conduct.

In that investigation, there was a significant amount of information related to the circumstances under investigation already in the public domain, in part as the public official had disclosed aspects of that complaint in various contexts.[62] Media reports on the matter included the identities of persons connected to the complaint. Despite the fact that media reports had publicly identified people in connection with that complaint, the CCC did not name persons relevant to its investigation, recognising the competing considerations of privacy and reputational harm against the public interest in reporting on the matter. The Integrity Commissioner, was of course, identifiable by reference to her position.

The Act requires the CCC to particularly focus on more serious cases of corrupt conduct. The seniority of staff involved in the conduct is a relevant feature in this regard, as more is to be expected of senior public servants.

It is also true that the more senior a person's position, the greater the likelihood that they will be identified. There are likely to be fewer people at a particular level, or at that level within a particular department or division, the more senior the officer's role. However, those are also more likely to be the types of matters which are investigated by the CCC,[63] and which may be susceptible to public reporting.

It is true that this approach of referring to a person by a pseudonym may not provide them with complete anonymity. Personal and professional associates may be able to infer the identity of a person provided they have sufficient detail. The closer an associate is to an investigation subject, the higher the likelihood is. It may be expected that it is those persons who are close to the subject of the investigation about whose opinion those subjects are likely to care the most.

However, it is a practical reality that, in publicly reporting on its investigations, there is a balance that will always need to be struck. The alternatives would be to either not report publicly, or to provide information at such a level of abstraction that the particular conduct of individuals may not be meaningfully understood.

Other jurisdictions provide a demarcation in who may be identified in public reporting by reference to whether those persons are to be the subject of adverse comment. Section 167(7) of the IBAC Act requires that the IBAC must not include information which would identify a person who is not the

[62] No criticism is made of the Integrity Commissioner for that conduct.
[63] Noting the statutory imperative to focus on more serious and systemic cases of corrupt conduct.

subject of adverse comment or opinion unless it is satisfied that it is necessary or desirable to do so in the public interest, is satisfied it will not cause unreasonable damage to the person's reputation, safety or wellbeing, and states in the report that the person is not the subject of any adverse comment or opinion.[64]

### *C. Information which is prejudicial to the public, or governmental interests*

There is no express provision in the Act which prohibits publication of information which may be damaging to particular matters, such as the functioning of law enforcement, Government or national security.

The NACC Act has specific provisions for matters which may not be included in a public report (sensitive information). Such information must be excised from the public report and provided to a restricted class of persons as a protected information report (section 152). 'Sensitive information' is defined in section 227 of the NACC Act, and includes categories of information which are, in many respects, reflective of categories of information recognised as covered by public interest immunity. Those include: information prejudicial to the security, defence, or international relations of Australia; information that could prejudice inter-governmental relations within Australia; intelligence information; confidential source information; and cabinet information. However, it also extends to include information which would involve unreasonably disclosing a person's personal affairs, and information which would involve unreasonably disclosing confidential commercial information.

In general terms, there are no equivalent provisions in the NSW ICAC or IBAC legislation. These matters are generally left to the relevant commission's discretion.

As noted above, section 57 of the Act obliges the CCC and its officers to, at all times, act independently, impartially and fairly, having regard to the purposes of the Act, and the importance of protecting the public interest. 'The public interest', of course, is not a monolith. There are a range of often countervailing considerations which must be weighed. The CCC's work at times intersects with matters which may, on their face, be covered by one or more of these factors.

For example, the CCC's investigation of former Minister Gordon Nuttall's corruption required an examination of his actions within Cabinet. While no public report was made in relation to that matter, any such report would inevitably have had to include information about Cabinet business, which arguably could not be included under NACC's governing legislation.

Similarly, Operation Capri[65] involved substantial conduct issues in relation to how Queensland police officers engaged with a confidential informant. That report was inextricably linked to the fact of,

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[64] There are similar, although less clear, provisions in the NACC Act (see, for example, s 153(5)).

[65] *Crime and Misconduct Commission*, Dangerous Liaisons: A report arising from a CMC investigation into allegations of police misconduct (Operation Capri), July 2009. Available at <Dangerous liaisons: a report arising from a CMC investigation into allegations of police misconduct (parliament.qld.gov.au)>.

circumstances of engagement with, and identity of, the informant. That report could not have been made under the provisions which govern NACC.[66]

*D. Coerced or covertly obtained information*

The Northern Territory's *Independent Commissioner Against Corruption Act 2017* (NT) prohibits the inclusion in public reports and public statements of material which would otherwise be inadmissible against a witness in other proceedings.

Commissions such as the CCC have the power to abrogate the privilege against self-incrimination and compel persons to answer questions, even where those answers may incriminate them. This is a common feature of integrity commissions, but also of similar entities which have an inquisitorial/investigative function such as royal commissions or boards of inquiry. The 'trade-off' for such an intrusive power is that the answers given in such circumstances may not be used as evidence against a person. This ordinarily encompasses civil, criminal or administrative proceedings (although this varies depending on the jurisdiction and function).[67]

An absolute prohibition on the inclusion of such information in a public report would pose some difficulties.

If it is accepted that there is value in publicly reporting on what is learned through a corruption investigation, then it follows that such a report is best served by setting out an accurate account, arrived at from the information obtained through the investigation. That would ordinarily include some amount of information obtained through compelled testimony.

A key feature of most corruption is that it involves some type of agreement, often by sophisticated actors, to engage in conduct which elevates private interests over the public interest. Obtaining information under compulsion is one of the ways in which key evidence is uncovered in relation to such arrangements. The fact that the information cannot be used in any civil, criminal or administrative proceeding does not detract from the value of the information, nor its centrality in understanding matters of interest to the investigation.

It would be especially curious if a public hearing could elicit evidence which could not be referred to in a public report because it was obtained under compulsion.[68]

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[66] This is not to be taken as a criticism of NACC's legislation. There are good reasons – not the least of which is NACC's involvement in national security and intelligence matters – why there would be different considerations for what information may be publicly reported on by it.

[67] See, for example, taxation legislation as examined in *R v Kinghorn* (2021) 106 NSWLR 322 and *R v Leach* [2019] 1 Qd R 459.

[68] Of course, this may be the exception referred to in the NT ICAC legislation which does not extend this prohibition to information in the public domain. However, it also seems perverse that the commissioner could defeat a prohibition which would otherwise operate under the Act by itself deciding to make information public by other means.

It is common for other types of investigative bodies to be able to rely on information obtained in similar circumstances. There is no restriction on a coroner's findings including such information,[69] parliamentary inquiries engage in fact finding, and may report regardless of whether information has been obtained in circumstances in which the information provided would be strictly inadmissible in any other forum, and a Royal Commission may report on its investigation, notwithstanding that evidence may have been given under compulsion.

It may be that such provisions are intended to prevent reference to *particular evidence* given by a person – that is, that a report could include information obtained in such a way, but could not attribute that information to a person having given the evidence in a hearing over an objection on the grounds of self-incrimination privilege.

There is also a question about whether a report could or should include information obtained by other covert means, such as through the use of telecommunications interception. A report on a corruption investigation is a 'permitted purpose' for which lawfully intercepted telecommunications information may be used under section 67 of the *Telecommunications (Interception and Access) Act 1974 (Cth)*. As such, absent a statutory restriction, such information could be included in a report.

*E. Information which may prejudice criminal or disciplinary proceedings*

The CCC accepts that caution must always be exercised in public reporting to minimise the risk of prejudice to criminal or disciplinary proceedings. What is required to achieve this will vary in any given case.

The CCC is not aware of any case in which a report by an integrity agency has formed the basis for a successful stay of a prosecution on the grounds of adverse pre-trial publicity. Of course, that is not the standard against which such agencies' conduct should be measured, and a greater degree of circumspection is necessary, recognising that adverse pre-trial publicity may have a detrimental impact on a person's fair trial rights, and the public interest in ensuring that those who commit criminal offences are brought to justice.

### *3.7 CCC preferred approach*

The CCC submits that the most appropriate approach to public reporting powers is the discretionary reporting model, since this best allows for a balanced approach to reporting which reflects the wide circumstances and variance of interests which may arise in the course of a corruption investigation and which must be considered in reaching a decision about how and when to report (or not report) on an investigation.

[69] *Coroners Act 2003* (Qld) ss 39, 45 and 46.

Where integrity agencies have the capacity to report and make statements in relation corruption complaints and investigations at any time in the life of a complaint, this is a powerful education tool and deterrent to corruption. In the CCC's experience, there are instances where early intervention and public comment on an issue under consideration can mitigate the impact of the matter under investigation. Public reporting serves this function, but the formality of messaging and the time that it takes to prepare and table a public report does not allow for short and contemporaneous intervention in appropriate cases.

Reporting powers should ideally allow for the CCC's discretion to determine the appropriate content of reports on a case by case basis, by balanced consideration of principles of natural justice and procedural fairness, human rights compatibility, the need to refrain from publishing sensitive information against the public interest and the public interest in transparent reporting of the CCC's investigations. This includes consideration of:

- the seriousness of the matters under investigation, and the extent to which there is a public interest in reporting on these matters and/or public reporting may provide an education and corruption prevention tool;

- the sensitivity of the matters under investigation, and the extent to which it is appropriate to report publicly about confidential personal information of the subject/s of the investigation and other parties. This may depend also on whether the subject matter of the investigation is in the public domain and whether a complainant or someone with knowledge of the complaint has revealed that a complaint has been made to the CCC which is being investigated;

- whether the investigation relates to more than one person, and whether the investigation concludes that there has been corrupt conduct by one or all of the subjects of the investigation. The CCC observes, on this point, that there is a differential threshold for the CCC's corruption investigations of public officers (who may be subject to disciplinary action on the one hand) and private persons who have engaged corruptly with a public officer or elected representatives on the other hand (who would not be subject to disciplinary action and therefore whose conduct must reach the threshold of criminality). It would be an artificially high bar to limit the CCC's power to publicly report on a corruption investigation of several subjects, where one of the subjects was in the latter category and their conduct did not reach the threshold for criminal prosecution. This higher bar for public reporting of investigations involving elected representatives is not considered to be in the public interest and is an undesirable restriction on transparency of CCC investigations;

- where an investigation concludes that there has been no corrupt conduct and the fact of a complaint or assessment or investigation is in the public domain, there is in many cases a significant public interest in explaining the basis for the CCC's conclusions. The CCC's

'Investigation Workshop: An investigation into allegations of disclosure of confidential information at the Office of the Integrity Commissioner'[70] is one example of this.

The CCC observes that the decision in *Carne* would also appear to impact on its ability to report on investigations conducted with public hearings. While section 69(1)(a) of the Act makes specific reference to "a report on a public hearing", noting the High Court's conclusion that section 64 proffers no authority to report on a corruption investigation beyond the reports to agencies set out in section 49, legislative amendment may be required to clarify the power to report on a public hearing in order to avoid the perverse outcome where a corruption investigation hearing could be conducted in public but the report of that investigation could not then be made publicly.

## 4. Legislative safeguards for the making of a public report

Adoption of the discretionary approach to public reporting does not, of course, result in an unfettered discretion. The CCC acknowledges that the responsibility to the public and the public interest must be balanced against the interests of individuals, particularly those who may be adversely affected by publication.

The Act as it currently stands provides for a statutory regime which promotes the protection of privacy and guards against reputational risk, thereby providing a framework of safeguards to appropriately balance those competing interests. For example:

- section 57 of the Act imposes an overarching obligation for the CCC and its officers to, at all times, act independently, impartially and fairly having regard to the purposes of the Act and the importance of protecting the public interest;

- section 66 of the Act allows for information from an investigation to be kept confidential, either by not making a report on a matter or by not referring to confidential information in a report. In either case, the Act provides that the information may be disclosed in a separate document to the Speaker, the Minister or the parliamentary committee;

- section 177(1) of the Act provides for a presumption against the holding of public hearings. The Commission may only open hearings in relation to a corruption investigation to the public if it considers closing the hearing to the public would be unfair to a person or contrary to the public interest;

- section 332 of the Act provides for an express right to seek judicial review of the Commission's activities in relation to corrupt conduct investigations where an applicant contends that an

[70] Available at <https://www.ccc.qld.gov.au/publications/investigation-workshop-investigation-allegations-disclosure-confidential-information>.

investigation is being conducted unfairly or a matter does not warrant investigation by the CCC[71]. An application may be made to the Supreme Court for an order to injunct the CCC in these circumstances. This important and powerful safeguard provision is not replicated in the legislation of any other anti-corruption agency in Australia; and

- section 71A specifically provides for procedural fairness requirements. It requires that, if the CCC proposes to make an adverse comment about a person in a report to be tabled in the Legislative Assembly, or published to the public, it must first give the person an opportunity to make submissions about the proposed adverse comment.[72] If the CCC still proposes to make the adverse comment, the person's submission must be fairly stated in the report.[73] This provides an important procedural fairness protection for affected persons.

The CCC is also bound by the protections afforded by common law authority and other statutes including:

- the common law duty of procedural fairness, as described in *Ainsworth v Criminal Justice Commission*[74], which applies to the CCC for investigations that may "destroy, defeat or prejudice a person's rights, interest or legitimate expectations"[75] which includes the interest in reputation;[76] and

- the *Human Rights Act 2019* (Qld) which protects Queenslanders' rights to privacy, rights to a fair hearing and rights in criminal proceedings among others. Queensland is one of only three Australian jurisdictions where integrity agencies are bound to comply with human rights legislation.

The collective operation of the safeguards in the Act and the other protections afforded by the common law and Queensland statute represents the high benchmark for integrity agencies in Australia. Many other Australian integrity agencies have some of these safeguards in place, but none other than the CCC in Queensland is bound by all of these protections.

The CCC considers it is appropriate for section 71A, or a similar provision, to be maintained to ensure the procedural fairness process provided by CCC legislation is clear to affected persons. This provision, in addition to the other safeguards outlined above, establishes sufficient guidance and requirements to ensure the CCC balances the public interest and being accountable to the public with the interests of those individuals who may be affected, adversely or otherwise, by the publication of a report.

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[71] Noting that section 332 and the exercise of the powers in section 334 are dependent on an ongoing corruption investigation. For an example, see *PRS v Crime and Corruption Commission* [2019] QCA 255.
[72] CC Act s 71A(1)-(2).
[73] CC Act s 71A(3).
[74] [1992] HCA 10.
[75] *Ainsworth* 24.
[76] *Ainsworth* 27.

## 5. Power to make statements

The High Court's decision in *Carne* has cast some doubt on whether the CCC may make public statements or comment on matters arising from complaints of corruption. The Court considered that the only reporting power available in respect of a complaint of corruption is found in s49 of the Act. It is arguable that 'reporting' extends to any public statement or comment in relation to a matter. If that is the case, then the CCC has no power to make public comment in relation to complaints of corruption it receives.

While the CCC does not generally make public comment on matters, there are circumstances in which such comment is appropriate. In those circumstances, to remove any doubt, the CCC's view is that it should be made clear that the CCC has the power to make public statements or comment on matters with which it deals.

The CCC must be accountable and transparent in its communication to stakeholders, most particularly members of the public.

### *5.1 Historical approach*

Prior to the *Carne* decision, the CCC frequently made media releases available on its website, and less frequently, held press conferences in relation to particular investigations. [77]

In regard to the CCC's practice for making public statements prior to the *Carne* litigation, the CCC would issue detailed media releases regarding corruption matters as the occasion and the public interest required. Some of the CCC media releases made before 2022 that may be considered 'public statements' have included the assessments of allegations of official misconduct by the Hon Campbell Newman while he was Mayor of Brisbane, complaints regarding Gold Coast Police and the conclusion of the investigation of the use of a personal email account by the Hon Mark Bailey MP.

The issuing of media releases did not mean that the CCC stopped or reduced the publication of detailed reports but would sometimes occur in addition to a public report at the conclusion of a corruption matter. A review of media releases also showed that the CCC has not commented on any investigations or assessments prior to their completion except where the matters have already been in the public domain.

### *5.2 Legislative position and jurisdictional comparison*

In some Australian jurisdictions, integrity agencies have express statutory authority to make statements. As detailed further below, the NACC, SA ICAC and NT ICAC all have provisions within their respective legislation regarding the making of public statements.

[77] The CCC has identified 256 such media releases between January 2006 and October 2022.

The NACC Act provides the Commissioner may make a public statement about a corruption issue at any time, whether or not the Commissioner deals with the issue.[78] A corruption issue is an issue of whether a person has engaged in, is engaging in or will engage in corrupt conduct.[79]

The SA ICAC is prohibited from making a public statement that discloses or may imply that a matter is being or is proposed to be investigated.[80] After an investigation has concluded, where a matter has not been referred to a law enforcement agency, inquiry agency or public authority, the SA ICAC is authorised to make a public statement if the Commissioner is satisfied that no criminal proceedings, proceedings for the imposition of a penalty or disciplinary action will be commenced as a result of the investigation.[81] The Commission must consider the matters set out in section 25(4) ICAC SA Act before making a public statement.

The NT ICAC is authorised to make a public statement in relation to a particular matter that the ICAC is dealing with or has dealt with, including a matter the ICAC has referred to a referral entity.[82] Reasons why the NT ICAC may make a public statement are articulated in section 55(2), with limitations on this power set out in section 55(4).

Other integrity agencies in Australia have general statutory authority which might be relied upon to make public statements, such as the ACT Integrity Commission to publish information about investigations conducted by the Commission including lessons learnt,[83] and NSW ICAC has authority to educate and disseminate information to the public.[84] The CCC considered itself, prior to *Carne,* to also have a similar authority.

### *5.3 CCC preferred approach*

The CCC submits that the Act should allow for it to make public statements in relation to both its crime and corruption functions in appropriate circumstances and at an appropriate time. Statutory authority for the CCC to make statements would be consistent with its authority to perform its prevention function,[85] and its broad authority to perform its corruption functions,[86] and with similar powers available to other integrity bodies in other jurisdictions.[87]

There is a significant public interest in the CCC being able to make statements about complaints that it has received, its assessment decisions and its corruption investigations by media release, and, in

[78] NACC Act s 48(1).
[79] NACC Act s 9.
[80] ICAC SA Act s 25(2).
[81] ICAC SA Act s 25(3)(b).
[82] *Independent Commissioner Against Corruption Act 2017* (NT) s 55.
[83] IC Act s 23.
[84] NSW ICAC Act s 18(e)-(f).
[85] As set out in ss 23 and 24 of the CC Act.
[86] As set out in ss 33 to 35B and 46 and 48 of the CC Act.
[87] We also note that other law enforcement agencies, such as the Queensland Police Service, make public comment on a range of matters without an express statutory authority to do so.

particular circumstances, to engage with media to keep the public informed of work being undertaken by the CCC. This allows the CCC to act quickly to correct inaccuracies in the public reporting of corruption complaints and investigations and to dispel allegations where they are determined to be unfounded, and to enhance transparency in the public sector. While statements lack the formality of public reports[88], it is appropriate that they be made when there is a public interest in the CCC providing information to correct the public record and to mitigate a corruption risk.

The CCC would support the introduction to the Act of an express power to make a statement, consistent with those of the NACC and NT ICAC, for the making of public statements in relation to particular matters the CCC is dealing with. While the CCC considers an interpretation of the *Carne* decision may not necessarily prevent the CCC making public statements, an express authorisation would remove uncertainty and provide the CCC discretion to adopt such an approach in appropriate circumstances.

The CCC submits that any express power to make statements in relation to corruption investigations to be a non-exhaustive provision which makes allowance for the CCC to refer to the subject matter of an investigation when fulfilling other aspects of its statutory responsibilities, including making comment in corruption prevention publications or a training and education setting, preparing research publications, providing information to the CCC's oversight committee in public meetings, and making submissions on legislative reforms and periodic reviews of the CCC's operations.

### 6. Retrospective operation of legislative amendment

The CCC considers curative legislation is required following the decision in *Carn*e to validate public reports previously prepared by the commission and tabled in the Legislative Assembly.

As detailed previously in this submission, the CCC and its predecessors have historically reported on significant matters relating to corruption matters on the understanding that it had the power to do so pursuant to the Act. Those reports highlight corruption risks, demonstrate important integrity lessons and in many cases were the impetus for improved processes and procedures in public agencies.

Express provisions for retrospectivity which confirm the authority for the preparation and/or tabling of previous reports will be an important aspect of any amendment to the reporting powers in the Act.

It is not uncommon in Queensland for retrospective laws to be passed to validate past actions (validating legislation), correct previously unknown defects in legislation or confer benefits retrospectively. However, when introducing retrospective legislation, Parliament must balance the risk of harm to society with the need for retrospective legislation. This balance may be achieved where the proposed amendments restore an intent that was already perceived to exist or where adverse impacts are mitigated by a narrow application of the retrospective change.

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[88] CCC decisions to make statements are nonetheless subject to considerations of natural justice and compatibility with human rights.

The CCC considers that, where retrospective legislation would operate to validate reports already published under the previous understanding of how the law operated, an appropriate balance would be struck.

The list of publications which have been tabled by the CCC and its predecessors is set out in **Annexure 3** to this submission.

The CCC has identified the following categories of report which the CCC and its predecessors have created pursuant to its broad reporting power, which may need to be contemplated in any provision to retrospectively validate past reports:

- A public report made by the CCC pursuant to section 64 in relation to a particular corruption investigation in circumstances where the CCC had decided that no prosecution proceedings or disciplinary action should be considered. The CCC has identified an example of this situation – 'Investigation Workshop: An Investigation into Allegations of Disclosure of Confidential Information at the Office of the Integrity Commission'.

- A public report made by the CCC pursuant to section 64 in relation to a particular corruption investigation in circumstances where the CCC had decided that disciplinary action may have been considered, however a section 49 report was not made to the relevant entity because the subject officer had resigned from their position so such a referral would have been futile. The CCC has identified an example for this situation – 'Investigation Keller: An Investigation Report into Allegations Relating to the Former Chief of Staff to the Honourable Annastacia Palaszczuk MP, Premier of Queensland and Minister for Trade'.

- A public report made by the CCC pursuant to section 64 in relation to a particular corruption investigation where public hearings were held. Two examples of this have been identified – the first is 'Operation Belcarra: A Blueprint for Integrity and Addressing Corruption Risk in Local Government' where public hearings were held and there was a referral of matters to the Electoral Commission of Queensland to deal with pursuant to section 49. The second example is 'Taskforce Flaxton: An Examination of Corruption Risks and Corruption in Queensland Prisons' where public hearings were held and there was no referral of matters for criminal or disciplinary action under section 49.

- A public report made by the CCC pursuant to section 64 that is categorised as a research report per section 69(1)(b), though makes some reference to a particular corruption investigation either as a case study or as a basis for why the research report is then being generated. An identified example is 'Seeking Justice: An Inquiry into how Sexual Offences Are Handled by the Queensland Criminal Justice System', a report which was tabled as a research report pursuant to section 69, though which includes a section from the public report into a particular corruption investigation 'Volkers Case: Examining the Conduct of the Police and Prosecution'.

- A public report made by the CCC pursuant to section 64 that is categorised as an 'assessment report' in which the CCC reports that a complaint has been assessed and it has been determined that the matter will not proceed to an investigation. An identified example is 'Conduct of Senior Medical Officers in treating and billing private patients in public hospitals – Report of assessment of allegations referred to the Crime and Corruption Commission'.

## 7. Conclusion

Thank you for the opportunity to engage with this Review. The CCC has provided this initial response to the questions posed in your correspondence dated 27 February 2024, to assist the Review within the time requested.

I would be happy to discuss these matters with you or to provide any further written submission that you require.

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.**

**Annexure 1**

**Part 1 – Legislative development of sections 64 and 69 of the *Crime and Corruption Act 2001***

| *Criminal Justice Act 1989* (31 October 1989) | *Criminal Justice Act 1989* (28 January 1994) | *Criminal Justice Act 1989* (1 April 1998) | *Crime and Misconduct Act 2001* (08 November 2001) |
|---|---|---|---|
| **2.18 Commission's reports.** (1) Except as is prescribed or permitted by section 2.19, a report of the Commission, signed by its Chairman, shall be furnished—<br>(a) to the chairman of the Parliamentary Committee;<br>(b) to the Speaker of the Legislative Assembly; and<br>(c) to the Minister.<br>(2) The Commission may furnish a copy of its report to the principal officer in a unit of public administration who, in its opinion, is concerned with the subject-matter of the report.<br>(3) If a report is received by the Speaker when the Legislative Assembly is not sitting, he shall deliver the report and any accompanying document to The Clerk of the Parliament and order that it be printed.<br>(4) A report printed in accordance with subsection (3) shall be deemed for all purposes to have been tabled in and printed by order of the Legislative Assembly and shall be granted all the immunities and privileges of a report so tabled and printed.<br>(5) A report received by the Speaker, including one printed in accordance with subsection (2), shall be tabled in the Legislative Assembly on the next sitting day of the Assembly after it is received by him and be ordered by the Legislative Assembly to be printed.<br>(6) No person shall publish, furnish or deliver a report of the Commission, otherwise than is prescribed by this section, unless the report has been printed by order of the Legislative Assembly or is deemed to have been so printed.<br>(7) This section does not apply to an annual report of the Commission referred to in section 7.10.<br><br>**3.21 Commission not bound by rules or practice.** (1) The Commission is not bound by rules or the practice of any court or tribunal as to evidence or procedure in the discharge of its functions and responsibilities, or the exercise of its powers or authorities, but may inform itself on any matter and conduct its proceedings as it thinks proper.<br>(2) The Commission shall, at all times—<br>(a) act independently, impartially, fairly, and in the public interest;<br>(b) act openly, except where to do so would be unfair to any person or contrary to the public interest;<br>(c) include in its reports—<br>(i) its recommendations with respect to the relevant subject-matter;<br>(ii) an objective summary and comment with respect to all considerations of which it is aware that support or oppose or are otherwise pertinent to its recommendations.<br>(3) Without limiting the operation of subsection (1), the Commission, other than a Misconduct Tribunal exercising its jurisdiction, may refer any matter on which it seeks expert evidence to a person of relevant competence, and may admit as evidence before it and act upon that person's report. | **Commission's reports**<br>**26.(1)** Subject to section 27, a report of the Commission, signed by its chairperson, shall be furnished—<br>(a) to the chairperson of the Parliamentary Committee; and<br>(b) to the Speaker of the Legislative Assembly; and<br>(c) to the Minister.<br>**(2)** The Commission may furnish a copy of its report to the principal officer in a unit of public administration who, in its opinion, is concerned with the subject matter of the report.<br>**(3)** If a report is received by the Speaker when the Legislative Assembly is not sitting, the Speaker shall deliver the report and any accompanying document to the Clerk of the Parliament and order that it be printed.<br>**(4)** A report printed in accordance with subsection (3) shall be deemed for all purposes to have been tabled in and printed by order of the Legislative Assembly and shall be granted all the immunities and privileges of a report so tabled and printed.<br>**(5)** A report received by the Speaker, including one printed in accordance with subsection (3), shall be tabled in the Legislative Assembly on the next sitting day of the Assembly after it is received by the Speaker and be ordered by the Legislative Assembly to be printed.<br>**(6)** No person shall publish, furnish or deliver a report of the Commission, otherwise than is prescribed by this section, unless the report has been printed by order of the Legislative Assembly or is deemed to have been so printed.<br>**(7)** This section does not apply to an annual report of the Commission referred to in section 7.10.<br>**(8)** Notwithstanding subsection (6) the Commission, prior to furnishing a report in accordance with subsection (1), may—<br>(a) publish, furnish or deliver a copy of a report of the Commission to the Government Printer; and<br>(b) make arrangements for the preprinting by the Government Printer of copies of such report for the purposes of this section.<br>**Commission's reports**<br>**93.(1)** The Commission must include in each of its reports—<br>(a) its recommendations; and<br>(b) an objective summary of all matters of which it is aware that support, oppose or are otherwise relevant to its recommendations.<br>**(2)** The Commission may also include in a report any comments it may have on the matters mentioned in subsection (1)(b). | **Commission's reports**<br>**26.(1)** Subject to section 27, a report of the commission, signed by its chairperson, shall be furnished—<br>(a) to the chairperson of the parliamentary committee; and<br>(b) to the Speaker of the Legislative Assembly; and<br>(c) to the Minister.<br>**(2)** The commission may furnish a copy of its report to the principal officer in a unit of public administration who, in its opinion, is concerned with the subject matter of the report.<br>**(3)** If a report is received by the speaker when the Legislative Assembly is not sitting, the speaker shall deliver the report and any accompanying document to the Clerk of the Parliament and order that it be printed.<br>**(4)** A report printed in accordance with subsection (3) shall be deemed for all purposes to have been tabled in and printed by order of the Legislative Assembly and shall be granted all the immunities and privileges of a report so tabled and printed.<br>**(5)** A report received by the speaker, including one printed in accordance with subsection (3), shall be tabled in the Legislative Assembly on the next sitting day of the Assembly after it is received by the speaker and be ordered by the Legislative Assembly to be printed.<br>**(6)** No person shall publish, furnish or deliver a report of the commission, otherwise than is prescribed by this section, unless the report has been printed by order of the Legislative Assembly or is deemed to have been so printed.<br>**(7)** This section does not apply to an annual report of the commission.<br>**(8)** Notwithstanding subsection (6) the commission, prior to furnishing a report in accordance with subsection (1), may—<br>(a) publish, furnish or deliver a copy of a report of the commission to the government printer; and<br>(b) make arrangements for the preprinting by the government printer of copies of such report for the purposes of this section.<br>**(9)** In this section—<br>**"report of the commission"** means—<br>(a) a report on a hearing conducted by the commission under section 25, other than a report under section 33; or<br>(b) a research or other report prepared by the commission that the parliamentary committee directs the commission to give to the Speaker of the Legislative Assembly.<br>**Commission's reports**<br>**93.(1)** The Commission must include in each of its reports—<br>(a) its recommendations; and<br>(b) an objective summary of all matters of which it is aware that support, oppose or are otherwise relevant to its recommendations.<br>**(2)** The Commission may also include in a report any comments it may have on the matters mentioned in subsection (1)(b). | **64 Commission's reports—general**<br>**(1)** The commission may report in performing its functions.<br>**(2)** The commission must include in each of the reports—<br>(a) any recommendations, including, if appropriate and after consulting with the commissioner of police, a recommendation that the Police Minister give a direction to the commissioner of police under the Police Service Administration Act, section 4.6; and<br>(b) an objective summary of all matters of which it is aware that support, oppose or are otherwise relevant to its recommendations.<br>**(3)** If the Police Minister decides not to give a direction under the Police Service Administration Act, section 4.6 following a recommendation made under subsection (2)(a), the Police Minister must table in the Legislative Assembly, after giving the reasons—<br>(a) a copy of the recommendation; and<br>(b) the Minister's reasons for not giving the direction.<br>**(4)** The commission may also include in a report any comments it may have on the matters mentioned in subsection (2)(b).<br>**(5)** In this section—<br>**"Police Service Administration Act"** means the *Police Service Administration Act 1990*.<br>**"Police Minister"** means the Minister administering the Police Service Administration Act.<br>**69 Commission reports to be tabled**<br>**(1)** This section applies to the following commission reports—<br>(a) a report on a public hearing;<br>(b) a research report or other report that the parliamentary committee directs be given to the Speaker.<br>**(2)** However, this section does not apply to the commission's annual report, or a report under section 49 or 65,[17] or a report to which section 66 applies.[18]<br>**(3)** A commission report, signed by the chairperson, must be given to—<br>(a) the chairperson of the parliamentary committee; and<br>(b) the Speaker; and<br>(c) the Minister.<br>**(4)** The Speaker must table the report in the Legislative Assembly on the next sitting day after the Speaker receives the report.<br>**(5)** If the Speaker receives the report when the Legislative Assembly is not sitting, the Speaker must deliver the report and any accompanying document to the clerk of the Parliament.<br>**(6)** The clerk must authorise the report and any accompanying document to be printed.<br>**(7)** A report printed under subsection (6) is to be taken, for all purposes, to have been tabled in and printed by order of the Legislative Assembly and is to be granted all the immunities and privileges of a report so tabled and printed.<br>**(8)** The commission, before giving a report under subsection (1), may—<br>(a) publish or give a copy of the report to the printer authorised to print the report; and<br>(b) arrange for the preprinting by the printer of copies of the report for this section. |

**Annexure 1**
**Part 2 – Legislative development of section 49 of the *Crime and Corruption Act 2001***

| *Criminal Justice Act 1989* (31 October 1989) | *Criminal Justice Act 1989* (28 January 1994) | *Criminal Justice Act 1989* (13 December 1994) | *Criminal Justice Act 1989* (1 April 1998) |
|---|---|---|---|
| **2.24 Reports of Division.** (1) The Director of the Official Misconduct Division shall report on—<br>(a) every investigation carried out by the Division;<br>(b) every matter of complaint, or information, submitted to him by the Complaints Section of the Division.<br>(2) A report shall be made to the Chairman with a view to such action by the Commission as he considers desirable and, with the authority of the Chairman, to such one or more of the following as the Chairman considers appropriate—<br>(a) the Director of Prosecutions, or other appropriate prosecuting authority, with a view to such prosecution proceedings as the Director of Prosecutions or other authority considers warranted;<br>(b) the Executive Director of the Commission with a view to a Misconduct Tribunal exercising jurisdiction in respect of the matter to which the report relates;<br>(c) the Chief Justice of the State, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;<br>(d) the Chairman of District Courts, if the report relates to conduct of a judge of District Courts;<br>(e) the Chief Stipendiary Magistrate, if the report relates to conduct of a person holding judicial office in the system of Magistrates Courts or Children's Courts;<br>(f) in a case to which paragraphs (c), (d) and (e) do not apply, the appropriate principal officer in a unit of public administration, with a view to disciplinary action being taken in respect of the matter to which the report relates.<br>(3) A report made to the Director of Prosecutions or the Executive Director of the Commission must contain, or be accompanied by, all relevant information known to the Official Misconduct Division, whether the information—<br>(a) supports a charge that may be brought against any person in consequence of the report;<br>or<br>(b) supports a defence that may be available to any person liable to be charged in consequence of the report.<br>(4) Where a complaint of official misconduct or of misconduct has been furnished to the Complaints Section of the Division, the Director shall cause a response to be given to the complainant (if his identity and whereabouts are known to the Commission) that states—<br>(a) if no action has been taken on the complaint, the reason for inaction;<br>(b) if action has been taken on the complaint, what that action is, the reason that action is appropriate in the circumstances of the case and the result of that action, if it be known at the time of making the response. | **Reports of division**<br>**33.(1)** The director of the Official Misconduct Division shall report on—<br>(a) every investigation carried out by the division (other than by or on behalf of the Complaints Section);<br>(b) every matter of complaint, or information, submitted to the director by the Complaints Section of the division.<br>**(2)** A report shall be made to the chairperson with a view to such action by the Commission as the chairperson considers desirable and, with the authority of the chairperson, to such 1 or more of the following as the chairperson considers appropriate—<br>(a) the Director of Prosecutions, or other appropriate prosecuting authority, with a view to such prosecution proceedings as the Director of Prosecutions or other authority considers warranted; and<br>(b) the executive director of the Commission with a view to a Misconduct Tribunal exercising jurisdiction in respect of the matter to which the report relates; and<br>(c) the Chief Justice of the State, if the report relates to conduct of a Judge of, or other person holding judicial office in, the Supreme Court; and<br>(d) the Chief Judge of District Courts, if the report relates to conduct of a Judge of District Courts; and<br>(e) the President of the Childrens Court, if the report relates to a person holding judicial office in the Childrens Court; and<br>(f) the Chief Stipendiary Magistrate, if the report relates to conduct of a person holding judicial office in the system of Magistrates Courts; and<br>(g) in a case to which paragraphs (c), (d) and (f) do not apply—the appropriate principal officer in a unit of public administration, with a view to disciplinary action being taken in respect of the matter to which the report relates.<br>**(3)** A report made to the Director of Prosecutions or the executive director of the Commission must contain, or be accompanied by, all relevant information known to the Official Misconduct Division, whether the information—<br>(a) supports a charge that may be brought against any person in consequence of the report; or<br>(b) supports a defence that may be available to any person liable to be charged in consequence of the report.<br>**(4)** If a person makes a complaint of misconduct or official misconduct to the Complaints Section, the director must give to the person a response stating—<br>(a) if no action is taken on the complaint—the reason for the inaction; or<br>(b) if action is taken on the complaint—<br>(i) the action taken; and<br>(ii) the reason the director considers the action to be appropriate in the circumstances; and<br>(iii) any results of the action that are known at the time of the response.<br>**(5)** However, the director is not required to give a response to the person if—<br>(a) the person has not given his or her name and address to the Commission; or<br>(b) the Complaints Section, acting under section 38(2), does not investigate the complaint.<br>**(6)** The director must not disclose, in a response under subsection (4), information the director considers should remain confidential. | **33.(1)** The director of the Official Misconduct Division shall report on—<br>(a) every investigation carried out by the division (other than by or on behalf of the Complaints Section);<br>(b) every matter of complaint, or information, submitted to the director by the Complaints Section of the division.<br>**(2)** A report shall be made to the chairperson with a view to such action by the Commission as the chairperson considers desirable and, with the authority of the chairperson, to such 1 or more of the following as the chairperson considers appropriate—<br>(a) the Director of Prosecutions, or other appropriate prosecuting authority, with a view to such prosecution proceedings as the Director of Prosecutions or other authority considers warranted;<br>(b) the executive director of the Commission with a view to a Misconduct Tribunal exercising jurisdiction in respect of the matter to which the report relates;<br>(c) the Chief Justice of the State, if the report relates to conduct of a Judge of, or other person holding judicial office in, the Supreme Court;<br>(d) the Chief Judge of District Courts, if the report relates to conduct of a Judge of District Courts;<br>(e) the President of the Childrens Court, if the report relates to a person holding judicial office in the Childrens Court;<br>(f) the Chief Stipendiary Magistrate, if the report relates to conduct of a person holding judicial office in the system of Magistrates Courts;<br>(g) in a case to which paragraphs (c), (d), (e) and (f) do not apply—the appropriate principal officer in a unit of public administration, with a view to disciplinary action being taken in respect of the matter to which the report relates.<br>**(3)** A report made to the Director of Prosecutions or the executive director of the Commission must contain, or be accompanied by, all relevant information known to the Official Misconduct Division, whether the information—<br>(a) supports a charge that may be brought against any person in consequence of the report; or<br>(b) supports a defence that may be available to any person liable to be charged in consequence of the report.<br>**(4)** If a person makes a complaint of misconduct or official misconduct to the Complaints Section, the director must give to the person a response stating—<br>(a) if no action is taken on the complaint—the reason for the inaction; or<br>(b) if action is taken on the complaint—<br>(i) the action taken; and<br>(ii) the reason the director considers the action to be appropriate in the circumstances; and<br>(iii) any results of the action that are known at the time of the response.<br>**(5)** However, the director is not required to give a response to the person if—<br>(a) the person has not given his or her name and address to the Commission; or<br>(b) the Complaints Section, acting under section 38(2), does not investigate the complaint.<br>**(6)** The director must not disclose, in a response under subsection (4), information the director considers should remain confidential. | **Reports of division**<br>**33.(1)** The director of the official misconduct division shall report on—<br>(a) every investigation carried out by the division (other than by or on behalf of the complaints section);<br>(b) every matter of complaint, or information, submitted to the director by the complaints section of the division.<br>**(2)** A report shall be made to the commission or, at the commission's direction, the chairperson.<br>**(2A)** With the authority of the commission, the report must also be made to 1 or more of the following—<br>(a) the director of public prosecutions, or other appropriate prosecuting authority, with a view to such prosecution proceedings as the director of public prosecutions or other authority considers warranted;<br>(c) the chief justice of the State, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;<br>(d) the chief judge of District Courts, if the report relates to conduct of a judge of District Courts;<br>(e) the president of the Childrens Court, if the report relates to a person holding judicial office in the Childrens Court;<br>(f) the chief stipendiary magistrate, if the report relates to conduct of a person holding judicial office in the system of Magistrates Courts;<br>(g) in a case to which paragraphs (c), (d), (e) and (f) do not apply—the appropriate principal officer in a unit of public administration, with a view to disciplinary action being taken in respect of the matter to which the report relates.<br>**(3)** A report made under subsection (2) must contain, or be accompanied by, all relevant information known to the official misconduct division, whether the information—<br>(a) supports a charge that may be brought against any person in consequence of the report; or<br>(b) supports a defence that may be available to any person liable to be charged in consequence of the report.<br>**(4)** If a person makes a complaint of misconduct or official misconduct to the complaints section, the director must give to the person a response stating—<br>(a) if no action is taken on the complaint—the reason for the inaction; or<br>(b) if action is taken on the complaint—<br>(i) the action taken; and<br>(ii) the reason the director considers the action to be appropriate in the circumstances; and<br>(iii) any results of the action that are known at the time of the response.<br>**(5)** However, the director is not required to give a response to the person if—<br>(a) the person has not given his or her name and address to the commission; or<br>(b) the complaints section, acting under section 38(2), does not investigate the complaint.<br>**(6)** The director must not disclose, in a response under subsection (4), information if disclosure would be contrary to the public interest.<br>**(7)** If the director of public prosecutions requires the commission to make further investigation or supply further information relevant to a prosecution, whether started or not, to which the content of a report made to the director under subsection (2)(a) relates, the director of the official misconduct division must take all reasonable steps to further investigate the matter or provide the further information.<br>**(8)** The commission may give directions to the director of the official misconduct division about the exercise of the director's powers under subsections (4), (5) or (6), including a direction that certain types of matter are to be responded to by the commission. |

**Annexure 1**
**Part 2 continued – Legislative development of section 49 the *Crime and Corruption Act 2001***

| *Crime and Misconduct Act 2001* (8 November 2001) | *Crime and Misconduct Act 2001* (1 December 2009) | *Crime and Misconduct Act 2001* (14 August 2012) |
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| **49 Reports about complaints dealt with by the commission**<br>**(1)** This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, misconduct and decides that prosecution proceedings or disciplinary action should be considered.<br>**(2)** The commission may report on the investigation to any of the following as appropriate—<br>(a) the director of public prosecutions, or other appropriate prosecuting authority, for the purposes of any prosecution proceedings the director or other authority considers warranted;<br>(b) the Chief Justice, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;<br>(c) the Chief Judge of the District Court, if the report relates to conduct of a District Court judge;<br>(d) the President of the Childrens Court, if the report relates to conduct of a person holding judicial office in the Childrens Court;<br>(e) the Chief Magistrate, if the report relates to conduct of a magistrate;<br>(f) the chief executive officer of a relevant unit of public administration, for the purpose of taking disciplinary action, if the report does not relate to the conduct of a judge, magistrate or other holder of judicial office.<br>**(3)** A report made under subsection (2) must contain, or be accompanied by, all relevant information known to the commission that—<br>(a) supports a charge that may be brought against any person as a result of the report; and<br>(b) supports a defence that may be available to any person liable to be charged as a result of the report.<br>**(4)** If the director of public prosecutions requires the commission to make further investigation or supply further information relevant to a prosecution, whether started or not, the commission must take all reasonable steps to further investigate the matter or provide the further information. | **49 Reports about complaints dealt with by the commission**<br>(1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, misconduct and decides that prosecution proceedings or disciplinary action should be considered.<br>(2) The commission may report on the investigation to any of the following as appropriate—<br>(a) the director of public prosecutions, or other appropriate prosecuting authority, for the purposes of any prosecution proceedings the director or other authority considers warranted;<br>(b) the Chief Justice, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;<br>(c) the Chief Judge of the District Court, if the report relates to conduct of a District Court judge;<br>(d) the President of the Childrens Court, if the report relates to conduct of a person holding judicial office in the Childrens Court;<br>(e) the Chief Magistrate, if the report relates to conduct of a magistrate;<br>(f) the chief executive officer of a relevant unit of public administration, for the purpose of taking disciplinary action, if the report does not relate to the conduct of a judge, magistrate or other holder of judicial office.<br>(3) A report made under subsection (2) must contain, or be accompanied by, all relevant information known to the commission that—<br>(a) supports a charge that may be brought against any person as a result of the report; or<br>(b) supports a defence that may be available to any person liable to be charged as a result of the report; or<br>(c) supports the start of a proceeding under section 219F or 219G against any person as a result of the report; or<br>(d) supports a defence that may be available to any person subject to a proceeding under section 219F or 219G as a result of the report.<br>(4) If the director of public prosecutions requires the commission to make further investigation or supply further information relevant to a prosecution, whether started or not, the commission must take all reasonable steps to further investigate the matter or provide the further information. | **49 Reports about complaints dealt with by the commission**<br>(1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, misconduct and decides that prosecution proceedings or disciplinary action should be considered.<br>(2) The commission may report on the investigation to any of the following as appropriate—<br>(a) the director of public prosecutions, or other appropriate prosecuting authority, for the purposes of any prosecution proceedings the director or other authority considers warranted;<br>(b) the Chief Justice, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;<br>(c) the Chief Judge of the District Court, if the report relates to conduct of a District Court judge;<br>(d) the President of the Childrens Court, if the report relates to conduct of a person holding judicial office in the Childrens Court;<br>(e) the Chief Magistrate, if the report relates to conduct of a magistrate;<br>(f) the chief executive officer of a relevant unit of public administration, for the purpose of taking disciplinary action, if the report does not relate to the conduct of a judge, magistrate or other holder of judicial office.<br>(3) If the commission decides that prosecution proceedings for an offence under the Criminal Code, section 57 should be considered, the commission must report on the investigation to the Attorney-General.<br>(4) A report made under subsection (2) or (3) must contain, or be accompanied by, all relevant information known to the commission that—<br>(a) supports a charge that may be brought against any person as a result of the report; or<br>(b) supports a defence that may be available to any person liable to be charged as a result of the report; or<br>(c) supports the start of a proceeding under section 219F or 219G against any person as a result of the report; or<br>(d) supports a defence that may be available to any person subject to a proceeding under section 219F or 219G as a result of the report.<br>(5) If the director of public prosecutions requires the commission to make further investigation or supply further information relevant to a prosecution, whether started or not, the commission must take all reasonable steps to further investigate the matter or provide the further information. |

## Annexure 2 - Jurisdictional comparison of Australian integrity agencies' public reporting powers

| Jurisdiction & agency | Governing legislation | Power to report | Publishing/tabling of report | Power to make public comments or statements |
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| **Commonwealth**<br><br>**National Anti-Corruption Commission (NACC)** | *National Anti-Corruption Commission Act 2022* (Cth) ('NACC Act') | **Investigation reports**<br><br>Section 149(1) - a report ('*investigation report*') must be prepared after completing a corruption investigation.<br><br>Section 149(2) – the investigation report must include findings and opinions about the corruption issues, a summary of the evidence, recommendations and reasons for those findings, opinions and recommendations.<br><br>Section 153 – a reasonable opportunity to respond must be given to those of whom a critical opinion, finding or recommendation is intended to be made about in the investigation report.<br><br>Section 151(1) – an investigation report must not include:<br>- section 235 'certified information' (information the Attorney-General has certified would be contrary to the public interest to disclose per the grounds set out in section 235(3))<br>- information the Commissioner is satisfied is sensitive information, as that term is defined by section 227(3).<br><br>**Protected information report**<br><br>Section 152 – if the Commissioner excludes certified and/or sensitive information under section 151, another report must be prepared (a *protected information report*). It must include all of the excluded information and the reason for excluding it from the investigation report. | Section 154(1) – the Commissioner must give the Minister (or the Prime Minister where the report concerns the Minister) both the investigation report and the protected information report.<br><br>Section 155 – the Minister (or Prime Minister) must table the investigation report in each House of Parliament within 15 sitting days if public hearings were held in the course of the investigation.<br><br>Section 156 – Once the Commissioner has given the Minister (or Prime Minister) the reports, the Commissioner may publish the whole or a part of the investigation report if the Commissioner is satisfied it is in the public interest to do so. Publication is subject to procedural fairness requirements including providing persons an opportunity to respond under section 157. | **Public statements**<br><br>Section 48(1) – the Commissioner may make a public statement about a corruption issue at any time (whether or not the Commissioner deals with the issue).<br><br>Section 9 – a corruption issue is an issue of whether a person has engaged in, is engaging is or will engage in corrupt conduct.<br><br>**Disclosure of information to the public or a section of the public**<br><br>Section 230(1) – if the Commissioner is satisfied that it is in the public interest to do so, the Commissioner may disclose information to the public, or a section of the public about:<br>(a) the performance of the Commissioner's functions; or<br>(b) the exercise of the Commissioner's powers; or<br>(c) a corruption investigation conducted by the Commissioner;<br>(d) a public inquiry conducted by the Commissioner.<br><br>Section 230(4) – information must not be disclosed that includes an opinion or finding about whether a particular person has engaged in corrupt conduct unless the information is contained in a report prepared under Part 8 (reporting on corruption investigations).<br><br>Section 230 is subject to section 231 which provides that before an opinion, finding or recommendation is made that is critical of an agency, entity or person, they must first be given the statement and a reasonable opportunity to respond. |
| **New South Wales**<br><br>**NSW Independent Commission Against Corruption (NSW ICAC)** | *Independent Commission Against Corruption Act 1988* (NSW) ('ICAC NSW Act') | Section 74(1) – the Commission may prepare reports in relation to any matter that has been or is the subject of an investigation.<br><br>Section 74(2)and (3) – the Commission shall prepare a report in relation to a matter:<br>• referred to it by the Houses of Parliament; and | Section 74(4) – The Commission shall furnish a report made under s 74 to the Presiding Officer of each House of Parliament. Where the report is required under s 74, it shall be furnished as soon as possible after the Commission has concluded its involvement in the matter (s 74(7)). | There are no express legislative provisions in relation to public comments or statements.<br><br>The Commission has authority in section 13:<br><br>(e) to educate and disseminate information to the public on the detrimental effects of corrupt |

## Annexure 2 - Jurisdictional comparison of Australian integrity agencies' public reporting powers

| Jurisdiction & agency | Governing legislation | Power to report | Publishing/tabling of report | Power to make public comments or statements |
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| | | • in which a public inquiry was conducted, unless otherwise directed by Parliament.<br><br>Section 74A(1) – the Commission is authorised to include in the report statements as to any of its findings, opinions and recommendations.<br><br>Section 74A(2) – the Commission must include a statement in respect of each affected person whether or not the Commission is of the opinion consideration should be given to obtaining advice from the Director of Public Prosecutions with respect to prosecution of a criminal offence, action for disciplinary offences, or other action against a public official.<br><br>The Commission is not authorised to include an adverse finding against a person in a section 74 report unless the person has been given a reasonable opportunity to respond to the proposed adverse finding and the persons response is included in the report. | Section 78(1) – A copy of the report furnished to the Presiding officer of a House of Parliament shall be laid before that House within 15 sitting days.<br><br>Section 78(2) – the Commission may include in a report a recommendation that the report be made public forthwith.<br><br>Section 78(3) – the Presiding Officer of a House of Parliament may make the report public whether or not the House is in session and whether or not the report has been laid before the House. If that occurs, the report will attract the same privileges and immunities as if it had been laid before the House (section 78(4)).<br><br>The Presiding Officer is the President of the Legislative Council or the Speaker of the Legislative Assembly (section 79(1)). | conduct and on the importance of maintaining the integrity and good repute of public administration;<br><br>(h) to educate and advise public authorities, public officials and the community on strategies to combat corrupt conduct and to promote the integrity and good repute of public administration. |
| **Victoria**<br><br>**Independent Broad-based Anti-Corruption Commission (IBAC)** | *Independent Broad-based Anti-Corruption Commission Act 2011 (Vic)* ('IBAC Act') | Section 15(7)(b) – For the purpose of achieving the objects of the Act, the IBAC has, amongst other functions, the following function – to report on, and make recommendations as a result of, the performances of its duties and functions.<br><br>Section 162 - IBAC may, at any time, cause a report to be transmitted to each House of the Parliament on any matter relating to the performance of its duties and functions ('a special report'), including after conducting an investigation (s164(1)(c)).<br><br>Section 162(1)-(2) – if IBAC proposes to transmit a report to the Parliament under section 162, it must, unless in the circumstances it is inappropriate to do so (section 162(3)), given an advance copy of the report to the Minister and the Secretary to the Department of Premier and Cabinet at least one business day before the report is due to be transmitted to the Parliament.<br><br>Section 165(1) – Note the IBAC must also include in its annual report a description of its activities in relation to the performance of its duties and functions, subject to procedural fairness requirements under that section which appears to imply the annual report may include information about specific investigations. | Section 162(10) – the clerk of each House of the Parliament must cause the report to be laid before the House on the day on which it is received or on the next sitting day of that House.<br><br>Section 162(11) – if the report is transmitted to Parliament on a day neither house is sitting, the IBAC must give notice of the intention to give the report to the clerk of each House, and publish the report on the IBAC's website as soon as practicable after giving the report to the clerks. A report published by IBAC to their website under section 162(11)(c) is absolutely privileged, and all laws relating to the publication of the proceedings of the Parliament apply to and in relation to the publication of the report as if it were a document published under the authority of the Parliament (section 162(14)).<br><br>Section 162(12)) – the clerk is to give a copy of the report to each member of the House as soon as practicable and cause it to be laid before the House on the next sitting day. Where the report is given to the clerk under s 162(11), it is taken to have been published by order, or under the authority, of the Houses of the Parliament. | The IBAC Act provides:<br><br>• Section 15(6) – functions under s 15(5) (education and prevention functions) include functions:<br>(d) to provide information and education services to the community about the detrimental effects of corruption on public administration and ways in which to assist in preventing corrupt conduct;<br>(e) to provide information and education services to members of police personnel and the community about police personnel conduct, including the detrimental effects of police personnel misconduct and ways in which to assist in preventing police personnel misconduct;<br>(f) to publish information on ways to prevent corrupt conduct and police personnel misconduct.<br><br>• Section 16 –the IBAC has power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the achievement of the objects of the Act and the performance of its duties and functions. |

## Annexure 2 - Jurisdictional comparison of Australian integrity agencies' public reporting powers

| Jurisdiction & agency | Governing legislation | Power to report | Publishing/tabling of report | Power to make public comments or statements |
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| | | | | • Section 38 prohibits IBAC staff and consultants from publicly commenting on the administration of the IBAC Act or the performance of duties and functions or the exercise of powers by IBAC.<br><br>• Section 164 – sets out what the IBAC may do after conducting an investigation, with subsection (2) providing that without limiting subsection (1), after conducting an investigation, the IBAC may also take any other action that the IBAC is permitted to take under the IBAC Act or any other Act. |
| **Western Australia**<br><br>**Corruption and Crime Commission (WA CCC)** | *Corruption, Crime and Misconduct Act 2003 (WA)* ('CCM Act') | Section 84(1) – The Commission may, at any time, prepare a report on any matter that has been the subject of an investigation or other action in respect of serious misconduct.<br><br>Section 84(2) – The Commission may, at any time, prepare a report on any received matter, irrespective of whether the matter has been the subject of an investigation or other action under the Act or any other law.<br><br>Section 84(3) – The Commission may include in a report statements about its assessments, opinions and recommendations, and its reasons for those.<br><br>Section 85(1)-(2)– The Commission may prepare a report during or after the carrying out of action by an appropriate authority in respect of an allegation referred to the authority if the Commission considers that the action is not being, or has not been properly, efficiently or expeditiously carried out.<br><br>Section 86 – Before reporting any matters adverse to a person or body in a report under section 84 or 85, the Commission must give the person a reasonable opportunity to make representations to the Commission concerning those matters. | Section 84(4) - The Commission may cause a report prepared under section 84 to be laid before each House of Parliament.<br><br>Section 85 – The Commission may cause a report prepared under section 85 to be laid before each House of Parliament.<br><br>Section 89 – A section 84 or 85 report may be made by the Commission to the Minister, or another Minister or the Standing Parliamentary Committee instead of being laid before each House of Parliament if the Commission considers, for any reason, it appropriate to do so.<br><br>Section 93 – If a copy of a section 84 or 85 report may be laid before each House of Parliament and the House is not sitting, the Commission may transmit a copy of the report to the Clerk of that House. A copy of a report transmitted to the Clerk of a House is to be regarded as having been laid before that House, and is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy of the report. | There are no express legislative provisions in relation to public comments or statements.<br><br>The WA CCC has a prevention and education function in respect of police misconduct. Section 21AA states:<br><br>(1) It is a function of the Commission (the *prevention and education function*) to help to prevent police misconduct.<br><br>(2) Without limiting the ways the Commission may perform the prevention and education function, the Commission performs that function by doing the following —<br><br>(c) using information it gathers from any source in support of the prevention and education function;<br><br>(e) providing information relevant to the prevention and education function to members of the police service and to the general community; |
| **South Australia**<br><br>**Independent Commission Against Corruption (SA ICAC)** | *Independent Commission Against Corruption Act 2012 (SA)* ('ICAC SA Act') | Section 41(2) – the Commission must prepare a report containing any recommendations made to an inquiry agency or public authority under s 41(1). Section 41(1) provides the Commission can make these recommendations in response to issues observed by the | Section 41(2) – the report must be provided to the President of the Legislative Council and the Speaker of the House of Assembly. | Section 25 – provides for when the SA ICAC may make a public statement. |

## Annexure 2 - Jurisdictional comparison of Australian integrity agencies' public reporting powers

| Jurisdiction & agency | Governing legislation | Power to report | Publishing/tabling of report | Power to make public comments or statements |
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| | | Commission in the course of an investigation or in the handling of a matter referred to an inquiry agency or public authority.<br><br>There are no express limitations or prohibitions in the Act on what can be included in a s 41 report.<br><br>Section 42(1)– the Commission may prepare a report setting out:<br><br>(a) recommendations, formulated in the course of the performance of the Commission's functions, for the amendment or repeal of a law; or<br>(b) findings or recommendations resulting from completed investigations by the Commission in respect of matters raising potential issues of corruption in public administration; or<br>(c) other matters arising in the course of the performance of the Commission's functions that the Commission considers to be in the public interest to disclose.<br><br>Section 42(1a) – the Commission must not prepare a report under section 42 setting out findings or recommendations resulting from a completed investigation into a potential issue of corruption in public administration unless all criminal proceedings arising from that investigation are completed or the Commission is satisfied that no criminal proceedings will be commenced as a result of the investigation, in which case the report must not identify any person involved in the investigation. | Section 41(3) – provides that once the report is supplied the President and Speaker must lay it before their respective houses on the first sitting day after receiving the report.<br><br>Section 42(2) - The report must be provided to:<br>• for an investigation report, the relevant public authority and Minister of the public authority; and<br>• in any case, the Attorney-General, the President of the Legislative Council and the Speaker of the House of Assembly.<br><br>Section 42(3) - the President of the Legislative Council and the Speaker of the House of Assembly must, on the first sitting day after 28 days (or such shorter number of days as the Attorney-General approves) have passed after receiving a report, lay it before their respective houses. | Section 25(2) – prohibits making a public statement that discloses or may infer that a matter is being or is proposed to be investigated.<br><br>After an investigation has concluded, section 25(3)(b) authorises that, where a matter has not been referred to any law enforcement agency, inquiry agency or public authority, a public statement may be made "if the Commissioner is satisfied that no criminal proceedings, proceedings for the imposition of a penalty or disciplinary action will be commenced as a result of the investigation."<br><br>Section 25(4) – The Commission must, before making a public statement under 3(b), have regard to the following:<br><br>(a) the benefits that might be derived from making the statement;<br><br>(b) whether the statement is necessary in order to allay public concern or to prevent or minimise the risk of prejudice to the reputation of a person;<br><br>(c) the risk of prejudicing the reputation of a person by making the statement;<br><br>(d) if an allegation against a person has been made public and, in the opinion of the Commissioner following an investigation, the person is not implicated in corruption in public administration—whether the statement would redress prejudice caused to the reputation of the person as a result of the allegation having been made public;<br><br>(e) whether any person has requested that the Commission make the statement.<br><br>Section 25(5) – reiterates that a public statement must not include any findings or suggestions of criminal or civil liability and must not include any findings that, if provided to the requisite standard by a court, would constitute a criminal offence or a civil wrong. |

## Annexure 2 - Jurisdictional comparison of Australian integrity agencies' public reporting powers

| Jurisdiction & agency | Governing legislation | Power to report | Publishing/tabling of report | Power to make public comments or statements |
|---|---|---|---|---|
| **Australian Capital Territory**<br><br>**Integrity Commission (ACT)** | *Integrity Commission Act 2018* (ACT) | Section 182 - the commission must prepare a report after the completion of an investigation.<br><br>The report may include:<br>(a) findings, opinions and recommendations; and<br>(b) reasons for those findings, opinions and recommendations. | Section 189 – Once completed, the report must be given to the Speaker. If Parliament is sitting, the report must be tabled on the next sitting day. If Parliament is not sitting, the Speaker must give the report to each member of the Legislative Assembly.<br><br>Section 190 – The Commission must publish the report on its website after providing parliament with a copy of the report, unless it is a confidential report or the Speaker directs otherwise.<br><br>Section 192(3) – If the Commission prepares a confidential report, it must be given to the relevant Assembly Committee. | There are no express legislative provisions in relation to public comments or statements.<br><br>Section 23 provides for the functions of the Commission and includes the following:<br><br>• to publish information about investigations conducted by the Commission, including lessons learned;<br><br>• to foster public confidence in the Legislative Assembly and public sector. |
| **Northern Territory**<br><br>**Independent Commission Against Corruption (NT ICAC)** | *Independent Commissioner Against Corruption Act 2017* (NT) ('ICAC NT Act') | **General reports**<br><br>Section 48 – The NT ICAC may, at any time, make a general report, including in relation to:<br><br>• systemic issues the ICAC has identified in one or more public bodies in relation to improper conduct;<br><br>• matters the ICAC believes may be affecting the incidence of improper conduct in one or more public bodies;<br><br>• a review of the practices, policies or procedures of a public body or person.<br><br>Section 48(2) –<br>The ICAC is not required to include details about specific investigations, unless the ICAC considers it is in the public interest to do so.<br><br>**Investigation report**<br><br>Section 50 – the NT ICAC may make a report on an investigation to the responsible authority for a public body or public officer whose conduct is the subject of an investigation.<br><br>There are restrictions that the report must not name a person in relation to a matter that amount to no more than misconduct or unsatisfactory conduct. | **General reports**<br><br>Section 48(3) – the NT ICAC may make a general report directly to the Speaker which the Speaker must table within 6 sitting days under section 49(2).<br><br>**Investigation report**<br><br>Section 50(6) – An investigation report that is provided to the Speaker or deputy speaker must be tabled in the legislative assembly on the next sitting day after receiving the report.<br><br>An NT ICAC investigation report must only be given to the Speaker where the investigation relates to a Minister. In that case, the report must be tabled.<br><br>Section 50A – The NT ICAC may decide to publish an investigation report if it is of the opinion it is appropriate to do so. | Section 18(1)(c)(v) provides one of the functions of the ICAC is to prevent, detect and respond to improper conduct by making public comment.<br><br>Section 55 authorises the NT ICAC to make a public statement in relation to a particular matter that the ICAC is dealing with or has dealt with, including a matter the ICAC has referred to a referral entity.<br><br>Section 55(2) – provides a number of reasons for which the NT ICAC may make a public statement. These include:<br>(a) to provide information about action taken or that may be taken by the ICAC in relation to the matter;<br>(b) to indicate that it would be inappropriate for the ICAC to comment on the matter;<br>(c) to refuse to confirm or deny anything in relation to the matter;<br>(d) to seek evidence in relation to the matter in the course of preliminary inquiries into, or an investigation of, the matter;<br>(e) to provide information about a referral, including the outcome of the referral;<br>(f) to address public misconception about a person or issue of which the ICAC has particular knowledge;<br>(g) to request the Legislative Assembly to authorise the publication, or disclosure to the ICAC, of information or an item that is or may be the subject of parliamentary privilege.<br><br>Section 55(4) limits the nature of public statements, for example, a public statement cannot include an opinion as to whether a person has committed, is committing or is about to commit, an offence or a breach of discipline; |

## Annexure 2 - Jurisdictional comparison of Australian integrity agencies' public reporting powers

| Jurisdiction & agency | Governing legislation | Power to report | Publishing/tabling of report | Power to make public comments or statements |
|---|---|---|---|---|
| | | There is a legislative requirement for procedural fairness and limits of content depending on the circumstances of the report. | | or a comment as to the prospects of success of any current or future prosecution or disciplinary action. |
| **Tasmania**<br><br>**Integrity Commission** | *Integrity Commission Act 2009* (Tas) | **General reporting powers**<br>Section 11 provides that the Commission may report on any matter arising in connection with the performance of its functions or exercise of its powers, and may report on the performance of its functions or exercise of its powers relating to an investigation on inquiry.<br><br>**Investigator's report**<br>Section 55 – On completion of an investigation into a complaint of misconduct, the investigator must prepare a report of their findings and provide to the CEO.<br><br>Section 56 – The CEO may, if appropriate, give a draft copy of the report to principal officer of the relevant public authority, the public officer who is the subject of the investigations and *any other person* who may have a special interest in the report for comment.<br><br>**Report by the CEO**<br>Section 57 – The CEO must provide a report to the Board regarding an investigation which must also include a copy of the Investigator's report. | Section 11(3) – The Integrity Commission may, at any time, lay before each House of Parliament a report on nay matter arising in connection with the performance of its functions or exercise of its powers.<br><br>Section 11(4) –<br>The Integrity Commission may, at any time, provide a report to the Joint Committee on the performance of its functions or exercise of its powers relating to an investigation or inquiry. | There are no express legislative provisions in relation to public comments or statements.<br><br>The Act provides –<br><br>• Section 8(2) – In addition to any other powers that are conferred on the Integrity Commission under this or any other Act, the Integrity Commission has the power to do all things reasonably necessary or convenient to be done in connection with the performance of its function.<br><br>• Section 8(1) – the functions of the Integrity Commission are to, relevantly:<br>  ○ educate public officers and the public about integrity in public administration.<br><br>• Section 9 provides for the principles of operation of the Integrity Commission and s9(1)(a) provides that the Integrity Commission must "raise standards of conduct, propriety and ethics in public authorities." |

## Annexure 3 - Publications of the CCC and its predecessors which have been tabled

| # | Date of tabling | Agency | Report Name | Parliament's Tabled Papers<br>Website URL |
|---|---|---|---|---|
| 1. | 5 June 1990 | CJC | Report on Gaming Machine Concerns and Regulations | https://documents.parliament.qld.gov.au/tp/1990/4690T882.pdf |
| 2. | 5 June 1990 | CJC | Reforms in Laws Relating to Homosexuality | https://documents.parliament.qld.gov.au/tp/1990/4690T883.pdf |
| 3. | 18 July 1991 | CJC | Complaints against Local Government Authorities in Queensland – Six Case Studies | https://documents.parliament.qld.gov.au/tp/1991/4691T197.pdf |
| 4. | 18 July 1991 | CJC | Report on Investigation into the Complaint of Mr T R Cooper | https://documents.parliament.qld.gov.au/tp/1991/4691T254.pdf |
| 5. | 02 October 1991 | CJC | Regulating Morality? An Inquiry into Prostitution in Queensland | https://documents.parliament.qld.gov.au/tp/1991/4691T560.pdf |
| 6. | 05 December 1991 | CJC | Report on an Investigation into Possible Misuse of Parliamentary Travel Entitlements by Members of the 1986–1989 Queensland Legislative Assembly | https://documents.parliament.qld.gov.au/tp/1991/4691T1188.pdf |
| 7. | 18 April 1991 | CJC | Report on an Investigative Hearing into Alleged Jury Interference | https://documents.parliament.qld.gov.au/tp/1991/4691T3109.pdf |
| 8. | 18 April 1991 | CJC | The Jury System in Criminal Trials in Queensland: An Issues Paper | https://documents.parliament.qld.gov.au/tp/1991/4691T3110.pdf |
| 9. | 31 May 1991 | CJC | Report on the Investigation into the Complaints of James Gerard Soorley against the Brisbane City Council | https://documents.parliament.qld.gov.au/tp/1991/4691T3350.pdf |
| 10. | 24 November 1992 | CJC | Report on S.P. Bookmaking and Related Criminal Activities in Queensland | https://documents.parliament.qld.gov.au/tp/1992/4792T415.pdf |
| 11. | 03 December 1992 | CJC | Report on the Investigation into the Complaints of Kelvin Ronald Condren and Others | https://documents.parliament.qld.gov.au/tp/1992/4792T568.pdf |
| 12. | 04 June 1993 | CJC | Report on a Review of Police Powers in Queensland – Volume I: An Overview | https://documents.parliament.qld.gov.au/tp/1993/4793T2354A.pdf |
| 13. | 04 June 1993 | CJC | Report on a Review of Police Powers in Queensland – Volume II: Entry, Search and Seizure | https://documents.parliament.qld.gov.au/tp/1993/4793T2354B.pdf |
| 14. | 26 August 1993 | CJC | Report of the Inquiry into the Selection of the Jury for the Trial of Sir Johannes Bjelke-Petersen | https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CJC/The-inquiry-into-the-selection-of-the-jury-for-the-trial-of-Sir-Joh-Bjelke-Petersen-Report-1993_0.pdf (CCC link - no link on Parliament website) |

## Annexure 3 - Publications of the CCC and its predecessors which have been tabled

| # | Date of tabling | Agency | Report Name | Parliament's Tabled Papers<br>Website URL |
|---|---|---|---|---|
| 15. | 10 November 1993 | CJC | Report on a Review of Police Powers in Queensland – Volume III: Arrest Without Warrant, Demand Name and Address and Move-on Powers | https://documents.parliament.qld.gov.au/tp/1993/4793T3416.pdf |
| 16. | 09 December 1993 | CJC | Recruitment and Education in the Queensland Police Force: A Review | https://documents.parliament.qld.gov.au/tp/1993/4793T3698.pdf |
| 17. | 05 April 1994 | CJC | A Report of an Investigation into the Arrest and Death of Daniel Alfred Yock | https://documents.parliament.qld.gov.au/tp/1994/4794T4036.pdf |
| 18. | 05 May 1994 | CJC | Report by the Honourable R H Matthews QC on his Investigation into the Allegations of Lorrelle Anne Saunders Concerning the Circumstances Surrounding her Being Charged with Criminal Offences in 1982, and Related Matters (Volume I) | https://documents.parliament.qld.gov.au/tp/1994/4794T4328.pdf |
| 19. | 05 May 1994 | CJC | Report by the Honourable R H Matthews QC on his Investigation into the Allegations of Lorrelle Anne Saunders Concerning the Circumstances Surrounding her Being Charged with Criminal Offences in 1982, and Related Matters (Volume II) | https://documents.parliament.qld.gov.au/tp/1994/4794T4329.pdf |
| 20. | 07 June 1994 | CJC | Report on a Review of Police Powers in Queensland – Volume IV: Suspects' Rights, Police Questioning and Pre-Charge Detention | https://documents.parliament.qld.gov.au/tp/1994/4794T4429.pdf |
| 21. | 08 July 1994 | CJC | Report on an Investigation into Complaints against Six Aboriginal and Island Councils | https://documents.parliament.qld.gov.au/tp/1994/4794T4630.pdf |
| 22. | 13 July 1994 | CJC | Report on Cannabis and the Law in Queensland | https://documents.parliament.qld.gov.au/tp/1994/4794T4634.pdf |
| 23. | 08 September 1994 | CJC | A Report of an Investigation into the Cape Melville Incident | https://documents.parliament.qld.gov.au/tp/1994/4794T5066.pdf |
| 24. | 28 October 1994 | CJC | Report on a Review of Police Powers in Queensland – Volume V: Electronic Surveillance and Other Investigative Procedures | https://documents.parliament.qld.gov.au/tp/1994/4794T5296.pdf |
| 25. | 14 November 1994 | CJC | Report on an Investigation Conducted by the Honourable R H Matthews QC into the Improper Disposal of Liquid Waste in South-east Queensland – Volume II: Transportation and Disposal | https://documents.parliament.qld.gov.au/tp/1994/4794T5370.pdf |
| 26. | 16 November 1994 | CJC | Report on an Investigation into the Tow Truck and Smash Repair Industries | https://documents.parliament.qld.gov.au/tp/1994/4794T5472.pdf |

## Annexure 3 - Publications of the CCC and its predecessors which have been tabled

| # | Date of tabling | Agency | Report Name | Parliament's Tabled Papers<br>Website URL |
|---|---|---|---|---|
| 27. | 22 December 1994 | CJC | A Report into Allegations that the Private Telephone of Lorrelle Anne Saunders was "Bugged" in 1982 by Persons Unknown, and Related Matters | https://documents.parliament.qld.gov.au/tp/1994/4794T5667.pdf |
| 28. | 15 February 1995 | CJC | Telecommunications Interception and Criminal Investigation in Queensland: A Report | https://documents.parliament.qld.gov.au/tp/1995/4795T5687.pdf |
| 29. | 11 April 1995 | CJC | Report of an Inquiry Conducted by the Honourable D G Stewart into Allegations of Official Misconduct at the Basil Stafford Centre | https://documents.parliament.qld.gov.au/tp/1995/4795T6078.pdf |
| 30. | 26 April 1995 | CJC | Report on the Sufficiency of Funding of the Legal Aid Commission of Queensland and the Office of the Director of Public Prosecutions Queensland | https://documents.parliament.qld.gov.au/tp/1995/4795T6080.pdf |
| 31. | 21 December 1995 | CJC | Report on an Inquiry Conducted by Mr R V Hanson QC into the Alleged Unauthorised Dissemination of Information Concerning Operation Wallah | https://documents.parliament.qld.gov.au/tp/1995/4895T642.pdf |
| 32. | 09 July 1996 | CJC | Report on Aboriginal Witnesses in Queensland Criminal Courts | https://documents.parliament.qld.gov.au/tp/1996/4896T790.pdf |
| 33. | 03 September 1996 | CJC | Evaluation of Brisbane Central Committals Project | https://documents.parliament.qld.gov.au/tp/1996/4896T1284.pdf |
| 34. | 05 September 1996 | CJC | Report on Police Watchhouses in Queensland | https://documents.parliament.qld.gov.au/tp/1996/4896T1329.pdf |
| 35. | 14 November 1996 | CJC | Gender and Ethics in Policing | https://documents.parliament.qld.gov.au/tp/1996/4896T1988.pdf |
| 36. | 27 November 1996 | CJC | Exposing Corruption – a CJC Guide to Whistleblowing in Queensland | https://documents.parliament.qld.gov.au/tp/1996/4896T2127.pdf |
| 37. | 27 November 1996 | CJC | Defendants' Perception of the Investigation and Arrest Process | https://documents.parliament.qld.gov.au/tp/1996/4896T2128.pdf |
| 38. | 20 December 1996 | CJC | Report on an Investigation into a Memorandum of Understanding Between the Coalition and the QPUE and an Investigation into an Alleged Deal Between the ALP and the SSA | https://documents.parliament.qld.gov.au/tp/1996/4896T2312.pdf |
| 39. | 18 March 1997 | CJC | Gold Coast District Negotiated Response Trial: Survey Findings | https://documents.parliament.qld.gov.au/tp/1997/4897T2580.pdf |
| 40. | 26 March 1997 | CJC | Reducing Police-Civilian Conflict: An Analysis of Assault Complaints against Queensland Police | https://documents.parliament.qld.gov.au/tp/1997/4897T2701.pdf |

## Annexure 3 - Publications of the CCC and its predecessors which have been tabled

| # | Date of tabling | Agency | Report Name | Parliament's Tabled Papers<br>Website URL |
|---|---|---|---|---|
| 41. | 29 April 1997 | CJC | Assault in Queensland | https://documents.parliament.qld.gov.au/tp/1997/4897T2788.pdf |
| 42. | 09 July 1997 | CJC | Criminal Justice System Monitor Series Volume 2 | https://documents.parliament.qld.gov.au/tp/1997/4897T3274.pdf |
| 43. | 09 July 1997 | CJC | Hot Spots and Repeat Break and Enter Crimes: An Analysis of Police Calls for Service Data | https://documents.parliament.qld.gov.au/tp/1997/4897T3275.pdf |
| 44. | 08 October 1997 | CJC | Community Consultative Committees and the Queensland Police Service: An Evaluation | https://documents.parliament.qld.gov.au/tp/1997/4897T3741.pdf |
| 45. | 22 October 1997 | CJC | Police and Drugs: A Report of an Investigation of Cases Involving Queensland Police Officers | https://documents.parliament.qld.gov.au/tp/1997/4897T3783.pdf |
| 46. | 30 October 1997 | CJC | The Investigation of Paedophilia by the Criminal Justice Commission | https://documents.parliament.qld.gov.au/tp/1997/4897T3983.pdf |
| 47. | 04 March 1998 | CJC | The Coast of First Response Policing | https://documents.parliament.qld.gov.au/tp/1998/4898T4638.pdf |
| 48. | 04 March 1998 | CJC | The Physical Requirements of General Duties Policing | https://documents.parliament.qld.gov.au/tp/1998/4898T4639.pdf |
| 49. | 04 March 1998 | CJC | Beenleigh Calls for Service Project: Evaluation Report | https://documents.parliament.qld.gov.au/tp/1998/4898T4640.pdf |
| 50. | 21 April 1998 | CJC | Police Pursuits in Queensland Resulting in Death or Injury | https://documents.parliament.qld.gov.au/tp/1998/4898T4901.pdf |
| 51. | 09 September 1998 | CJC | Inquiry into Allegations of Misconduct in the Investigation of Paedophilia in Queensland: Kimmins Report | https://documents.parliament.qld.gov.au/tp/1998/4998T299.pdf |
| 52. | 16 September 1998 | CJC | Policing and the Community in Brisbane | https://documents.parliament.qld.gov.au/tp/1998/4998T387.pdf |
| 53. | 03 March 1999 | CJC | A Snapshot of Crime in Queensland | https://documents.parliament.qld.gov.au/tp/1999/4999T1114.pdf |
| 54. | 17 March 1999 | CJC | Report on a Hearing into Complaints against the Children's Commissioner and Another | https://documents.parliament.qld.gov.au/tp/1999/4999T1235.pdf |
| 55. | 25 March 1999 | CJC | Inquiry into Allegations of Misconduct in the Investigation of Paedophilia in Queensland: Kimmins Report – Terms of Reference No. 5 | https://documents.parliament.qld.gov.au/tp/1999/4999T1324.pdf |
| 56. | 25 May 1999 | CJC | Crime Prevention Partnerships in Queensland | https://documents.parliament.qld.gov.au/tp/1999/4999T1676.pdf |

## Annexure 3 - Publications of the CCC and its predecessors which have been tabled

| # | Date of tabling | Agency | Report Name | Parliament's Tabled Papers<br>Website URL |
|---|---|---|---|---|
| 57. | 27 May 1999 | CJC | Police Cautioning of Adults: Drug and Other Offences | https://documents.parliament.qld.gov.au/tp/1999/4999T1728.pdf |
| 58. | 27 May 1999 | CJC | Police Powers in Queensland: Notices to Appear | https://documents.parliament.qld.gov.au/tp/1999/4999T1729.pdf |
| 59. | 02 August 1999 | CJC | Police and Drugs: A follow-up report | https://documents.parliament.qld.gov.au/tp/1999/4999T2085.pdf |
| 60. | 26 August 1999 | CJC | Trial of Capsicum Spray in Queensland: Evaluation Report | https://documents.parliament.qld.gov.au/tp/1999/4999T2283.pdf |
| 61. | 30 September 1999 | CJC | GOCORP Interactive Gambling Licence: Report on an Advice by R W Gotterson QC | https://documents.parliament.qld.gov.au/tp/1999/4999T2462.pdf |
| 62. | 10 December 1999 | CJC | Ethics Surveys of First Year Constables: Summary of Findings 1995-1998 | https://documents.parliament.qld.gov.au/tp/1999/4999T3225.pdf |
| 63. | 10 December 1999 | CJC | Police Powers in Queensland: Strip Searching Issues Paper | https://documents.parliament.qld.gov.au/tp/1999/4999T3226.pdf |
| 64. | 15 March 2000 | CJC | What the Public Thinks about Employee Behaviour in the Queensland Public Service and Local Councils | https://documents.parliament.qld.gov.au/tp/2000/4900T3535.pdf |
| 65. | 15 March 2000 | CJC | Public Attitudes Towards the CJC | https://documents.parliament.qld.gov.au/tp/2000/4900T3536.pdf |
| 66. | 15 March 2000 | CJC | Reported Sexual Offences in Queensland | https://documents.parliament.qld.gov.au/tp/2000/4900T3537.pdf |
| 67. | 13 April 2000 | CJC | Prisoner Numbers in Queensland: An examination of population trends in Queensland correctional institutions | https://documents.parliament.qld.gov.au/tp/2000/4900T3693.pdf |
| 68. | 13 April 2000 | CJC | Prisoner Numbers in Queensland: An examination of population trends in Queensland correctional institutions – Summary | https://documents.parliament.qld.gov.au/tp/2000/4900T3694.pdf |
| 69. | 21 June 2000 | CJC | Defendants' Perceptions of Police Treatment | https://documents.parliament.qld.gov.au/tp/2000/4900T3999.pdf |
| 70. | 21 June 2000 | CJC | Reported Use of Force by Queensland Police | https://documents.parliament.qld.gov.au/tp/2000/4900T4000.pdf |
| 71. | 19 July 2000 | CJC | Police Powers in Queensland: Findings from the 1999 Defendants Survey | https://documents.parliament.qld.gov.au/tp/2000/4900T4220.pdf |
| 72. | 19 July 2000 | CJC | Public Attitudes Towards the QPS | https://documents.parliament.qld.gov.au/tp/2000/4900T4221.pdf |

## Annexure 3 - Publications of the CCC and its predecessors which have been tabled

| # | Date of tabling | Agency | Report Name | Parliament's Tabled Papers<br>Website URL |
|---|---|---|---|---|
| | | | | |
| 73. | 15 August 2000 | CJC | Police Strip Searches in Queensland: An Inquiry into the Law and Practice | https://documents.parliament.qld.gov.au/tp/2000/4900T4268.pdf |
| 74. | 06 September 2000 | CJC | Allegations of Electoral Fraud: Report on an Advice by P.D. McMurdo QC | https://documents.parliament.qld.gov.au/tp/2000/4900T4496.pdf |
| 75. | 12 September 2000 | CJC | Queensland Prison Industries: A Review of Corruption Risks | https://documents.parliament.qld.gov.au/tp/2000/4900T4548.pdf |
| 76. | 06 December 20000 | CJC | Protecting Confidential Information: A Report on the Improper Access to, and Release of, Confidential Information from the Police Computer Systems by Members of the Queensland Police Service | https://documents.parliament.qld.gov.au/tp/2000/4900T5127.pdf |
| 77. | 12 December 2000 | CJC | Safeguarding Students: Minimising the Risk of Sexual Misconduct by Education Queensland State | https://documents.parliament.qld.gov.au/tp/2000/4900T5140.pdf |
| 78. | 01 May 2001 | CJC | The Shepherdson Inquiry: An Investigation into Electoral Fraud | https://documents.parliament.qld.gov.au/tp/2001/5001T324.pdf |
| 79. | 16 May 2002 | CMC | The Public Scrapbook: Guidelines for the Correct and Ethical Disposal of Scrap and Low-Value Assets | https://documents.parliament.qld.gov.au/tp/2002/5002T2718.pdf |
| 80. | 06 August 2002 | CMC | Drug Use and Crime: Findings from the DUMA Survey | https://documents.parliament.qld.gov.au/tp/2002/5002T3129.pdf |
| 81. | 23 October 2002 | CMC | Forensics Under the Microscope: Challenges in Providing Forensic Science Services in Queensland | https://documents.parliament.qld.gov.au/tp/2002/5002T3756.pdf |
| 82. | 08 November 2002 | CMC | Spending Public Money: An Investigation into How Certain Government Grants and Contracts Were Awarded to a Commercial Company | https://documents.parliament.qld.gov.au/tp/2002/5002T4007.pdf |
| 83. | 27 March 2003 | CMC | Public Perceptions of the Queensland Police Service: Findings from the 2002 Public Attitudes Survey | https://documents.parliament.qld.gov.au/tp/2003/5003T4837.pdf |
| 84. | 02 April 2003 | CMC | The Volkers Case: Examining the Conduct of the Police and Prosecution | https://documents.parliament.qld.gov.au/tp/2003/5003T4921.pdf |

## Annexure 3 - Publications of the CCC and its predecessors which have been tabled

| # | Date of tabling | Agency | Report Name | Parliament's Tabled Papers<br>Website URL |
|---|---|---|---|---|
| 85. | 24 June 2003 | CMC | Seeking Justice: An Inquiry into how Sexual Offences Are Handled by the Queensland Criminal Justice System | https://documents.parliament.qld.gov.au/tp/2003/5003T5581.pdf |
| 86. | 25 November 2003 | CMC | Public Perceptions of the Queensland Public Service and Local Government: Findings from the 2002 Public Attitudes Survey | https://documents.parliament.qld.gov.au/tp/2003/5003T6891.pdf |
| 87. | 27 November 2003 | CMC | An Investigation of Matters Relating to the Conduct of the Hon. Ken Hayward MP | https://documents.parliament.qld.gov.au/tp/2003/5003T6950.pdf |
| 88. | 06 January 2004 | CMC | Protecting Children: An Inquiry into Abuse of Children in Foster Care | https://documents.parliament.qld.gov.au/tp/2004/5004T7051.pdf |
| 89. | 23 January 2004 | CMC | The Prosecution of Pauline Hanson and David Ettridge: A Report on an Inquiry into Issues Raised in a Resolution of Parliament | https://documents.parliament.qld.gov.au/tp/2004/5104T2.pdf |
| 90. | 22 April 2004 | CMC | Lockhart River Allegations: A CMC Report on an Investigation into Allegations of Official Misconduct Arising from the Presence of Alcohol on the Queensland Government Aircraft at the Lockhart River Airport | https://documents.parliament.qld.gov.au/tp/2004/5104T340.pdf |
| 91. | 04 August 2004 | CMC | The Tugun Bypass Investigation | https://documents.parliament.qld.gov.au/tp/2004/5104T930.pdf |
| 92. | 02 September 2004 | CMC | Profiling the Queensland Public Sector: Functions, Risks and Misconduct Resistance Strategies | https://documents.parliament.qld.gov.au/tp/2004/5104T1338.pdf |
| 93. | 09 December 2004 | CMC | Striking a Balance: An Inquiry into Media Access to Police Radio Communications | https://documents.parliament.qld.gov.au/tp/2004/5104T2350.pdf |
| 94. | 21 December 2004 | CMC | Regulating Prostitution: An Evaluation of the *Prostitution Act 1999* (Qld) | https://documents.parliament.qld.gov.au/tp/2004/5104T2369.pdf |
| 95. | 21 December 2004 | CMC | Regulating Adult Entertainment: A Review of the Live Adult Entertainment Industry in Queensland | https://documents.parliament.qld.gov.au/tp/2004/5104T2370.pdf |
| 96. | 08 March 2005 and 23 March 2005 | CMC | Palm Island Airfare Controversy: A CMC Report on an Investigation into Allegations of Official Misconduct Arising from Certain Travel Arrangements Authorised by the Minister for Aboriginal and Torres Strait Islander Policy | https://documents.parliament.qld.gov.au/tp/2005/5105T2915.pdf |

## Annexure 3 - Publications of the CCC and its predecessors which have been tabled

| # | Date of tabling | Agency | Report Name | Parliament's Tabled Papers<br>Website URL |
|---|---|---|---|---|
| 97. | 24 March 2005 | CMC | Report of an Investigation into an Offer Made by the Premier of Queensland to the Palm Island Aboriginal Council | https://documents.parliament.qld.gov.au/tp/2005/5105T2929.pdf |
| 98. | 30 September 2005 | CMC | Police Powers and VSM: A Review – Responding to Volatile Substance Misuse | https://documents.parliament.qld.gov.au/tp/2005/5105T4434.pdf |
| 99. | 07 December 2005 | CMC | Allegations Concerning the Honourable Gordon Nuttall MP, Report of a CMC Investigation | Report: https://documents.parliament.qld.gov.au/tp/2005/5105T5386.pdf<br>Appendix 1: https://documents.parliament.qld.gov.au/tp/2005/5105T5387.pdf<br>Appendix 2: https://documents.parliament.qld.gov.au/tp/2005/5105T5388.pdf<br>Appendix 3: https://documents.parliament.qld.gov.au/tp/2005/5105T5389.pdf<br>Appendix 4: https://documents.parliament.qld.gov.au/tp/2005/5105T5390.pdf<br>Appendix 5: https://documents.parliament.qld.gov.au/tp/2005/5105T5391.pdf<br>Appendix 6: https://documents.parliament.qld.gov.au/tp/2005/5105T5392.pdf |
| 100. | 11 May 2006 | CMC | Independence, Influence and Integrity in Local Government: A CMC Inquiry into the 2004 Gold Coast City Council Election | https://documents.parliament.qld.gov.au/tp/2006/TP6347-2006.pdf |
| 101. | 05 October 2006 | CMC | Regulating Outcall Prostitution: Should Legal Outcall Prostitution Services be Extended to Licensed Brothels and Independent Escort Agencies | https://documents.parliament.qld.gov.au/tp/2006/5206T4.pdf |
| 102. | 13 March 2008 | CMC | How the Criminal Justice System Handles Allegations of Sexual Abuse: A Review of the Implementation of the Recommendations of the *Seeking Justice* Report | https://documents.parliament.qld.gov.au/tp/2008/5208T3143.pdf |
| 103. | 18 December 2008 | CMC | Public Duty, Private Interests: Issues in Pre-Separation and Post-Separation Employment for the Queensland Public Sector – A Report Arising from the Investigation into the Conduct of Former Director-General Scott Flavell | https://documents.parliament.qld.gov.au/tp/2008/5208T4940.pdf |
| 104. | 22 July 2009 | CMC | Dangerous Liaisons: A Report Arising from a CMC Investigation into Allegations of Police Misconduct (Operation Capri) | https://documents.parliament.qld.gov.au/tp/2009/5309T489.pdf |
| 105. | 20 November 2009 | CMC | Restoring Order: Crime Prevention, Policing and Local Justice in Queensland's Indigenous Communities | https://documents.parliament.qld.gov.au/tp/2009/5309T1430.pdf |
| 106. | 15 April 2010 | CMC | Sound Advice: A Review of Police Powers in Reducing Excessive Noise From Off-Road Motorbikes | https://documents.parliament.qld.gov.au/tp/2010/5310T2071.pdf |

## Annexure 3 - Publications of the CCC and its predecessors which have been tabled

| # | Date of tabling | Agency | Report Name | Parliament's Tabled Papers Website URL |
|---|---|---|---|---|
| | | | | |
| 107. | 17 June 2010 | CMC | CMC Review of the Queensland Police Service's *Palm Island Review* | https://documents.parliament.qld.gov.au/tp/2010/5310T2451.pdf |
| 108. | 21 December 2010 | CMC | Setting the Standard: A Review of Current Processes for the Management of Police Discipline and Misconduct Matters | https://documents.parliament.qld.gov.au/tp/2010/5310T3791.pdf |
| 109. | 21 December 2010 | CMC | Police Move-on Powers: A CMC Review of Their Use | https://documents.parliament.qld.gov.au/tp/2010/5310T3792.pdf |
| 110. | 21 December 2010 | CMC | Report on an Investigation into the Alleged Misuse of Public Monies, and a Former Ministerial Adviser | https://documents.parliament.qld.gov.au/tp/2010/5310T3793.pdf |
| 111. | 28 April 2011 | CMC | Evaluating Taser Reforms: A Review of Queensland Police Service Policy and Practice | https://documents.parliament.qld.gov.au/tp/2011/5311T4279.pdf |
| 112. | 23 June 2011 | CMC | Operation Tesco: Report of an Investigation into Allegations of Police Misconduct on the Gold Coast | https://documents.parliament.qld.gov.au/tp/2011/5311T4740.pdf |
| 113. | 29 June 2011 | CMC | Regulating Prostitution: A Follow-up Review of the *Prostitution Act 1999* | https://documents.parliament.qld.gov.au/tp/2011/5311T4753.pdf |
| 114. | 29 June 2011 | CMC | An Alternative to Pursuit: A Review of the Evade Police Provisions | https://documents.parliament.qld.gov.au/tp/2011/5311T4754.pdf |
| 115. | 26 June 2013 | CMC | Multiple and Prolonged Taser Deployments | https://documents.parliament.qld.gov.au/tp/2013/5413T2908.pdf |
| 116. | 13 September 2013 | CMC | An Examination of Suspected Official Misconduct at the University of Queensland | https://documents.parliament.qld.gov.au/tp/2013/5413T3458.pdf |
| 117. | 25 September 2023 | CMC | Fraud, Financial Management and Accountability in the Queensland Public Sector: An Examination of How a $16.69 Million Fraud Was Committed on Queensland Health | https://documents.parliament.qld.gov.au/tp/2013/5413T3493.pdf |
| 118. | 19 December 2014 | CCC | Review of the Operation of the *Child Protection (Offender Prohibition Order) Act 2008* | https://documents.parliament.qld.gov.au/tp/2014/5414T6730.pdf |
| 119. | 11 December 2015 | CCC | Transparency and Accountability in Local Government | https://documents.parliament.qld.gov.au/tp/2015/5515T1883.pdf |
| 120. | 08 December 2016 | CCC | Fraud Prevention or Fraud Risk? A Report on an Investigation into the Queensland Police Service's Project Synergy | https://documents.parliament.qld.gov.au/tp/2016/5516T2254.pdf |

## Annexure 3 - Publications of the CCC and its predecessors which have been tabled

| # | Date of tabling | Agency | Report Name | Parliament's Tabled Papers Website URL |
|---|---|---|---|---|
| | | | | |
| 121. | 12 December 2016 | CCC | Publicising Allegations of Corrupt Conduct: Is It In the Public Interest? | https://documents.parliament.qld.gov.au/tp/2016/5516T2256.pdf |
| 122. | 04 October 2017 | CCC | Operation Belcarra: A Blueprint for Integrity and Addressing Corruption Risk in Local Government | https://documents.parliament.qld.gov.au/tp/2017/5517T1861.pdf |
| 123. | 14 August 2018 | CCC | Culture and Corruption Risks in Local Government: Lessons from an Investigation into Ipswich City Council (Operation Windage) | https://documents.parliament.qld.gov.au/tp/2018/5618T982.pdf |
| 124. | 14 December 2018 | CCC | Taskforce Flaxton: An Examination of Corruption Risks and Corruption in Queensland Prisons | https://documents.parliament.qld.gov.au/tp/2018/5618T1983.pdf |
| 125. | 24 January 2020 | CCC | Operation Yabber: An Investigation into Allegations Relating to the Gold Coast City Council | https://documents.parliament.qld.gov.au/tp/2020/5620T41.pdf |
| 126. | 21 February 2020 | CCC | Operation Impala: Report on Misuse of Confidential Information in the Queensland Public Sector | https://documents.parliament.qld.gov.au/tp/2020/5620T326.pdf |
| 127. | 02 July 2020 | CCC | An Investigation into Allegations Relating to the Appointment of a School Principal | https://documents.parliament.qld.gov.au/tp/2020/5620T1003.pdf |
| 128. | 23 September 2020 | CCC | Investigation Keller: An Investigation Report into Allegations Relating to the Former Chief of Staff to the Honourable Annastacia Palaszczuk MP, Premier of Queensland and Minister for Trade | https://documents.parliament.qld.gov.au/tp/2020/5620T1668.pdf |
| 129. | 12 May 2021 | CCC | Investigation Arista: A Report Concerning the Investigation into the Queensland Police Service's 50/50 Gender Equity Recruitment Strategy | https://documents.parliament.qld.gov.au/tp/2021/5721T621.pdf |
| 130. | 04 July 2022 | CCC | Investigation Workshop: An Investigation into Allegations of Disclosure of Confidential Information at the Office of the Integrity Commissioner | https://documents.parliament.qld.gov.au/tp/2022/5722T965-70C1.PDF |

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Crime and Corruption Commission
QUEENSLAND

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.**

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Crime and Corruption Commission
QUEENSLAND

Our Reference: AD-24-0310; 24/071908

18 April 2024

The Honourable Catherine Holmes AC SC
Reviewer
Independent CCC Reporting Review

*By email: enquiries@cccreportingreview.qld.gov.au*

Dear Ms Holmes

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

I refer to our recent correspondence, and your request that the Crime and Corruption Commission (CCC) provide a supplementary submission to the Independent Review into the Crime and Corruption Commission's reporting on the performance of its corruption function (the Review).

You have requested the CCC's supplementary submission on the following matters:

1. Retrospectivity of amending legislation
2. Jurisdictional comparison of overseas integrity agencies
3. The determination of the United Nations Human Rights Committee on the complaint of Charif Kazal
4. Human rights considerations in reporting on corruption investigations
5. The CCC's witness welfare policy
6. The CCC's approach to publishing and tabling of reports and the making of public statements
7. Operation of section 50 of the *Crime and Corruption Act 2001* (the Act)
8. Identifying information in CCC prevention publications.

The following submission is supplementary to the CCC's submission dated 12 March 2024. It expands on some matters considered in that submission in further detail, considers other matters not contemplated by that submission, and also responds to some matters raised in submissions submitted to the Review which were published on the Review's website on 9 April 2024.

## 1. Retrospectivity of amending legislation

The CCC has previously submitted that curative legislation is required following the decision in *Crime and Corruption Commission v Carne*[1] (*Carne*) to validate reports previously prepared and published by the CCC and its predecessors. For the avoidance of doubt, any references to 'reports' previously made by the CCC and its predecessors includes public statements as the commission considered statement making to be one form of reporting pursuant to the understood power in section 64(1) of the Act. Any references to 'publication' includes tabling the report in the Legislative Assembly pursuant to section 69 of the Act and also includes publication without tabling including via the CCC website.

In *Carne*, the High Court held that the CCC had no statutory power to prepare a report of the kind it did in that matter.[2] The CCC is therefore cognisant of the distinction between the preparation and publication of such reports. It may be the case that amendments which retrospectively validate the publication of commission reports might implicitly resolve the question of whether those reports were within power to prepare. However, the CCC has taken a cautious approach and considers that the amendments which it seeks should expressly validate both the preparation and publishing of commission reports to dispel any uncertainty. It would not be desirable if the publication of commission reports was validated, but uncertainty remained about whether the preparation of the reports was undertaken without power.

The CCC considers there are three distinct categories of commission reports which must be contemplated when addressing the question of valid and authorised corruption investigation reporting.

*A. Reports previously created and published by the CCC and its predecessors in relation to corruption investigations.*

The CCC submits that there is a public interest in declaring reports previously prepared and tabled to have been within the CCC's authority, given that those reports were prepared in good faith pursuant to a broad reporting power that the CCC was widely understood to have. Those reports contain information which is of continuing relevance for the important purpose of corruption prevention and raising standards of integrity in units of public administration (UPA). If it is assumed that those historical reports have value in promoting public confidence in UPAs and raising standards of integrity in the public sector, then leaving the status of those reports as having been prepared without power may serve to undermine their value. It is easier to ignore findings and recommendations arising from a report if a person can (rightly) say that the entity which prepared it had no authority to do so. There is ample recent illustration of the risk to public confidence in the public comments made by the subject of a CCC investigation, former Deputy Premier Ms Jacklyn Trad, a former member of the Parliamentary Crime and Misconduct Committee[3] and the comments made in the submission of Mr David Barbagallo to the Review.[4]

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[1] [2023] HCA 28.

[2] See [68] of the majority's judgment and [104] of the minority's judgment.

[3] @jackietrad post to platform X.com (formerly Twitter) on 3 October 2023.

[4] Submission of David Barbagallo AM to the Independent Review of the CCC Reporting Powers, p 4 <https://www.cccreportingreview.qld.gov.au/__data/assets/pdf_file/0011/796547/mr-david-barbagallo-22-march-2024.pdf>.

*B. Reports and statements that will be made by the CCC in the future.*

All future public reports and public statements made by the CCC will be governed and authorised by amending legislation, which the CCC assumes will set out parameters for public reporting and statement making including procedural fairness requirements. In our submission, it would be necessary and appropriate that both the preparation and publication of reports, and the making of statements, would be expressly authorised by the Act.

*C. Corruption investigations which were underway at the time of Carne, or have commenced since, part of which has included the preparation of reports in relation to those investigations which are yet to be published.*

The CCC considers this category of reports should also be addressed by amending legislation. In our submission, any new parameters for public reporting and statement making should apply to this category by retrospective operation or by declaratory provision applying to both preparation and publication. The CCC would expect this to practically mean that any reports falling into this category will not be made public until it is determined that the CCC has complied with the amending legislation, in particular any new procedural fairness provisions. Care would need to be taken to define this category of reports such that it was confined to reports concerning CCC corruption investigations and would not extend to purely prevention or research publications. The CCC's reports concerning the former Deputy Premier and the former Public Trustee would, in our view, fall into this category.

The proposal for declaratory provisions and/or provisions with retrospective operation should not be controversial, in the CCC's submission. Parliament retains the power to legislate retrospectively and will be justified in doing so where the intent is to be curative or validating.[5] There are examples across the Queensland statute book of laws being amended retrospectively in order to clarify a situation or correct unintended legislative consequences, including amendments to the *Crime and Misconduct Act 2001* following courts' judgments on the scope of Crime and Misconduct Commission powers.[6]

In the event there is not amending legislation to validate prior public reports of the CCC and its predecessors, this will undoubtedly need to be addressed by a statement on the CCC's website. This would impact all of the reports listed in Annexure 3 to the CCC's submission dated 12 March 2024, notwithstanding that not all of the reports are purely corruption investigation reports and may have been issued pursuant to the CCC's prevention or research functions as well. The CCC would need to consider removing the reports from publication, although this would not of course limit their public availability given that they had been tabled and form part of the records of Parliament. This would inevitably erode public confidence in the work of the CCC and would not assist with public understanding of the statutory powers and responsibilities of the CCC which are set out in sections 33, 34, 35, 46A, 23 and 24 of the CC Act.

**2. Jurisdictional comparison of overseas integrity agencies**

The CCC provided a jurisdictional comparison of Australian integrity agencies' public reporting powers as Annexure 2 to its submission dated 12 March 2024. Now **attached** as **Annexure 1** to this submission

[5] Queensland Legislation Handbook p 35.

[6] These examples are detailed in the CCC's submission dated 29 February 2024 to the Community Safety and Legal Affairs Committee with respect to the Crime and Corruption Amendment Bill (Private Members' Bill) https://documents.parliament.qld.gov.au/com/CSLAC-40FE/CCAB2023-A326/submissions/00000004.pdf.

is a table of legislation from international jurisdictions with integrity agencies (or integrity units within existing agencies) which have functions that bear some resemblance to those of the CCC. The table identifies the legislative provisions and authorities relevant to these agencies/units and their reporting powers, where applicable.

You may note, in particular, the Papua New Guinea Independent Commission Against Corruption (PNG ICAC) which is established under the Constitution of Papua New Guinea and the powers of which are prescribed under the *Organic Law on the Independent Commission Against Corruption* (Organic Law). The Organic Law has adopted an approach to the making of public statements within section 52 that is modelled on the South Australian Independent Commission Against Corruption (SA ICAC) section 25, noting however that the power to make a public statement within the Organic Law is expressed as a general, discretionary power, whereas the SA ICAC model is one of exception. In both jurisdictions, the authority to make a public statement is inherently linked to the agencies' investigative functions, further noting the co-operation between the PNG ICAC's corruption investigation powers under section 34 of the Organic Law and its corruption prevention and reduction powers under section 33.

The CCC considers the adoption of a provision in similar terms to section 52 of the Organic Law is likely to engender public confidence in an agencies' exercise of their power to report and make a public statement and is likely to be uncontroversial. This is particularly the case in Queensland where the factors to be considered prior to making a public statement (or report) align with requirements that currently exist within section 57 of the CC Act, the *Human Rights Act 2019* (Qld) (HR Act) and at common law (i.e., procedural fairness requirements).

The CCC considers the factors listed in section 52(a) to (e) of the Organic Law reflect balanced decision-making in regard to a power/s of this nature but should neither operate to the exclusion of the HR Act nor as a paramount consideration.

### 3. Determination of the United Nations Human Rights Committee on the complaint of Charif Kazal

The CCC has considered the determination of the United Nations Human Rights Committee (the Committee) in *Charif Kazal v Australia*[7] *(Kazal).* The question before the Committee was whether the inquiry and the publication of the findings by the New South Wales Independent Commission Against Corruption (NSW ICAC) constituted an *arbitrary* interference with Mr Kazal's right to privacy under article 17 of the International Covenant on Civil and Political Rights (the Covenant). The Committee noted the Office of the Inspector published a report in 2017 which concluded in relation to the investigation involving Mr Kazal that the NSW ICAC's findings were "weak and flawed" and was critical of the public nature of the proceedings and the lack of written reasons for its decision to make the proceeding public.

Article 17 of the Covenant provides no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, to unlawful attacks on their honour and reputation, and that everyone has the right to the protection of the law against such interference or attacks. In Queensland, an equivalent right to privacy and reputation is set out at section 25 of the HR Act.

[7] 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.

The CCC notes at the outset that the NSW ICAC operates in a jurisdiction without domestic human rights legislation, and it is therefore not bound to consider the compatibility of actions and decisions it makes with human rights. The CCC operates subject to the requirements of the HR Act which means every internal policy and procedure which govern CCC investigations are assessed to ensure their compatibility with human rights. Those rights are again considered by decision-makers prior to taking action or making decisions pursuant to those policies and procedures. Concerns of the nature raised in *Kazal* would be mitigated in part, if not in full, by the fact that an arbitrary interference with an individual's rights to privacy is likely to be identified by the CCC through its Human Rights Compatibility Framework, and the action or decision may then be proactively amended to ensure its compatibility with human rights.

Additionally, we consider the decision can be distinguished from the CCC in several respects:

- The facts of this matter largely turn on the conduct of the NSW ICAC in undertaking a particular investigation, which the Inspector found fell short of what was expected of the agency in carrying out such an investigation.

- Section 177(1) of the CC Act provides a presumption that hearings will not be open to the public. The CCC may open a corruption hearing to the public if it considers closing the hearing to the public would be unfair to a person or contrary to the public interest and approves that the hearing be a public hearing.[8] The presumption in favour of private hearings provided by the Act means the CCC is statutorily bound to consider the public interest in opening the hearing, and would necessarily document relevant public interest and unfairness considerations, and the approval process, before opening a hearing to the public. In our view, that process is likely to overcome the finding in *Kazal* that there was no reasoning by NSW ICAC as to its decision to hold a public hearing, as the CCC would, in every case, document such a decision and the reasons for the decision.

- Hearings generally being held in private means the CCC has an opportunity to consider the evidence obtained in an investigation and make a determination about whether or not to publicly report on the matter. In making the decision about whether to publicly report, the CCC would have regard to the matters already set out in this submission and the CCC's submission dated 12 March 2024, including:

    - the compatibility of the decision with human rights under the HR Act;

    - complying with the procedural fairness process under section 71A of the Act as well as the common law of natural justice generally;

    - the CCC's overriding duty under section 57 of the Act; and

    - our internal procedures, particularly under MM03 – *Matter reports and publications*.

It should be noted as a general observation that a range of provisions regarding those matters have been introduced into the NSW ICAC Act since this matter was investigated in 2010-2011.

[8] *Crime and Corruption Act 2001* s 177(2)(c).

To the extent that the decision of the Committee highlights that persons who are investigated by anti-corruption bodies may find themselves the subject of adverse findings in circumstances where no criminal offences are progressed – the CCC acknowledges this raises concerns about reputational risks. The CCC is required by legislation to investigate corrupt conduct. In reporting on corruption investigations, the balancing exercise of weighing the public interest against the interests of individuals who may be adversely affected by publication is difficult. As has previously been submitted, the CCC undertakes that difficult exercise having regard to the procedural safeguards in our legislation, our duties to the public, human rights, and the performance of our functions.

## 4. Human Rights considerations in reporting on corruption investigations

The CCC adopted a Human Rights policy and procedure at the time of commencement of the HR Act. At that time, the CCC took steps to confirm that its policies and procedures, including the CCC's Operations Manual, were compatible with human rights. The Operations Manual sections governing its corruption functions, including section 'MM03 – Matter reports and publications' were reviewed and concluded to be compatible with human rights.

**Attached** to this submission are the following documents:

- **Annexure 2:** CCC Human Rights policy and procedure.
- **Annexure 3:** CCC Human Rights operating model.
- **Annexure 4:** Human Rights compatibility framework – decision making guideline.

The CCC gives particular consideration to human rights when making decisions about public reports on corruption investigations. This can be seen, by way of example, in paragraphs 9 to 12 of the Operation Workshop report referred to in footnote 11.

## 5. The CCC's Witness welfare policy

The CCC acknowledges the imperative to protect witness welfare extends to the subjects of investigations, as well as those who have given information to the CCC. To the extent that any individual is required to participate in or provide information to a CCC investigation, the CCC acknowledges that this may impact on an individual's psychological wellbeing. The CCC's current Witness Welfare Policy addresses this. It reflects the CCC's risk assessment-based approach to dealing with witnesses, taking into account CCC policy requirements and considerations under the HR Act and sets out requirements for considering and responding to risks of psychological harm.

The policy was developed following consideration of the best practice principles established by recent reviews undertaken by agencies in other jurisdictions in relation to witness welfare factors.[9] It applies to all witnesses, persons of interest and other persons subject to or directly impacted by the exercise of the CCC's functions.

[9] Integrity and Oversight Committee, Parliament of Victoria, *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare* (Parliamentary Paper, 6 October 2022). Available at <https://www.parliament.vic.gov.au/get-involved/inquiries/performance-of-victorian-integrity-agencies-202021/>.

While the CCC has always taken a risk-based approach to the wellbeing of the individuals it encounters, whether those are complainants, witnesses, subject officers or others, the Witness Welfare Policy provides for:

- the provision of a fact sheet to people involved in CCC investigations about access to publicly available psychological support services;
- publication of 'Guidelines for responding to risks of harm' which set out practical guidance for commission officers who are dealing with people who present a risk of harm to themselves or to others; and
- CCC officers who regularly interact with complainants and/or witnesses will be required to complete the Mental Health First Aid program.

The following documents are **attached:**

- **Annexure 5:** CCC Witness welfare policy.
- **Annexure 6:** CCC Guidelines for responding to risks of harm.
- **Annexure 7:** Information for witnesses fact sheet – January 2024.

## 6. The CCC's approach to publishing and tabling of reports and the making of public statements

Attached, in response to your request, are copies of the following CCC policies:

- **Annexure 8:** CCC Operation Manual MM03 – *Matter reports and publications*, which sets out the CCC's approach to publishing a report and seeking to table a report.
- **Annexure 9:** CCC Communications policy and procedure regarding public statement making.

## 7. Operation of section 50 of the *Crime and Corruption Act 2001*

You have enquired as to the circumstances in which the CCC has made application under section 50 of the Act. The CCC has prepared a brief legislative history of section 50 of the Act which is **attached** as **Annexure 10**.

This provision operates primarily as a disciplinary provision. An application under section 50 is predicated on the CCC having provided a report under section 49 to the chief executive officer of a UPA (that disciplinary action should be considered), and that the provisions which set out what may be done in relation to such an application are set out in Chapter 5, Pt 2 of the Act, which is entitled "Disciplinary proceedings relating to corruption etc. – particular prescribed persons".

It is true to say that, in dealing with an application in relation to corrupt conduct, the Queensland Civil and Administrative Tribunal (QCAT) may first make a finding that corrupt conduct is proved against the

person,[10] before proceeding to impose a sanction on the person. Through such a process an independent tribunal would make a finding that a person has engaged in corrupt conduct. However, the CCC has historically sought to rely on this power only where the matter warrants disciplinary action being taken and there are no other means by which this can be achieved.

The CCC has brought six applications in relation to prescribed persons. Of those, three resulted in findings that the person had engaged in corrupt conduct, and three matters were withdrawn. One of the matters which was withdrawn was in relation to a public servant. The other five applications have all been in relation to police officers.

There are a variety of factors which inform the decision as to whether to exercise the power in section 50 of the Act. Chief among them is whether there is a reasonable mechanism by which a UPA is able to deal with the matter. The devolution principle in section 34(d) of the CC Act provides that *"action to prevent and deal with corruption in a unit of public administration should generally happen within the unit*".

Of course, this must be balanced against other principles in the Act, including 'public interest'. This principle provides that the CCC should exercise its power to deal with particular cases of corruption when it is appropriate having regard to various factors, including "*any likely increase in public confidence in having the corruption dealt with by the commission directly*."

At a practical level, there are several other related factors which may impact on whether the CCC exercises the power in section 50 of the Act. Beyond the principle of devolution, it is also far more efficient for matters to be dealt with through a disciplinary process within a UPA than to bring an application under section 50. Departmental disciplinary processes are often conducted 'on the papers'. They are often dealt with relatively quickly. Such proceedings do not involve the allocation of substantial resources, nor involve protracted litigation. There are review and appeal rights available. In some cases – particularly in respect of police disciplinary decisions – the CCC can exercise its oversight role through a power of review.

No doubt because of the infrequency with which such applications are brought, the CCC's experience is that QCAT does not have a set process to deal with such matters. Different members have taken different approaches as to when evidence is required to be filed, and what evidence may be led by way of affidavit or statement, as opposed to full oral evidence. Hearings often take place over multiple days and are conducted as a full trial. In each case, parties have been represented by solicitors and counsel.

The QCAT is also, regrettably, beset by significant delays. Its annual reports for the last several years have observed delays in resolving matters arising from, or exacerbated by, a number of features, including an ongoing lack of resourcing and the impact of the COVID-19 pandemic. In the police disciplinary space, there have been several legal issues which have impacted on the timeliness of those matters. While those issues do not affect proceedings under section 50, those matters are heard by the same cohort of members (involved in the occupational regulation stream), and as such, they are also likely to be substantially affected by the current backlog. The prospect of delay in resolving a matter is a significant factor which weighs into the consideration of whether to bring an application under section 50 of the CC Act.

[10] *Crime and Corruption Act 2001* s 219I(2)(b).

The clearest articulation of circumstances in which the CCC sought to exercise its powers was in the matter of *Lee*, which involved litigation over several years. *Lee* was the first corrupt conduct proceeding brought by the CCC. That matter had a lengthy history, which is set out in the judgment of the Court of Appeal in *Lee v Crime and Corruption Commission & Anor*[11] and supplemented by the decision of QCAT in *Crime and Corruption Commission v Lee*[12] (*Lee*).

In short, Lee was allocated responsibility for investigating a complaint against a police officer. His investigation was severely deficient. He recommended 'exoneration' of the officer, which included a statement that CCTV footage supported the officer's version, when it did not. The subject officer was subject of a further allegation, and Lee's investigation was also reviewed as part of that. It revealed the deficiencies in his investigation, and disciplinary action was commenced against him.

The CCC recommended that Lee should face a disciplinary hearing. The Queensland Police Service (QPS) negotiated an agreed outcome where Lee would be demoted, but that demotion wholly suspended for 12 months. The CCC disagreed with that course, and applied to QCAT for a review, arguing further evidence should be taken into account. The QCAT referred the matter back to QPS to reconsider, taking into account the further evidence. The QPS then advised the CCC that it proposed to resolve the matter by 'managerial action'. The CCC advised it did not agree with the proposed resolution and advised that it was assuming responsibility for the investigation under section 48(1)(d) (for the purpose of commencing CC proceedings in QCAT).

Lee applied for a declaration that the 'assumption' was invalid because the matter had been dealt with by the Assistant Commissioner's decision to deal with the matter by managerial action. The Court of Appeal upheld the trial judge's decision that the decision to deal with the matter by managerial action did not finalise the allegations against Lee, and that reading such a limitation into the CC Act would curtail the CCC's monitoring function.

The conduct in *Lee* occurred in 2008. The initial disciplinary decision by the QPS was made in 2013. The Court of Appeals' decision that it was within the CCC's power to assume responsibility for the investigation occurred in 2016, which was the year in which the section 50 proceedings were commenced.

That proceeding was commenced in mid-2016, and QCAT heard the application over three days in March 2017. QCAT delivered its decision in December 2017. That decision was appealed to the Appeals Tribunal of QCAT, and then the Court of Appeal. The Court of Appeal finalised the appeal in 2020 in *Lee v Crime and Corruption Commission; Crime and Corruption Commission v Lee*.[13]

The circumstances in *Lee* were such that the CCC took the view that the conduct was sufficiently serious that Lee ought to have been dismissed from the Queensland Police Service but that, in any case, the disciplinary action proposed by the QPS was manifestly inadequate to properly deal with the conduct involved. At the relevant time, the proposed action (managerial guidance) would have been a decision which the CCC could not review.

Other instances in which the CCC has commenced section 50 proceedings in QCAT have involved matters which the CCC has investigated, and where criminal proceedings had also been brought. In

[11] [2016] QCA 145 at [2]-[7].
[12] [2017] QCAT 483 at [12]-[14].
[13] [2020] QCA 201.

one instance, the officer had been successfully criminally prosecuted. In two other instances, there had been criminal prosecutions in which the charges had been withdrawn or dismissed. In one of those cases the section 50 proceedings were unsuccessful, but in the other the subject officer admitted the conduct amounted to corrupt conduct, and a disciplinary declaration was made (as he had left the service, the declaration was that, had he not resigned, he would have been dismissed). Again, highlighting delays in QCAT matters, the only outstanding section 50 proceeding was commenced in 2020. The QCAT has not yet delivered its decision on sanction.

Another factor in considering whether to bring corrupt conduct proceedings is what evidence is available to substantiate the allegations against the subject officer. Certain evidence may not be available in disciplinary proceedings conducted by a UPA. Telecommunications data (such as call charge records) may not be disseminated to other UPAs for disciplinary purposes. Intercepted telecommunications may only be disseminated to other interception agencies but may be used in exempt proceedings (which includes tribunal proceedings). As such, there may be circumstances where key pieces of evidence necessary to prove a disciplinary allegation would not be available for use by a departmental disciplinary proceeding but could be relied upon in section 50 proceedings in QCAT.

A further relevant consideration which has informed decisions in relation to commencing section 50 proceedings, rather than a matter being resolved through internal disciplinary processes, is the operation of statutory time limits which would otherwise preclude disciplinary action being taken. Amendments made in 2019 to the *Police Service Administration Act 1990* (Qld) (PSAA) introduced limitation periods for commencing disciplinary action against a subject officer. Those were 12 months from the date the ground for disciplinary action arises, or 6 months from the date a complaint about the conduct is received (sections 7.12 and 7.13 PSAA). Those limitation periods do not apply to proceedings under section 50 of the CC Act. This was a deliberate choice to ensure that action could be taken in relation to more serious matters.

Additionally, a matter that provides grounds for disciplinary action may not always overlap with 'corrupt conduct'. Corrupt conduct, as you are aware, requires several criteria to be met. It also must be conduct at a sufficient level of seriousness, indicated by section 15(1)(c) or (2)(c), being a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person's services.

In summary, then, a key factor in the CCC's consideration as to whether to bring a proceeding (assuming the seriousness of the conduct is sufficient to otherwise justify bringing such an application) is whether there is a credible alternative disciplinary process which would see the officer dealt with appropriately for the conduct. That is primarily because such proceedings are far more efficient than a section 50 proceeding in QCAT.

Given that disciplinary proceedings are primarily protective in nature, and that a sanction is most likely to have protective and rehabilitative effect when it occurs close to the impugned conduct, delay of this kind can undermine the effectiveness of disciplinary proceedings. Further, allowing a UPA to deal with its own officers (subject to possible review), also gives effect to those principles in section 34 of the CC Act which promote UPAs dealing with matters themselves.

In light of the foregoing, while it may be an option to seek to bring an application in QCAT pursuant to section 50 of the CC Act where the CCC sought a finding of corrupt conduct to be made, that has not been considered to this point as a generally suitable option. It may be that, if the CCC considered that corrupt conduct findings should be made, this would be a process by which such findings could be

made by an independent arbiter. But, having regard to the current issues with QCAT, and in particular the significant delays arising from under-resourcing, such a process may be complex, expensive and time-consuming for all involved.

**8. CCC prevention reports**

The CCC does not contend that in prevention publications on its website (e.g. Prevention in Focus and Public Sector Guidance and Resources) it is always necessary to include investigation details including identifying information. Where investigation details are included in these prevention publications, this is generally done at a sufficient level of generality to avoid identification of individuals. There are some limited exceptions to this, including matters in which a public report has already issued, or where there has been a concluded prosecution.

If you have any specific concerns in relation to matters the CCC has submitted to you, including information annexed to our submissions, could you please advise us so that we might be able to provide any additional information to assist you with the Review.

Yours sincerely

**Bruce Barbour**
Chairperson

**This correspondence is suitable for publication.**

**Annexures**

**Table of contents**

# Annexure 1: International jurisdiction comparison table

INTERNATIONAL JURISDICTIONS WITH INTEGRITY AGENCIES (OR INTEGRITY UNITS WITHIN EXISTING AGENCIES) – PREPARED BY THE CRIME AND CORRUPTION COMMISSION (CCC) AT THE REQUEST OF THE INDEPENDENT REVIEW INTO CCC REPORTING POWERS

| Jurisdiction | Agency | Legislation | Relevant provisions |
|---|---|---|---|
| New Zealand | Serious Fraud Office<br><br>"The Serious Fraud Office is New Zealand's lead law enforcement agency for investigating and prosecuting serious fraud, including corruption. The SFO also works to prevent fraud and corruption in New Zealand's public sector by providing guidance and raising awareness." | Empowered under the *Serious Fraud Office Act 1990* | No relevant provisions identified. |
| Canada - Quebec | The Permanent Anti-Corruption Unit (UPAC)<br><br>"… created by the government of Quebec on February 18, 2011, is a group of public organizations under the responsibility of the Anti-Corruption Commissioner, who coordinates and directs the forces and expertise in place at within government to fight corruption." | L 6-1 of the Anti-Corruption Act | **Investigation reports**<br><br>**16 .** The investigation teams designated by the government continue to carry out their mandate with their respective department or agency in their area of competence, in accordance with the responsibilities and powers conferred on them under the law. They must also:<br><br>1 ° carry out any investigation requested by the commissioner and inform the latter when a penal or criminal investigation begins;<br><br>2 ° provide the associate commissioner for investigations with any information useful to his duties;<br><br>3 ° report to the associate commissioner for investigations on the progress of the investigations.<br><br>2011, c. 17, a. 16 ; 2018, c. 1 , a. 15 .<br><br>**General Reports/public communication**<br><br>**SECTION II**<br>FUNCTIONS AND POWERS<br><br>**9 .** The commissioner's functions are:<br><br>1 ° to receive, record and examine reports of reprehensible acts, in order to take appropriate action;<br><br>(2 ) to act as director of the police force formed under section 8.4;<br><br>3 ° to request, on its own initiative, investigations in order to detect the commission of reprehensible acts;<br><br>4 ° to make recommendations to the President of the Treasury Board and to the Minister of Municipal Affairs, Regions and Land Occupancy on any measure concerning the awarding of contracts whose conditions are determined by a law for which they are responsible for the application;<br><br>5 ° to make recommendations to the Minister as well as to any body or person in the public sector on any measure aimed at promoting the prevention and fight against corruption;<br><br>6 ° to assume a role of prevention and education in the fight against corruption.<br><br>The commissioner may also carry out or have carried out any investigation or any additional investigation at the request of the director of criminal and penal prosecutions.<br><br>The commissioner also exercises any other function entrusted to him by the government or the minister.<br><br>2011, c. 17, a. 9 ; 2018, c. 1 , a. 8 . |

| Jurisdiction | Agency | Legislation | Relevant provisions |
|---|---|---|---|
| | | | **SECTION IV**<br>COMMUNICATION TO THE PUBLIC<br><br>**22 .** The commissioner communicates to the public the status of his activities at least twice a year and no later than eight months after his last communication. He may in particular communicate the recommendations made under paragraphs 4° and 5° of the first paragraph of article 9.<br><br>The commissioner may also publish a report on any matter falling within his powers, if he judges that the importance of the matter justifies it.<br><br>2011, c. 17, a. 22 . |
| United Kingdom | Serious Fraud Office<br><br>"A specialist prosecuting authority tackling top level serious or complex fraud, bribery and corruption.<br><br>We are part of the UK criminal justice system covering England, Wales and Northern Ireland, but not Scotland, the Isle of Man or the Channel Islands." | Empowered by the Criminal Justice Act 1987 | *Restrictions on reporting.*<br>(1) Except as provided by this section—<br>(a) no written report of proceedings falling within subsection (2) below shall be published in **[**F2the United Kingdom**]**;<br>(b) no report of proceedings falling within subsection (2) below shall be included in a relevant programme for reception in **[**F3the United Kingdom**]**.<br>(2) The following proceedings fall within this subsection—<br>F4 (a). . . . . .<br>(b) a preparatory hearing;<br>(c) an application for leave to appeal in relation to such a hearing;<br>(d) an appeal in relation to such a hearing.<br>F5 (3). . . . . .<br>(4) The judge dealing with a preparatory hearing may order that subsection (1) above shall not apply, or shall not apply to a specified extent, to a report of—<br>(a) the preparatory hearing, or<br>(b) an application to the judge for leave to appeal to the Court of Appeal under section 9(11) above in relation to the preparatory hearing.<br>(5) The Court of Appeal may order that subsection (1) above shall not apply, or shall not apply to a specified extent, to a report of—<br>(a) an appeal to the Court of Appeal under section 9(11) above in relation to a preparatory hearing,<br>(b) an application to that Court for leave to appeal to it under section 9(11) above in relation to a preparatory hearing, or<br>(c) an application to that Court for leave to appeal to the **[**F6Supreme Court**]** under Part II of the M1Criminal Appeal Act 1968 in relation to a preparatory hearing.<br>(6) **[**F7The Supreme Court**]** may order that subsection (1) above shall not apply, or shall not apply to a specified extent, to a report of—<br>(a) an appeal to **[**F8the Supreme Court**]** under Part II of the Criminal Appeal Act 1968 in relation to a preparatory hearing, or<br>(b) an application to **[**F8the Supreme Court**]** for leave to appeal to it under Part II of the M2Criminal Appeal Act 1968 in relation to a preparatory hearing.<br>(7) Where there is only one accused and he objects to the making of an order under subsection F9... (4), (5) or (6) above the judge or the Court of Appeal or the **[**F10Supreme Court**]** shall make the order if (and only if) satisfied after **[**F11considering**]** the representations of the accused that it is in the interests of justice to do so; and if the order is made it shall not apply to the extent that a report deals with any such objection or representations.<br>(8) Where there are two or more accused and one or more of them objects to the making of an order under subsection F12... (4), (5) or (6) above the judge or the Court of Appeal or the **[**F10Supreme Court**]** shall make the order if (and only if) satisfied |

| Jurisdiction | Agency | Legislation | Relevant provisions |
|---|---|---|---|
| | | | after **[**F13considering**]** the representations of each of the accused that it is in the interests of justice to do so; and if the order is made it shall not apply to the extent that a report deals with any such objection or representations.<br>F14 (9). . . . . .<br>F15 (10). . . . . .<br>(11) Subsection (1) above does not apply to—<br>F16(a). . . . . .<br>(b) the publication of a report of a preparatory hearing,<br>(c) the publication of a report of an appeal in relation to a preparatory hearing or of an application for leave to appeal in relation to such a hearing,<br>F17(d). . . . . .<br>(e) the inclusion in a relevant programme of a report of a preparatory hearing, or<br>(f) the inclusion in a relevant programme of a report of an appeal in relation to a preparatory hearing or of an application for leave to appeal in relation to such a hearing,<br>at the conclusion of the trial of the accused or of the last of the accused to be tried.<br>(12) Subsection (1) above does not apply to a report which contains only one or more of the following matters—<br>(a) the identity of the court and the name of the judge;<br>(b) the names, ages, home addresses and occupations of the accused and witnesses;<br>(c) any relevant business information;<br>(d) the offence or offences, or a summary of them, with which the accused is or are charged;<br>(e) the names of counsel and solicitors in the proceedings;<br>(f) where the proceedings are adjourned, the date and place to which they are adjourned;<br>(g) any arrangements as to bail;<br>**[**F18 (h) whether, for the purposes of the proceedings, representation was provided to the accused or any of the accused under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.**]**<br>(13) The addresses that may be published or included in a relevant programme under subsection (12) above are addresses—<br>(a) at any relevant time, and<br>(b) at the time of their publication or inclusion in a relevant programme;<br>and “relevant time” here means a time when events giving rise to the charges to which the proceedings relate occurred.<br>(14) The following is relevant business information for the purposes of subsection (12) above—<br>(a) any address used by the accused for carrying on a business on his own account;<br>(b) the name of any business which he was carrying on on his own account at any relevant time;<br>(c) the name of any firm in which he was a partner at any relevant time or by which he was engaged at any such time;<br>(d) the address of any such firm;<br>(e) the name of any company of which he was a director at any relevant time or by which he was otherwise engaged at any such time;<br>(f) the address of the registered or principal office of any such company;<br>(g) any working address of the accused in his capacity as a person engaged by any such company; |

| Jurisdiction | Agency | Legislation | Relevant provisions |
|---|---|---|---|
| | | | and here "engaged" means engaged under a contract of service or a contract for services, and "relevant time" has the same meaning as in subsection (13) above.<br><br>(15) Nothing in this section affects any prohibition or restriction imposed by virtue of any other enactment on a publication or on matter included in a programme.<br><br>(16) In this section—<br><br>(a) "publish", in relation to a report, means publish the report, either by itself or as part of a newspaper or periodical, for distribution to the public;<br><br>(b) expressions cognate with "publish" shall be construed accordingly;<br><br>(c) "relevant programme" means a programme included in a programme service, within the meaning of the **M3**Broadcasting Act 1990.] |
| Hong Kong | Independent Commission Against Corruption (HK ICAC)<br><br>"Since its establishment in February 1974, the ICAC has been fighting corruption independently without fear or favour. Its independent status is derived from the ICAC Ordinance (Cap. 204) which stipulates the statutory mandate of the ICAC in combatting corruption through investigation, prevention and education." | Established under the *Independent Commission Against Corruption Ordinance (Cap. 24)* | Section 12 of the HK ICAC Ordinance provides for the duties of the Commissioner. These include the following relevant duties:<br><br>(a) receive and consider complaints alleging corrupt practices and investigate such of those complaints as he considers practicable; ….<br>(e) instruct, advise and assist any person, on the latter's request, on ways in which corrupt practices may be eliminated by such person;<br>(f) advise heads of Government departments or of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such departments or public bodies which the Commissioner thinks necessary to reduce the likelihood of the occurrence of corrupt practices;<br>(g) educate the public against the evils of corruption; and<br>(h) enlist and foster public support in combatting corruption.<br><br>The HK ICAC issues press releases in relation to investigation outcomes where a subject person has been charged or convicted. The HK ICAC also has a number of published documents or videos (Inside 303) that provide general information, at times involving de-identified examples, about their powers and functions.<br><br>No legislative provisions have been identified regarding the making of public reports or statements. |

## Annexure 1: International jurisdiction comparison table

INTERNATIONAL JURISDICTIONS WITH INTEGRITY AGENCIES (OR INTEGRITY UNITS WITHIN EXISTING AGENCIES) – PREPARED BY THE CRIME AND CORRUPTION COMMISSION (CCC) AT THE REQUEST OF THE INDEPENDENT REVIEW INTO CCC REPORTING POWERS

| Jurisdiction | Agency | Legislation | Relevant provisions |
|---|---|---|---|
| Papua New Guinea | Independent Commission Against Corruption (PNG ICAC) | Established under the Constitution (as amended in 2016)[1]<br><br>Powers given under the Organic Law on the Independent Commission Against Corruption (Organic Law) | **Constitution**<br><br>**220D.** Functions of the Commission.<br>Subject to any Organic Law made for the purposes of Section 220E, the functions of the Commission are:—<br>(a) to receive and consider complaints regarding alleged or suspected corrupt conduct and investigate such of those complaints as it considers appropriate; and<br>(b) to investigate, on its own initiative or on complaints received, alleged or suspected corrupt conduct; and<br>(c) to exchange information regarding alleged or suspected corrupt conduct and cooperate with other law enforcement, integrity and regulatory agencies, both within Papua New Guinea and internationally; and<br>(d) to refer complaints regarding alleged or suspected corrupt conduct to other agencies for investigation; and<br>(e) to accept the referral from other agencies of matters regarding alleged or suspected corrupt conduct for investigation; and<br>(f) where the Commission, after conducting an investigation, is of the opinion that a person has committed an offence involving corrupt conduct, to refer the matter to the Public Prosecutor or the Police Force together with a statement of reasons for its opinion; and<br>(g) to exercise such prosecution powers concerning or relating to corrupt conduct as may be prescribed by or under an Organic Law; and<br>(h) to encourage, cooperate and coordinate with other public and private sector agencies in:—<br>(i) research regarding corrupt conduct and anti-corruption strategies, policies, practices and procedures; and<br>(ii) the development, implementation and review of anti-corruption strategies, policies, practices and procedures; and<br>(iii) training, education and awareness regarding corrupt conduct and anti-corruption strategies, policies, practices and procedures. |

[1] Version available through Oxford Constitutions of the World – online access to post-2016 version of the Constitution (with relevant amendments for the PNG ICAC) is limited.

| Jurisdiction | Agency | Legislation | Relevant provisions |
|---|---|---|---|
| | | | **220E.** Powers Etc., of the Commission.<br>**(1)** An Organic Law shall make further provision for the functions, structure, powers, procedures, operations, protections and immunities of the Commission and its staff.<br>**(2)** Without limiting the scope of Subsection (1), an Organic Law may –<br>(a) make provision for the Commission to have access to all available relevant information to carry out its functions; and<br>(b) impose reasonable restrictions on the availability of information held by the Commission; and<br>(c) make provision to ensure the secrecy or confidentiality of secret or confidential information made available to the Commission; and<br>(d) make provision for the bodies with which the Commission may share secret or confidential information; and<br>(e) make provision for and in respect of publicity for the proceedings, reports and recommendations of the Commission; and<br>(f) provide for certain penalties to automatically apply to a person who has been convicted of an offence involving corrupt conduct.<br>**220H.** Reports by the Commission.<br>**(1)** By 31 March each year, the Commission shall present to the Speaker of Parliament an annual report for presentation to Parliament, and shall provide a copy of the annual report to the Minister and the Oversight Committee.<br>**(2)** The Speaker of Parliament shall present the Commission's annual report to Parliament at the next meeting of Parliament following the receipt of the report.<br>**(3)** Once the annual report has been presented to Parliament, the Commission shall publish the report.<br>**(4)** An Organic Law may make provision for:—<br>(a) any particular matters which the Commission shall be obliged to report on in its annual report; and<br>(b) the role of the Oversight Committee in:—<br>(i) reviewing the Commission's annual report; and<br>(ii) reporting on the Commission's annual report; and<br>(iii) reviewing and making recommendations on matters within the scope of its role under Section 220G as part of its reports; and<br>(c) the publication of the Oversight Committee's reports.<br>**(5)** Nothing in this section prevents the Commission or the Oversight Committee from making any other reports relating to any aspect of the Commission's operations, functions or powers. |

| Jurisdiction | Agency | Legislation | Relevant provisions |
|---|---|---|---|
| | | | **Organic Law**<br><br>**32. FUNCTIONS AND POWERS OF THE COMMISSION.**<br>(1) In addition to the functions and powers of the Commission specified in Division VIII.3 (***The Independent Commission Against Corruption)*** of the ***Constitution***, the Commission has –<br>(a) such functions and powers as are conferred on it by this Law or any other Constitutional Law or Act; and<br>(b) the power to do all things necessary to be done for or in connection with, or reasonable incidental to, the performance of its functions or the exercise of its powers.<br><br>**33. PREVENTING AND REDUCING CORRUPT CONDUCT.**<br>Without limiting how the Commission may prevent and reduce corrupt conduct, the Commission may do the following:<br>(a) undertake or commission research; or<br>(b) review and make recommendations regarding the systems, strategies, policies, practices and procedures of any public body or public official; or<br>(c) undertake or commission education, training or awareness, to the public generally or to a particular section of the public or private sector, including educational institutions; or<br>(d) enlist and foster public support for preventing and reducing corrupt conduct; or<br>(e) analyse information regarding complaints, investigations and prosecutions; or<br>(f) make recommendations for legal, operational or policy reforms; or<br>(g) publish recommendations, research, reports, policies or guidelines and provide such material to other agencies and bodies; or<br>(h) make public statements necessary for its purposes under this Law or regarding the powers or functions of the Commission; or<br>(i) work in cooperation with other agencies and bodies, including other public sector agencies and bodies, the media, civil society, educational institutions and the private sector.<br><br>**34. INVESTIGATION AND PROSECUTION OF CORRUPT CONDUCT.**<br>(1) Without limiting how the Commission may prevent and reduce corrupt conduct, the Commission may –<br>(a) investigate alleged or suspected corrupt conduct, including offences mentioned in Subsection (2), and perform functions or exercise powers under Parts IV, V and VI; and<br>(b) prosecute indictable offences relating to corrupt conduct in accordance with Part VII.<br><br>(2) The Commission may investigate –<br>(a) offences under this ***Organic Law***; and<br>(b) other offences under the ***Criminal Code Act 1974*** that fall within the definition of corrupt conduct; and<br>(c) offences under any other laws that fall within the definition of corrupt conduct.<br><br>**52. PUBLIC STATEMENTS.**<br>The Commission may, subject to other laws, make or publish a public statement about a complaint or investigation concerning alleged or suspected corrupt conduct if, in the Commission's opinion, it is appropriate to do so in the public interest, having regard to the following:<br>(a) the benefits to an investigation that might be derived from making the statement;<br>(b) the risk of prejudicing the reputation or safety of a person by making the statement;<br>(c) whether the statement is necessary in order to allay public concern or to prevent or minimize the risk of prejudice to the reputation of a person;<br>(d) if an allegation against a person has been made public and, in the opinion of the Commission, the person is not implicated in corrupt conduct – whether the statement allegation having been made public;<br>(e) the risk of adversely affecting a potential prosecution of a criminal offence or a disciplinary proceeding. |

Crime and Corruption Commission
QUEENSLAND

Human rights | August 2023

# Human rights policy and procedure

## Objective

The Crime and Corruption Commission (CCC) and its staff have an obligation under the *Human Rights Act 2019* (Qld) to make decisions and act compatibly with human rights in their work and interactions with the people of Queensland. The Act protects 23 human rights, as outlined in Appendix A.

The purpose of this policy and procedure is to outline the CCC's obligations as a public entity and referral entity under *the Human Rights Act 2019* (Qld).

## Application

This policy applies to all commission officers.

## Relevant legislation

*Human Rights Act 2019 (Qld)*

*Crime and Corruption Act 2001 (Qld)*

## Definitions

| | |
|---|---|
| Act | Includes a failure to act or a proposal to act (has the meaning given by Schedule 1 of the *Human Rights Act*). |
| Decision | The term decision under the *Human Rights Act* is intended to capture all decision-making that engages human rights. |
| Human rights | The 23 human rights stated in part 2, divisions 2 and 3 of the *Human Rights Act.* |
| Human rights complaint | A complaint about an alleged contravention of section 58(1) of the *Human Rights Act* by a public entity in relation to an act or decision of the public entity (has the meaning given by section 63 of the *Human Rights Act*). |
| Proper consideration | Proper consideration includes, but is not limited to: identifying the human rights that may be affected by the decision; and considering whether the decision would be compatible with human rights, having regard to the factors listed under section 13 of the *Human Rights Act* (has the meaning given by section 58(5) of the *Human Rights Act*). |
| Public entity | Has the meaning given by section 9 of the *Human Rights Act.* |
| QHRC | Queensland Human Rights Commission. |
| Referral entity | The Crime and Corruption Commission, the Health Ombudsman, the Information Commissioner and the Ombudsman (has the meaning given by section 66 and schedule 1 of the *Human Rights Act*). |

## Policy statement

Commission officers are required to consider human rights when making decisions, and act and make decisions in a way that is compatible with human rights law.

The CCC is committed to:

- building and fostering a culture that respects, promotes and protects the human rights of individuals
- acting and making decisions in a way that is compatible with human rights when delivering its services and interacting with the Queensland community and
- promoting a dialogue about the nature, meaning and scope of human rights.

Respect for human rights should be reflected in all CCC policy, procedure and decision-making frameworks as well as embedded in the CCC's vision, values, strategic plans and priorities. The CCC will foster a culture that promotes human rights by reporting publicly on our commitment to achieving the objects of the *Human Rights Act*.

## Procedure

The CCC ensures compliance with human rights by:

- developing and reviewing CCC policies and procedures to ensure compatibility with human rights
- acting and making decisions that are compatible with human rights
- appropriately dealing with human rights complaints.

## Developing and reviewing CCC policies and procedures to ensure compatibility with human rights

The CCC must ensure its policies and procedures are compatible with human rights.

When developing and reviewing policies and procedures, commission officers are to give proper consideration (section 58(5) of the *Human Rights Act*) as to whether the policy or procedure:

- is authorised under law
- engages any of the protected human rights
- limits or restricts one or more of the protected human rights (and if so, whether the policy and procedure is reasonable and demonstrably justifiable)
- requires amendment to ensure compatibility with human rights.

Different processes have been established depending on whether the policy and procedure may engage human rights.

The *Guide – Human rights compatibility framework for policies and procedures* provides guidance about the steps to ensure compatibility of policies and procedures.

### *Policies and procedures that do not engage human rights*

The responsible officer will undertake a preliminary assessment of a new or revised policy or procedure to identify whether the policy or procedure engages one or more human rights. If no human rights are engaged, the officer is to record that assessment in the *Policy Approval form* submitted to the policy approver (accountable officer), via the digital Governance, Risk and Compliance (dGRC) system. The assessment must include enough information to allow the approver (accountable officer) to make an informed decision about whether human rights may be engaged by the policy or procedure. If approved by the accountable officer, the policy or procedure is considered to be compatible with human rights.

The responsible officer or accountable officer should seek advice from Corporate Legal (HumanRights@ccc.qld.gov.au) if uncertain whether a human right is engaged.

If the responsible officer, or Corporate Legal, determines that human rights are engaged and may be limited by the new policy or procedure, then a formal human rights assessment is required.

***Policies that may engage human rights - formal human rights assessment***

A formal human rights assessment assesses the policy to ensure its compatibility with human rights and is required where the policy and procedure is:

- new and engages with a human right, or
- is subject to a change or amendment which may, or is likely to, engage and may limit a human right.

In such instances, the responsible officer is to submit the draft new or revised policy or procedure (with revisions shown in track changes) to Corporate Legal with a request to conduct a formal human rights assessment. In the event that the assessment determines that the policy or procedure is incompatible with human rights, the responsible officer or accountable officer should amend the policy to ensure compliance with human rights and resubmit to Corporate Legal for reassessment (HumanRights@ccc.qld.gov.au).

If a policy document has previously been assessed as engaging human rights, it does not require a further human rights assessment at its periodic review unless a change is made which may engage a human right in a manner not considered in the existing assessment.

The responsible officer is to submit the policy or procedure and accompanying human rights assessment to the accountable officer for approval, via the dGRC.

## Acting and making decisions that are compatible with human rights

The CCC must act and make decisions in a way that is compatible with human rights, and must give proper consideration to human rights relevant to a decision (section 58(1)(b)) of the *Human Rights Act*).

A CCC act, decision or statutory provision is compatible with human rights if it:

- does not limit a human right; or
- it limits the human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act*.

When determining whether acts or decisions are compatible with human rights, commission officers are to give proper consideration as to whether:

- the limit is authorised under law
- the act or decision engages any of the protected human rights
- the act or decision limits or restricts one or more of the protected human rights
- the limit under law is reasonable and demonstrably justifiable
- an exception to the obligations (under section 58 of the *Human Rights Act*) applies.

The *Guide – Human Rights compatibility framework for acts and decisions* provides guidance about the steps to ensure decisions are compatible with human rights.

### *When human rights may be limited*

A human right may be subject under law[1] only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom (section 13(1) of the *Human Rights Act*). Implied legitimate reasons for limiting rights that are consistent with a free and democratic society include:

- public interest considerations (including national security and community safety); and
- protection of the rights of others (for example, children and domestic violence victims).

Section 13(2) of the *Human Rights Act* provides a structured proportionality analysis to enable commission officers to determine whether a limit on a human right is reasonable and justifiable. Refer to *Guide – When human rights may be limited* for more information about ensuring CCC acts and decisions are reasonable and justifiable.

#### *Mechanisms to facilitate making decisions compatible with human rights*

The following mechanisms help to facilitate the making of decisions compatible with human rights:

- Policies and procedures are compliant with human rights
- CCC briefing notes and other significant documents triggering a decision (eg project plans) include a section on human rights
- Committee and Board Charters highlight human rights obligations
- Minutes record human rights considerations.

## Complaints

#### *Dealing with a complaint about corruption that may also be a human rights complaint*

When dealing with a complaint about corruption under the *Crime and Corruption Act* and it is considered the complaint may also be a *human rights complaint,* the CCC may decide to:

- deal with the complaint under the CC Act; or
- with the consent of the complainant, refer the complaint to the Queensland Human Rights Commission (QHRC) under the *Human Rights Act.*[2]

The CCC must consider whether the actions or decisions of a public entity the subject of a complaint, are compatible with human rights or whether, in making a decision, a public entity failed to give proper consideration to relevant human rights.

In accordance with section 74 of the *Human Rights Act,* the CCC and the Queensland Human Rights Commission (QHRC) have entered into a referral arrangement that sets out how human rights complaints are to be dealt with.

Refer to the *Operations Manual – Identification of matters (IM01-04)* for more information as well as the *Referral arrangement between the Crime and Corruption Commission and the Queensland Human Rights Commission.* The *IS Guidance – Assessing complaints of corruption (Human Rights)* also provides information.

#### *Dealing with complaint against commission officers that may involve a breach of human rights*

If an individual believes a commission officer has breached their human rights, they may make a complaint. The CCC must deal with human rights complaints against commission officers.

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[1] The phrase 'under law' refers to a limitation imposed by a law, for example, an Act, subordinate legislation (such as a regulation) or the common law.

[2] The CCC is a referral entity under section 66 of the *Human Rights Act*.

The CCC's complaints management system is a broad system for managing various types of complaints against commission officers. The CCC has legislative obligations when it comes to dealing with some types of complaints (e.g. improper conduct) and has established separate policies and procedures for dealing with these.

Complaints should be initially reviewed, assessed and managed in accordance with the CCC's *Complaints against commission officers (policy & procedure)*.

***Timeframe for dealing with a human rights complaint against commission officers***

If 45 business days have elapsed and the CCC fails to provide a response or the individual considers the response to be inadequate, the individual may then complain to the Queensland Human Rights Commission (QHRC).

## Performance and Reporting

***Human rights records***

The CCC must keep accurate records to demonstrate that its acts and decisions are compatible with human rights, to monitor the effectiveness of its human rights policy framework, and meet its reporting requirements. At a minimum, the following records are required (note, normal recordkeeping procedures and obligations remain):

- agency-wide and business unit actions to further the objects of the Human Rights Act
- evidence of decisions considering human rights considerations
- the number of human rights complaints received and outcomes
- details of human rights compatibility assessments undertaken for policies and procedures.

***External reporting***

The CCC must include the following information in its annual report (as per section 97 of the *Human Rights Act*):

- details of any actions taken during the reporting period to further the objects of the *Human Rights Act*;
- details of any human rights complaints, including: the number of complaints received; the outcome of the complaints; any other information prescribed by regulation relating to the complaints; and
- details of any review of policies, programs, procedures, practices or services undertaken in relation to ensuring compatibility with human rights.

***Auditing, review and continuous improvement***

Legal, Risk & Compliance and Internal Audit will assess the performance of the CCC's human rights operating model by conducting relevant compliance and performance audits prior to the review date for this policy and procedure.

## Related documents

***Internal documents***

*Complaints against commission officers – policy and procedure*

*Guide – Human rights compatibility framework for decision making*

*Guide – Human rights compatibility framework for policies and procedures*

*Guide – When human rights may be limited*

*IS Guidance – Assessing complaints of corruption (Human Rights)*

*Operations Manual – IM01 to IM 04 including Assessment of Matters IM03*

*Policy Framework*

*Referral arrangement between the Crime and Corruption Commission and the Queensland Human Rights Commission*

***External documents***

*Nature and Scope of Human Rights Guide*

## Review triggers

This policy will be reviewed three years from the date of approval, unless changes in legislation or government policy affecting its operation occur before the three year period has expired. This policy will remain in effect until updated, superseded or declared obsolete.

## Metadata

As at 15 December 2022 the existing version being replaced or a new version will be v.1. All previous records will be searchable in eDRMS.

| Version | Action | Responsible Officer | Accountable Officer (Approver) | Approval Date | HRCA Y / N | eDRMS no. |
|---|---|---|---|---|---|---|
| [v.1] | Existing Instrument as at 15 December 2022 | General Manager, Corporate Services | CEO | 06/09/2021 | | Policy no: 21/213210<br>HRCA no: 21/203370 |
| [v.2] | Minor amendments – updating position titles, grammatical | Director, Corporate Legal | CEO | 28/08/2023 | N | Policy no: 23/145827<br>HRCA no: 21/203370<br>- |
| Next review date: | | 28 August 2026 | | | | |

## Appendix A: The human rights protected by the *Human Rights Act 2019*

| Human right | Section of the *Human Rights Act* |
|---|---|
| Right to recognition and equality before the law<br>*Every person has the right to recognition as a person, and to enjoy their human rights and be protected by the law without discrimination.* | 15 |
| Right to life<br>*A person has the right to life and the right not to be arbitrarily deprived of it.* | 16 |
| Protection from torture and cruel, inhuman or degrading treatment<br>*A person must not be subjected to torture or treated or punished in a cruel, inhuman or degrading way or subjected to medical or scientific experimentation or treatment without the person's full, free and informed consent.* | 17 |
| Freedom from forced work<br>*A person must not be held in slavery or servitude, or made to do forced or compulsory labour.* | 18 |
| Freedom of movement<br>*Every person has the right to move freely within Queensland, and in and out of it, and has the freedom to choose where to live.* | 19 |
| Freedom of thought, conscience, religion and belief<br>*Every person has the right to freedom of thought, conscience, religion and belief.* | 20 |
| Freedom of expression<br>*Every person has the right to have an opinion, and the freedom to seek, receive and impart information and ideas.* | 21 |
| Right to peaceful assembly and freedom of association<br>*Every person has the right of peaceful assembly and the right to freedom of association with others, including the right to form and join trade unions.* | 22 |
| Taking part in public life<br>*Every person is to have the opportunity to participate in public affairs, including voting in elections and having access to public service or office.* | 23 |
| Property rights<br>*A person has the right to own property and to not be arbitrarily deprived of it.* | 24 |
| Privacy and reputation<br>*A person has the right to not have their privacy (or the privacy of their family, home or correspondence) unlawfully or arbitrarily interfered with, and has the right to not have their reputation unlawfully attacked.* | 25 |
| Protection of families and children<br>*Families are the fundamental unit in society and are entitled to protection by society and the State. Every child has the right to be protected and to be given a name and registered as having been born.* | 26 |

| **Human right** | **Section of the *Human Rights Act*** |
|---|---|
| Cultural rights – generally<br>*People must have the right to enjoy their culture, practise their religion and use their language.* | 27 |
| Cultural rights – Aboriginal peoples and Torres Strait Islander peoples<br>*Aboriginal and Torres Strait Islander Peoples have distinct cultural rights, including the right to practise their cultural customs, and the right not to be subjected to forced assimilation or the destruction of their culture.* | 28 |
| Right to liberty and security of person<br>*A person cannot be arrested or detained without reason. A person who is arrested or detained must be told why and about any proceedings that will be brought against them.* | 29 |
| Humane treatment when deprived of liberty<br>*Any person who is deprived of their liberty must be treated with humanity, and any person who is detained without charge must be treated appropriately in light of this and segregated from people who have been convicted.* | 30 |
| Fair hearing<br>*A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.* | 31 |
| Rights in criminal proceedings<br>*A person charged with a criminal offence has the right to be presumed innocent until proven guilty, and to a range of entitlements including being informed of their charges, being provided time to prepare a defence and not being compelled to testify against themselves.* | 32 |
| Children in the criminal process<br>*Detained children must be separated from adults and be brought to trial as quickly as possible. A child who is convicted of an offence must be treated appropriately for their age.* | 33 |
| Right not to be tried or punished more than once<br>*A person has the right not to be tried or punished more than once for an offence in relation to which the person has already been finally convicted or acquitted in accordance with law.* | 34 |
| Protection from retrospective criminal laws<br>*A person has the right to not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in.* | 35 |
| Right to education<br>*Every child has the right to access education appropriate to their needs, and every person has the right to access vocational education and training based on their abilities.* | 36 |
| Right to health services<br>*Every person has the right to access health services, and must not be refused emergency medical treatment.* | 37 |

SENSITIVE

# Human Rights Operating Model 23/150093

**Attachment 1**

| Governance and compliance | Acting and making decisions | Policies | Corruption complaints | Dealing with a human rights complaint against the CCC or commission officers | Annual report |
|---|---|---|---|---|---|
| **Statutory/regulation** | CCC must act and make decisions compatible with human rights<br><br>(s.58(1)(b) *Human Rights Act*)<br>Human rights may only be limited in certain circumstances and after careful consideration | CCC policies and procedures must be compatible with human rights (s.58(5) *Human Rights Act*) | The CCC (as a referral entity) may deal with a human rights complaint that is also a complaint of corruption under the *Crime and Corruption Act 2001* (s.58(1), s.63, s.66(1)(c) and (2) *Human Rights Act)*<br><br>Under s.74, the QHRC Commissioner and a referral entity (i.e. CCC) may enter into an arrangement about referring complaints under a referral Act or dealing with complaints that are not referred | CCC must deal with a complaint by an individual about an alleged contravention of section 58(1) of the Human Rights Act 2019 by a public entity in relation to an act or decision of the CCC | CCC to include details in its annual report about:<br>• Actions taken to further the objects of the Act<br>• Human rights complaints received by the agency, including number and outcome of complaints and other information prescribed by regulation<br>• Reviews of policies, programs, procedures, practices or services undertaken for compatibility with human rights. (s.97 Human Rights Act) |
| **What do we commit to achieving?** | When making a decision or taking action, all CCC staff are to consider the human rights of individuals (including people in the community and other commission officers), and act compatibly with human rights<br><br>If a right is being limited, we must be able to show that there is a good reason, and that the limitation is fair and reasonable | Any new or revised policy and/or procedure must have a human compatibility assessment undertaken | Any corruption complaint must be assessed for human rights breaches | Any complaints against the CCC or a commission officer must be assessed for human rights breaches<br><br>Human rights complaints are to be resolved within 45 days | We will continue to build a human rights culture within our business units, divisions and as 1CCC<br><br>We will ensure appropriate documentation is maintained and recorded to facilitate effective reporting of compliance requirements |
| **Policies and procedures** | *Human rights policy and procedure*<br><br>*Governance Framework*<br><br>*Operational FrameworkOperations Manual*<br><br>*Guide - Human rights compatibility framework – decision-making*<br><br>*Guide – When human rights may be limited* | *Human rights policy and procedure*<br><br>*Governance Framework*<br><br>*Policy Framework*<br><br>*Guide – Human rights compatibility framework – policies and procedures* | *Human rights policy and procedure*<br><br>*IS Guidance – Assessing complaints of corruption (Human Rights Act)*<br><br>Corruption Case Categorisation and Prioritisation Model (CCPM)<br><br>*Operations Manual:*<br>• IM01 to IM04 – Identification of Matters<br>• MM01 – Matter management, planning and conduct (specifically forms MM-AO1 and AO2)<br>• MM04 – Disclosure and requests for information (specifically forms related to disseminations s.60 CC Act) | *Human rights policy and procedure*<br><br>*Complaints policy and procedure (new combined policy)* | *Human rights policy and procedure*<br><br>*Annual report requirements for Queensland Government agencies* |
| **Processes**<br>**Consideration of human rights** | **1) Officer to assess human rights considerations and triage:**<br>a) No human right is engaged<br>b) A human right is engaged and the decision is consistent with those rights<br>c) A formal human rights assessment is required<br><br>**2) Formal assessment (if required):** | **1) Officer to assess human rights considerations and triage:**<br>a) No human right is engaged<br>b) A human right is engaged<br><br>**2) No human right engaged:**<br>a) Responsible officer to outline reasons in Policy Approval Form in dGRC | **1) Assessing officer to assess complaint and identify human rights**<br>a) No human right is engaged<br>b) A human right is engaged<br><br>**2) Assessing officer to process as per CCPM** | **Improper conduct (s.329) complaints**<br><br>**1)** Notifier to submit report and identify whether the behaviour involves a breach of human rights<br><br>**Workplace complaints:**<br><br>**1)** Manager assesses improper conduct and human rights (if yes, notification to CEO)<br>**2)** If not improper conduct > receiving<br><br>**Customer service complaints:**<br><br>**1)** Receiving officer assesses improper conduct and human rights (if yes, notification to CEO) | **Regular compliance reporting:**<br>Six-monthly updates provided to ELT (facilitated by Legal, Risk and Compliance) on:<br>• specific agency-wide and business unit actions to further the objects of the Human Rights Act during period;<br>• number of human rights complaints received and outcomes (sources: Customer Service Complaints Register, |

| Governance and compliance | Acting and making decisions | Policies | Corruption complaints | Dealing with a human rights complaint against the CCC or commission officers | | | Annual report |
|---|---|---|---|---|---|---|---|
| | a) A formal assessment requires the completion of the form, *Human rights acts and decision-making review* (refer *Guide: Human rights compatibility framework – decision-making*)<br>b) The threshold for whether a formal assessment is required will be determined by reference to the number and nature of different rights engaged, and whether there are any questions of compatibility<br>c) The officer may undertake the assessment themselves, or for matters of complexity, potential incompatibility or where multiple rights are involved, the officer may seek the assessment to be undertaken by Corporate Legal | **3) Human right engaged – formal assessment:**<br>a) Responsible officer forwards new or existing policy to Corporate Legal for human rights assessment<br>b) Responsible officer submits completed Human Rights compatibility review and accompanying new or amended policy and/or procedure to policy approver (via Policy Approval form on GRC) | | **2)** CEO assesses human rights breach | officer to deal as per complaints policy | **2)** If not improper conduct > receiving officer to deal as per complaints policy | Human rights workplace complaints register and COMPASS/Nexus<br>• Details of human rights compatibility assessments undertaken for policies, programs, procedures, practices, or services undertaken during period |
| **Decision**<br><br>**Records**<br>(in addition to normal record keeping obligations) | The decision-maker should actively consider any human rights issues independently of any assessment conducted by the officer or Corporate Legal<br>Human rights considerations and decisions | The decision-maker should actively consider any human rights issues independently of any assessment conducted by the officer or Corporate Legal<br>Human rights considerations and decisions | Decision maker as per CCPM.<br>The decision-maker should actively consider any human rights issues independently of any prior assessment | CEO assesses complaint and considers any human rights breaches<br><br>Human rights considerations and decisions - CM | Assessment decision<br><br>Human rights considerations and decisions - CM | Assessment<br><br>Human rights considerations and decisions – CM, GRC | Annual report |
| **Controls** | | | | | | | |

| Governance and compliance | Acting and making decisions | Policies | Corruption complaints | Dealing with a human rights complaint against the CCC or commission officers | | | Annual report |
|---|---|---|---|---|---|---|---|
| **Administrative** | **CCC briefing note** includes Human Rights section and requires officer to triage:<br>a) No human right is engaged<br>b) A human right is engaged and the decision is consistent with those rights<br>c) A formal human rights assessment is required<br><br>**Committee charters** – Human Rights obligations outlined<br><br>**Meeting agenda papers** – governance and operational committees, Human Rights obligations prompt<br><br>**Project management** - project proposal; project plan and project finalisation templates (not yet in place) | **Policy Approval form** (dGRC) includes mandatory field requiring completion of human rights compatibility assessment<br><br>**Formal human rights assessment form** requires consideration of 23 human rights (conducted by Corporate Legal)<br><br>**Register of HR Compatibility Reviews** records assessment details including informal/formal assessment (conducted by Corporate Legal) | | **Suspected Improper Conduct Notification Report** asks reporting officer to identify if alleged misconduct involves breach of human rights<br><br>Consideration of human rights noted on assessment<br><br>For matters categorised as an 'issue' or 'complaint, the Executive Officer to CEO records CEO's human rights considerations in case management system | **Workplace Complaints Register** - includes human rights complaints and outcomes (Human Resources) | **Service delivery complaint form** prompts complainant to self-identify human rights breach<br><br>**Customer service complaints register** - includes 'human rights' categorisation option (on dGRC) | Human Rights six-monthly update – template completed by business units<br><br>Legal, Risk and Compliance records updates in Content Manager |
| **Quality and coordination** | **Control of templates** – amendments require authorised approval; R&C centralised management | **Control of templates** – amendments require authorised approval; R&C centralised management<br>**Audit** - six-monthly review/audit of policies and/or procedures (sample only), which were not subject to a formal human rights assessment (Corporate Legal) | | **Control of templates** – amendments require authorised approval; R&C centralised management | **Control of templates** – amendments require authorised approval; R&C centralised management | **Control of templates** – amendments require authorised approval; R&C centralised management | |
| **System** | **Content Manager** – decisions<br><br>**Case Management System** – decisions (operational) | **Content Manager** – human rights compatibility assessments; Register of HR Compatibility Reviews<br>**dGRC** – policy approval process; notification of approved policy and human rights compatibility assessment is automatically provided to Risk and Compliance<br><br>**Content Manager** - decisions | **Compass / Nexus** - **Complaints assessment template** references human rights considerations; report<br><br>**Online referral form for CCC liaison officers** references human rights considerations | **Content Manager** - individual complaint decisions and action taken | **Content Manager** – individual complaint decisions; Workplace Complaints Register | **Content Manager** – individual complaint decisions<br>**dGRC** – Complaint details including outcome to be recorded on CCC Customer service complaints register (entered by divisional officer with access rights) | |
| **Advice and support** | **Human Rights consideration or decision** - Corporate Legal<br>**dGRC** – Risk and Compliance | **Human Rights consideration or decision** - Corporate Legal<br>**dGRC** – Risk and Compliance | **Human Rights consideration or decision** - Corporate Legal<br>**dGRC** – Risk and Compliance | **Human Rights consideration or decision** - Corporate Legal | **Customer Service Complaints** - Human Resources | **Workplace complaints** - Human Resources | |
| **Awareness and training** | Compulsory training for all staff – Induction and Refresher (annually) – *Public Entities and the Human Rights Act* – CCC online learning<br>CCC Intranet 'human rights' page | Compulsory training for all staff – Induction and Refresher (annually) – *Public Entities and the Human Rights Act* – CCC online learning<br>CCC Intranet 'human rights' page | Compulsory training for all staff – Induction and Refresher – *Public Entities and the Human Rights Act* – CCC online learning<br>Integrity Services-specific training new staff via *IS Guidance – Assessing complaints of corruption (Human Rights)* | s.97(2) *Human Rights Act 2019* | | | Annual Report compliance checklist |

| Governance and compliance | Acting and making decisions | Policies | Corruption complaints | Dealing with a human rights complaint against the CCC or commission officers | Annual report |
|---|---|---|---|---|---|
| **Reporting** | As required | **Internal**<br>Six-monthly report provided to ELT on number of human rights compatibility reviews undertaken (Legal, Risk and Compliance)<br><br>**External**<br>Number of human rights compatibility reviews undertaken reported in Annual Report<br>Collate policy/ Human Rights Compatibility Reviews assessment information for annual reporting purposes (s.97 HR Act) | **Internal**<br>Not separately required<br><br>**External**<br>Quarterly QHRC convened forum for Referral Agencies under the Human Rights Act – discussion of human rights complaints and referral pathways | **Internal**<br>Six-monthly report provided to ELT on number of human rights complaints received (Legal, Risk and Compliance)<br><br>**External**<br>Number of human rights complaints reported in Annual Report | **Internal**<br>Six-monthly update provided to ELT (Legal, Risk and Compliance)<br><br>**External**<br>s.97(2) (a), (b) and (c) compliance detailed in CCC Annual Report (Legal, Risk and Compliance) |

## Metadata

| Version | Action | Responsible Officer | Accountable Officer (Approver) | Approval Date | HRCA Y / N | eDRMS no. |
|---|---|---|---|---|---|---|
| [v.1] | Existing Instrument as at 15 December 2022 | Director, Corporate Legal | | | | Policy No: 20/231771<br>HRCA no: |
| [v.2] | Minor amendments – updating position titles, grammatical | Director, Corporate Legal | CEO | | N | Policy no: 23/150093<br>HRCA no: |
| | | | | | | Policy no:<br>HRCA no: |
| | | | | | | Policy no:<br>HRCA no: |
| Next review date: | | 29 September 2026 | | | | |

Crime and Corruption Commission
QUEENSLAND

Guide | September 2023

# Human rights compatibility framework – decision-making

This guide supports the CCC's *Human rights policy and procedure.*

The purpose of this guide is to provide information to commission officers about the steps to take to ensure our **acts and decisions** are compatible with human rights, in accordance with the *Human Rights Act 2019 (Qld)*. It is important to keep a record of human rights considerations in our decision-making to be able to demonstrate how human rights have been taken into account. When applying these steps (Appendix A), commission officers are ensuring that a human rights assessment is undertaken.

Examples of when commission officers are to refer to these steps include the following:

- decisions about the use of **coercive powers** and acting under coercive powers;
- assessment decisions and actions in relation to **corruption complaint**s and **police misconduct complaints**;
- decisions and actions under **review** and **monitoring** of **corruption complaints** and **police misconduct complaints**;
- decisions and actions during the **investigation** of **corruption complaints** and **police misconduct complaints**;
- decisions and actions in relation to **crime investigations** and **confiscation related investigations**; and
- administrative decisions and actions in relation to the **disclosure of information** e.g. dissemination of information and Right to Information decisions.

Compatibility with human rights means that our acts and decisions do not limit human rights, or limit human rights only to the extent that is reasonable and demonstrably justifiable, in accordance with section 13 of the *Human Rights Act*.

## Steps to ensure compatibility of acts and decisions

### Step 1: Is the limit authorised by law?

An act or decision that limits human rights must be authorised by law.[1] An act or decision made in accordance with an existing or proposed policy or procedure that is not authorised by law will not be reasonable and justifiable under section 13 of the *Human Rights Act* and therefore will not be compatible with human rights.

### Step 2: Does the act or decision engage any of the protected human rights?

Commission officers need to identify each human right that is **engaged** by a CCC act or decision. A human right is engaged if it is **limited** by an act or decision or alternatively if it is **protected** or **promoted** by an act or decision. Therefore, it is important to consider what human rights are being limited and protected in any given situation.

[1] The term 'law' means an Act, subordinate legislation such as regulation or the common law.

If the officer is unsure whether a human right is engaged, the officer should seek advice from Corporate Legal to ascertain whether rights are, or may be, engaged.

If the officer, or Corporate Legal, assesses that a human right is engaged then a formal assessment is to be undertaken. The instrument at Appendix B may be used, or the assessment may be recorded within the decision-making record (such as within an application to exercise a power, or other supporting paperwork).

If no human right is engaged by the act or decision then no further assessment is required.

## Step 3: Does the act or decision limit/restrict one or more of the protected human rights? If so, how?

Commission officers are to assess how the act or decision will limit/restrict one or more of the protected human rights. An understanding of the nature and scope of the human right is required in order to assess whether there is potential for the human right to be limited, including whether there are any specific limitations that appear in the section setting out the human right. The Department of Justice and Attorney-General's *Nature and scope of human rights guide* provides further information.[2]

If the act or decision does not limit human rights, then no further assessment is required.

## Step 4: Is the limit under law reasonable and demonstrably justified?

The test set out in section 13 of the *Human Rights Act* is to be applied to determine whether a limitation on a human right is reasonable and demonstrably justifiable. Section 13 provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

*The Guide – When human rights may be limited* sets out a framework for using section 13 of the *Human Rights Act* and whether a limit on a human right is likely to be considered reasonable and justifiable.

## Step 5*:* Does an exception to the obligations under section 58 apply?

There are exceptions to the obligations outlined in section 58 of the *Human Rights Act*:

- If the CCC could not have reasonably acted differently or made a different decision because of a statutory provision that is incompatible with human rights (section 58(2));
- Bodies established for a religious purpose and the act or decision is done or made in accordance with the doctrine of the religion concerned and it is necessary to avoid offending the religious sensitivities of the people of the religion (section 58(3));
- If the act or decision is of a private nature (decisions or actions of a private nature, include things done outside of work) (section 58(4)).

## Step 6: Assessment

If the act or decision will limit human rights, and the limit(s) is reasonable and justifiable, then the act or decision will be compatible with human rights, and the obligations under section 58 of the *Human Rights Act* will be met.

If the act or decision will limit human rights, but the limit is **not** reasonable and demonstrably justifiable, then the act or decision is unlikely to be compatible with human rights, and the obligations under section 58 of the *Human Rights Act* will **not** be met.

The CCC must keep accurate records to demonstrate that our acts and decisions are compatible with human rights.

[2] Department of Justice and Attorney-General (2019). *Nature and scope of human rights guide.* Available: https://www.forgov.qld.gov.au/service-delivery-and-community-support/design-and-deliver-public-services/comply-with-the-human-rights-act/human-rights-resources

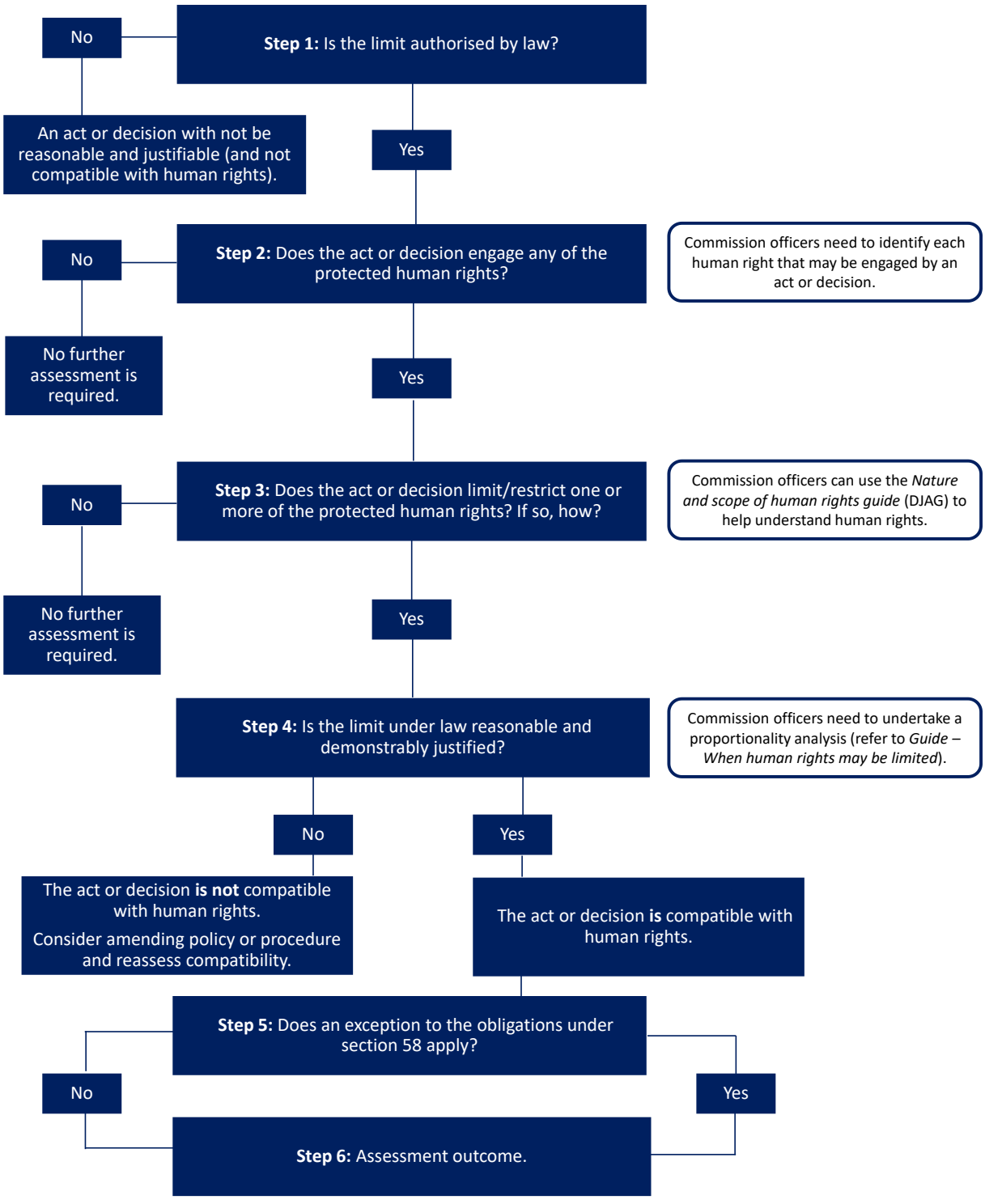
## Further assistance

For more information about the CCC's obligations under the *Human Rights Act*, refer to the CCC's *Human rights policy and procedure*. For queries in relation to acting and making decisions in a way that is consistent with the *Human Rights Act*, contact Corporate Legal (HumanRights@ccc.qld.gov.au).

## Metadata

| Version | Action | Responsible Officer | Accountable Officer (Approver) | Approval Date | HRCA Y / N | eDRMS no. |
|---|---|---|---|---|---|---|
| [v.1] | Existing Instrument as at 15 December 2022 | Director, Corporate Legal | | | | Policy No:<br>HRCA no: |
| [v.2] | Minor amendments – updating position titles, grammatical | Director, Corporate Legal | CEO | | N | Policy no:<br>23/150071<br>HRCA no: |
| | | | | | | Policy no:<br>HRCA no: |
| | | | | | | Policy no:<br>HRCA no: |
| Next review date: | | 29 September 2026 | | | | |

## Appendix A: Ensuring acts and decisions are compatible with human rights



## Appendix B: Human rights acts and decision-making review

| **CCC business area** | | | | |
|---|---|---|---|---|
| **Type of act or decision** | | | | |
| **Step 1: Authorising law** | | | | |
| **Protected human rights under the *Human Rights Act*** | **Section of the *Human Rights Act*** | **Step 2: Does the act or decision engage human rights? If so, how?** | **Step 3: Does the act or decision limit/restrict human rights? If so, how?** | **Step 4: Is the limit under law reasonable and demonstrably justifiable?** |
| Recognition and equality before the law | 15 | | | |
| Right to life | 16 | | | |
| Protection from torture and cruel, inhuman or degrading treatment | 17 | | | |
| Freedom from forced work | 18 | | | |
| Freedom of movement | 19 | | | |
| Freedom of thought, conscience, religion or belief | 20 | | | |
| Freedom of expression | 21 | | | |
| Peaceful assembly and freedom of association | 22 | | | |
| Taking part in public life | 23 | | | |

| | | | | |
|---|---|---|---|---|
| Property rights | 24 | | | |
| Privacy and reputation | 25 | | | |
| Protection of families and children | 26 | | | |
| Cultural rights – generally | 27 | | | |
| Cultural rights – Aboriginal peoples and Torres Strait Islander peoples | 28 | | | |
| Right to liberty and security of person | 29 | | | |
| Humane treatment when deprived of liberty | 30 | | | |
| Fair hearing | 31 | | | |
| Rights in criminal proceedings | 32 | | | |
| Children in the criminal process | 33 | | | |
| Right not to be tried or punished more than once | 34 | | | |
| Retrospective criminal laws | 35 | | | |
| Right to education | 36 | | | |
| Right to health services | 37 | | | |
| **Step 5: Does an exception apply? If so, describe.** | | | | |
| **Step 6: Final assessment: Is the act or decision compatible with human rights?** | | | | |

Crime and Corruption Commission
QUEENSLAND

Policy | March 2024

# Witness welfare

## Objective

The objective of this policy is to describe the CCC's approach to the psychological welfare of witnesses, persons of interest and other persons subject to or impacted by the exercise of the CCC's duties, functions, and powers.

## Application

This policy applies to witness as defined by the policy.

This policy does not apply to individuals who are participants in the Witness Protection Program under the *Witness Protection Act 2000 (Qld)*.

This policy does not apply to managing the psychological wellbeing needs of complainants or public interest disclosers, unless that individual is also a witness as defined by the policy.

## Relevant legislation

*Crime and Corruption Act 2001*

*Human Rights Act 2019*

*Police Powers and Responsibilities Act 2000*

*Public Interest Disclosure Act 2010*

*Work health and Safety Act 2011 (Queensland)*

## Definitions

| | |
|---|---|
| Operational activity | As defined within the Operational Framework, excluding Witness Protection. |
| Suitably qualified provider | A provider of psychological wellbeing services including but not limited to psychiatrists, psychologists, counsellors and therapists. This includes low cost or free mental health services such as Lifeline Australia, Beyond Blue and Kids Helpline as well as Employee Assistance Program providers. |
| Witness | A witness is inclusive of witnesses, persons of interest and other persons subject to or directly impacted by the exercise of CCC's duties, functions and powers. |

## Policy statement

The CCC acknowledges that witnesses may experience stress and emotional discomfort within the lifecycle of an operational activity. This policy operates to ensure that, so far as reasonably practicable, the risks to the psychological wellbeing of individuals are recognised and, if required, responded to having regard to the CCC's function and purpose.

The CCC's practices in relation to witness welfare are designed to:

- Ensure witnesses are treated with respect, dignity, and fairness.
- Balance the psychological wellbeing of witnesses with the CCC's functions and purpose.
- Meet the CCC's legislative obligations.

The CCC provides information to people about the psychological wellbeing supports services and resources available to them in the community and provides reminders about the availability of these services through the course of an operational activity. Where specific psychological wellbeing concerns are identified, the CCC will implement a risk-based approach to determine whether to refer the person to support services relevant and appropriate to the needs and circumstances of the individual.

If a commission officer identifies concerns about the psychological wellbeing of a witness at any stage of an operational activity, they will escalate these concerns to the relevant Director (Corruption Investigations, Crime Hearings and Legal or Crime Operations) or above. Psychological wellbeing may be managed through an appropriate referral to a suitably qualified provider. Where an urgent risk to a person's psychological wellbeing arises, such as risk of suicide, self-harm, harm to others, extreme distress or anxiety, or domestic and family violence the senior officer will consider escalation to emergency services. Where there is a reasonable belief that there is a serious threat to a person's life, health, safety or welfare, disclosure of relevant personal information is permitted.

## Related documents

*Code of Conduct*

*MP01 – Witness interviews, statements and other communications*

*MP03 – Hearings (closed and public)*

## Review triggers

This policy will be reviewed three years from the date of approval, unless changes in legislation or government policy affecting its operation occur before the three year period has expired. This policy will remain in effect until updated, superseded or declared obsolete.

## Metadata

| Version | Action | Responsible Officer | Accountable Officer (Approver) | Approval Date | HRCA Y / N | eDRMS no. |
|---|---|---|---|---|---|---|
| V.1 | Final approved version | Executive Director Corporate Services | Chief Executive Officer | 13 December 2023 | Y | Policy no: 23/175519<br>HRCA no: 23/215237 |
| V.2 | Revised version following CPAC feedback. | Executive Director Corporate Services | Chief Executive Officer | 1 March 2024 | N | Policy no: 23/175519<br>HRCA no: 23/215237 |
| Next review date: | | 13 December 2025 | | | | |

Crime and Corruption Commission
QUEENSLAND

Factsheet | January 2023

# Guidance for commission officers on dealing with risks of harm

## Purpose

This fact sheet is designed to give commission officer confidence in handling the behaviour of others including complainants, witnesses, subject officers and members of the public that may pose a risk to themselves or others.

This guide has four sections:

1. Responding to someone at risk of self-harm or suicide
2. Responding to someone who indicates they pose a risk of harm to someone else
3. Tips for supporting commission officers who've dealt with the risk
4. Printable quick reference guides

## Background

The nature of the work of the CCC can place additional stress on people who are interacting with us. Commission officers may find themselves dealing with someone who is considering self-harm, suicide, or harming someone else. Dealing with this situation can be confronting and difficult.

Any indication that a person intends to harm themselves or others must be taken seriously and responded to appropriately. It is not up to commission officers to determine whether risks should be taken seriously. Responses can range from encouraging people to engage with a doctor, mental health professional or support services, through to contacting police or emergency services depending on the level of risk.

There are many reasons why a person might be considering self-harm, suicide or harm to others. The focus of these guidelines is to respond to the behaviours of concern, not the underlying motives. These guidelines focus on providing commission officers some tools to respond to the behaviours of concern in a sensitive way so that they can recognise and refer to appropriate support services.

## Privacy and confidentiality

Commission officers should always consider a person's right to privacy and confidentiality. However, when a person expresses thoughts or impulses to self-harm or harm others and a commission officer reasonably believes there is a safety risk, they may have a duty of care to share information without that person's consent.

## General disclaimer

It is noted that these guidelines are provided for the use of commission officers who do not necessarily have a background, training or qualifications in psychology, counselling or social work. Where reference is made in this document to assessing risk it is with the ordinary meaning of the words, and not in the clinical practice context. Commission officers will make best efforts in the circumstances to use these guidelines, however it is noted that each situation will present its own challenges. It is not expected that commission officers will follow these guidelines exactly, but use them to extent that the situation allows.

## Responding to risks of self-harm or suicide

The following steps are intended as a guide. Commission officers may not need to follow the steps in order. Steps may be skipped depending on the circumstances.

When communicating with a distressed person it can help to:

- Provide an opportunity for the person to express themselves
- Acknowledge their feelings
- Encourage the person to think about wellbeing strategies or support they can access.

Leaders are responsible for supporting commission officers to recognise and manage risks. Commission officers should raise any concerns about a person's safety with their supervisor or senior leader as soon as practicable.

### Gain rapport

When communicating with people in crisis or distress:

- Respond calmly and be aware of your tone of voice
- Acknowledge their emotions
- Show them that you're listening by paraphrasing, summarising and asking them questions about what they're telling you
- Give information in small amounts
- Be supportive without claiming to know how they feel

### Be present for the person

Listen to words and phrases that may indicate a level of risk of self-harm. Some examples include:

> *'I want to kill myself…'*
>
> *'I just don't think there's a point anymore…'*
>
> *'It won't matter tomorrow…'*
>
> *'Things would be easier if I wasn't around…'*

### Validate and support

Thoughts of self-harm are common among people who have experience significant trauma. An important reflection to people who are suicidal is to normalise their feelings. This can be done through the use of phrases like:

> *'Suicidal thoughts are not unusual for someone who's been through what you have experienced.'*
>
> *'Thank you for letting me know that you feel this way. It's a very normal way to be feeling in these circumstances. It must have taken a lot of strength for you to tell me.'*
>
> *'Thank you for sharing this with me. I know it must be difficult to talk about these feelings. I am very concerned about your safety and I want to help you.'*

### Ask direct questions

To appropriately understand the level of risk, commission officers should ask the person directly if they are considering harming themselves. Asking a person to expand on what they mean when they say something which may indicate they are thinking of committing suicide or harming others, even if it sounds ambiguous, will not increase their risk of self-harm, but will provide commission officers with necessary information to make an assessment of the risk.

> *'You are telling me that you just don't think there's a point anymore… I am very concerned about you. Are you thinking of killing yourself?'*

## Get information. Establish immediacy.

It is important to find out whether the person intends to act on their thoughts and to ascertain immediacy. The following questions may be helpful:

> *'You mentioned you are thinking of suicide. Are you thinking of acting on those thoughts'?*
> *'Have you thought about how and when you plan to kill yourself?'*
> *'Have you ever harmed yourself on purpose?'*
> *'Do you have access to any weapons?'*
> *'What are you planning to do?'*

## Safety and support check

Identifying the person's support resources can be useful at any stage during the interaction. Talking about support can help ground the person and move them away from suicidal thinking. Identification of support they can access is also useful information if the person is assessed as high risk.

Talk about what support they can access to stay safe and get help. Encourage the person draw on connections with family, friends, treating practitioners or mental health professionals, and personal coping strategies.

It is also helpful to try and get contact details for the person's GP, counsellor, psychologist or psychiatrist in case it is appropriate to request assistance or intervention. If speaking on the phone suggested questions could be:

> *'Are you with anyone at the moment?'*
> *'Is there someone you can call to seek support?'*

## Consult and decide action

If the person states they are going to harm themselves or harm someone else and the risk may be imminent, tell them:

- you will discuss the conversation with your supervisor
- you may need to contact other services such as police and mental health services, and
- you may need to contact the person's emergency contact, their GP, counsellor, psychologist or psychiatrist (if you have the details available).

For example:

> *'I am concerned for you and I need to make sure you have support. I may contact someone to check on your safety.'*

If the person is on the phone and they hang up during the call, speak to your supervisor about how to proceed.

Where appropriate, you should consider getting help from colleagues and supervisors to manage people who pose a risk of harm to themselves or someone else. This could include signalling to another person to alert them to the nature of the call or interaction and that assistance is required.

## Take action

Refer the person to an external service. That might be a 24 hour counselling hotline or the person's GP or mental health care provider. Some common services to suggest include:

- Lifeline – 13 11 14
- Suicide Call Back Service – 1300 659 467
- Beyond Blue – 1300 22 46 36
- MensLine Australia – 1300 78 99 78
- Kids Helpline – 1800 55 1800
- 1800 RESPECT – 1800 737 732

- 13 YARN – 13 92 76 – for Aboriginal and Torres Strait Islander people

Remember that you are not a trained mental health professional – your role is to recognise, respond and refer.

Discuss any other actions with your supervisor. You may need to notify another agency including the Queensland Police Service, the Queensland Ambulance Service or the Department of Child Safety.

## Defuse and debrief

Working with people in crisis can be distressing and people will respond to it differently. There are a range of options available including:

- debriefing with a colleague or supervisor
- taking a walk to clear your head
- calling the Employee Assistance Program to debrief with a counsellor
- engaging in your own personal self-care strategies

Please refer to the section in this guide titled Employee support for more information on defusing and debriefing.

## In summary

**If a person says something that indicates they may be thinking of harming themselves** ask them a direct question about what they intend to do. If you think there may be an imminent risk of self-harm of suicide, try to gather as much information as possible to inform appropriate referral or intervention.

**If a person writes something in an email or a letter that indicates they may be thinking of harming themselves**, you should attempt to contact the person by telephone, where possible. If this is not possible, discuss this with your supervisor. You may need to arrange emergency intervention depending on the information in the email or letter.

**If you are in a face-to-face situation within someone who raises the risk of self-harm**, follow the same procedures to recognise the risks as on the phone and escalate as required. Unless there is a risk to your own safety, try not to leave the person on their own.

## Threats of harm to commission officers and other

The following steps are intended as a guide for responding to threats to commission officers or third parties. This can include hostility, aggression and assaults. You do not need to follow the steps in order – you may skip steps depending on the circumstances.

Where commission officers are at risk due to dangerous or aggressive behaviour during or as a direct result of their work, the CCC must take immediate action to protect their health and safety. We do this by providing a secure work environment, limiting face-to-face contact with complainants, witnesses and subject officers where possible, and having processes in place to terminate calls under certain circumstances.

Commission officers should report any threat of harm to a supervisor, whether it is made face-to-face, on the phone or in writing. The supervisor should decide what the response is, and this may include contacting the police and requesting their attendance.

If a commission officer is confronted with someone displaying threatening behaviour, they should try to de-escalate the behaviour. If at any time the commission officer feels their safety is at risk, they should remove themselves from the situation immediately and seek assistance. Remember not to speculate on the motives for someone's behaviour. Address the behaviour, not the person.

### Recognising danger signals and assessing risk

The following signals may indicate that a person could become aggressive or violent:

- **Appearance**: seems intoxicated or is carrying something that could be used as a weapon.
- **Physical activity**: restless or agitated, pacing, hostile facial expressions, has entered non-public area of the office.
- **Speech**: loud, swearing or abusive, slurred.

The signals above may alert you to potential danger, but other explanations need to be considered. For example, slurred speech may be caused by a speech impairment and agitation and pacing by anxiety. Do not automatically conclude that a person intends harm by displaying these behaviours.

The strategies below will help you manage any risk associated with responding to a person displaying those signals, while still treating them with respect and concern for their problem:

- If you are in a public space speaking to a distressed person, ensure you are not alone. If available, ensure you are being monitored on security screens.
- If meeting with a person who is displaying aggressive or intimidating behaviour, do not keep them waiting before attending to them.
- Ask a colleague to attend the meeting with you.
- If possible, use a room where you can attend to the person in a calming, low stimulus environment and position yourself near an exit or safety alarm.
- Use calm words, tone and body language. Learn and use de-escalation and distraction strategies outlined below.
- Ensure someone else is aware of the situation. If possible, restrict access to the area by other persons until the situation calms down.
- If you feel you are in danger, remove yourself as quickly as possible. Walk through the nearest door to a secure area and let others know of the risk.
- If safe to do so, encourage the person away from the premises or disconnect the person from the phone call. If possible, leave a route for the person to follow where they will not feel like they are trapped or cornered, as this may increase their agitation.

### Defuse and de-escalate the situation

The aim of using de-escalation techniques is to calm the person and manage the physical environment. You should aim to:

- stay calm and adopt a neutral, open posture
- speak slowly and clearly, even if the person is shouting
- acknowledge the grievance and communicate a willingness to see what can be done.

  For example:

  *'I can hear you are very angry about …'*

  or

  *'I am concerned about you and would like to help you '*
- clarify any statements that suggest a risk of harm to the person or someone else by repeating what the person has said.

  For example:

  *'You have just said you will .....'*
- ask open ended questions to keep the dialogue going. A question about the facts can change a person's focus:

  For example:

  *'Can you tell me about ….'*

If possible, it can also be useful to identify someone the person normally relies on for support.

## Respond to ensure the safety of everyone

If the person continues to exhibit unacceptable behaviour take the following actions:

- inform the person what the consequences of their unacceptable behaviour will be.

  For example:

  *'If you continue to speak/act like that, I will stop this conversation.'*
- inform the person of the actions you will take in response to their continued behaviour/words:

  *'You have just said that you will…' (repeat the person's language). 'Our policy here is that all threats must be taken seriously and responded to. I will now inform a supervisor that you have said you will…' (use the words the person has used). 'If you continue to make those comments, I will request that you leave the premises.'*
- if you feel you are in physical danger, leave the room and request assistance from Security.

## Review with your supervisor

With your supervisor, identify strategies for future interactions with the person, for example a follow up call and referrals to other services.

Some common services to suggest include:

- Lifeline – 13 11 14
- Suicide Call Back Service – 1300 659 467
- Beyond Blue – 1300 22 46 36
- MensLine Australia – 1300 78 99 78
- Kids Helpline – 1800 55 1800
- 1800 RESPECT – 1800 737 732
- 13 YARN – 13 92 76 – for Aboriginal and Torres Strait Islander people

## Defuse and debrief

Working with aggressive people can be distressing and people will respond to it differently. There are a range of options available including:

- debriefing with a colleague or supervisor

- taking a walk to clear your head
- calling the Employee Assistance Program to debrief with a counsellor
- engaging in your own personal self-care strategies

Please refer to the section in this guide titled Employee support for more information on defusing and debriefing.

## Employee support

After all action to manage the risk is completed, supervisors should offer and provide support. Defusing and debriefing are two support strategies for commission officers who deal with difficult situations.

### Defusing

- initial response post-crisis (within 12 hours)
- check the wellbeing of the person/commission officer involved, offering initial support
- arrange debriefing and follow-up sessions.

Defusing is designed to assist people to manage any distress in the short-term and address immediate basic needs. It is very important to do this as soon as possible, on the day of the incident, before leaving work. Defusing is done informally and usually by peers (small group support). The aim is to stabilise the responses of commission officers involved in the incident and provide an opportunity to express any immediate concerns.

Guided discussion and the opportunity to ask questions can help ground everyone involved in managing the incident.

For example:

*'What is one 'self-care' activity you can do for yourself after you finish work today? '*

Defusing activities include:

- briefly reviewing the event
- discussing questions and concerns
- identifying current needs
- offering advice, information and handouts on referrals and support agencies.

Debriefing

Debriefing helps people deal with reactions to a distressing incident, reflect on its impact, and discuss whether additional support or action is required. It can help people begin processing the event and bring closure.

Commission officers should have the opportunity to debrief as soon as possible, but no longer than 72 hours after the initial incident. Commission officers should be encouraged to debrief with a senior staff member or colleague, or to use facilitated debriefing support such as our EAP provider. It can be done informally or formally, depending on the needs of those involved.

The following steps may act as a facilitation guide, but remember to tailor the discussion to employee needs and the circumstances surrounding the incident:

- acknowledge the role played by all involved
- invite the person to discuss both the positive and negative elements of the experience
- ask open-ended questions that help the person explore the facts, thoughts and sensory experience related to the event
- allow expression of thoughts, emotions and experiences associated with the event without judgement

- identify the incident's impact on the person to determine whether follow-up support is required
- advise what additional support is available such as EAP.

## References

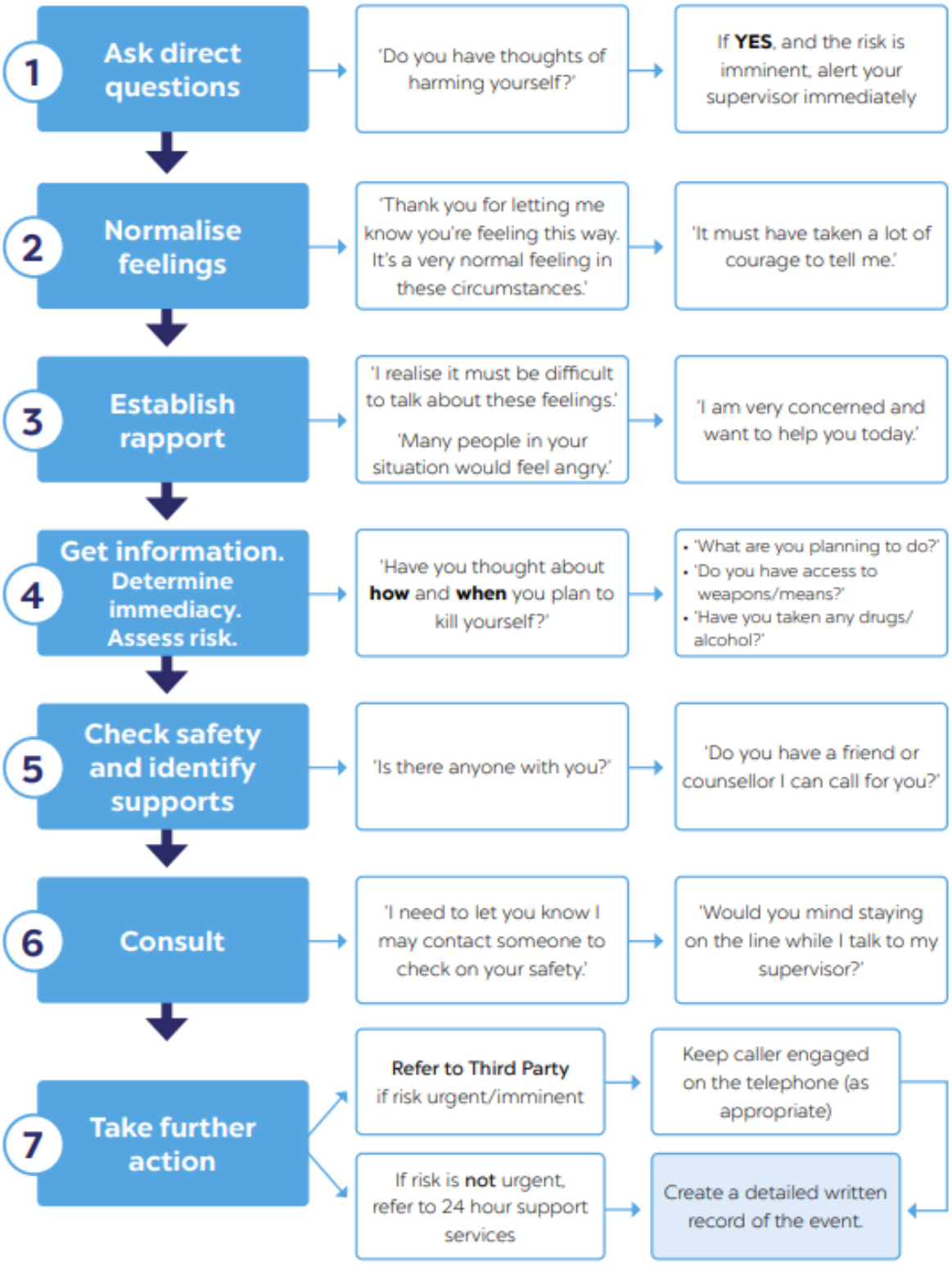
The content of these guidelines has been largely derived from:

*Guidance for complaint handlers on dealing with risks of harm*, Commonwealth Ombudsman (2022)

*Helping someone at risk of suicide*, Lifeline Australia

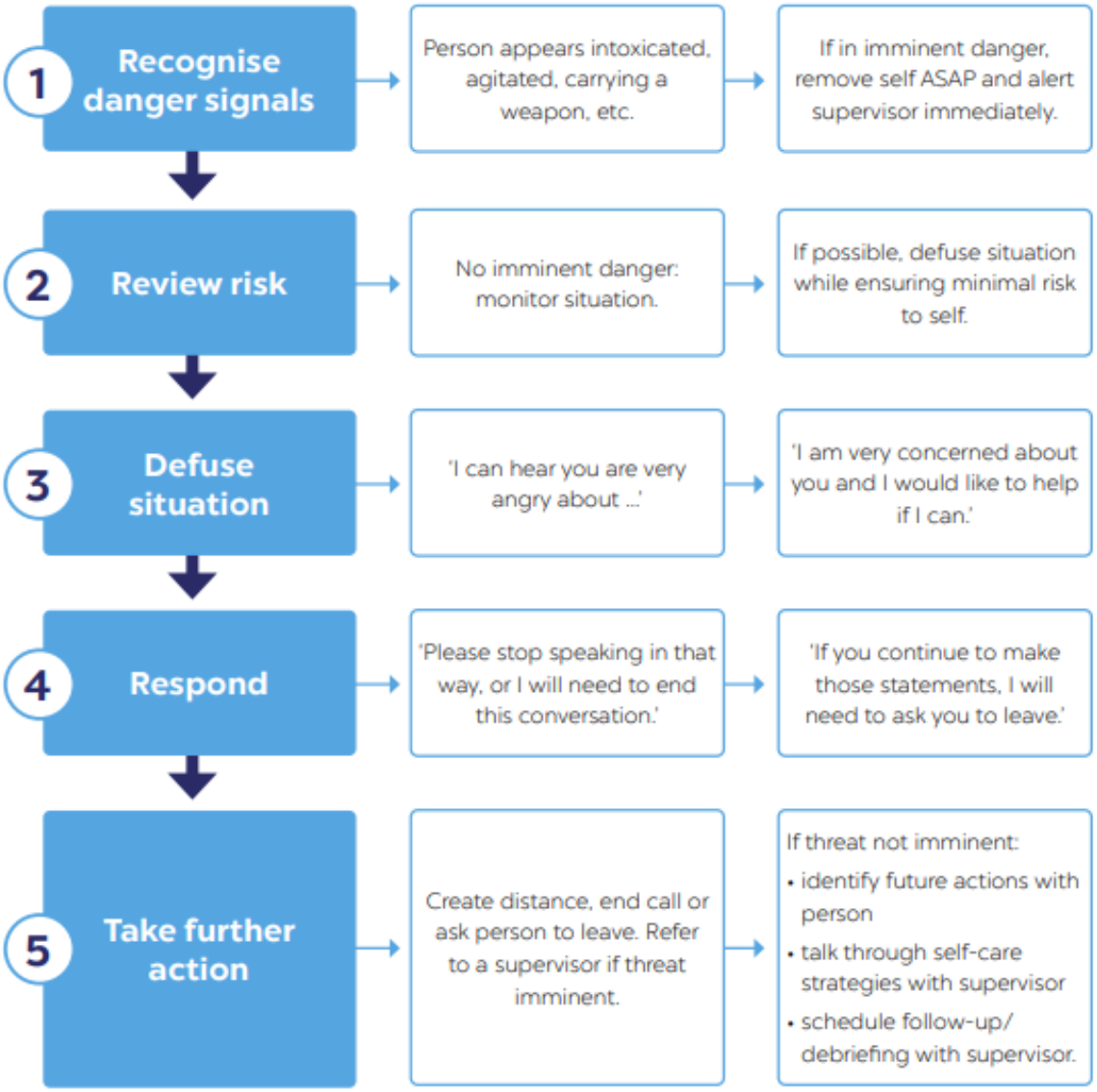
*Mental health first aid (4th ed.)*, Mental Health First Aid Austalia (2017)

## Quick risk assessment tool: Responding to risks of self-harm or suicide




Reproduced with permission from *Guidance for complaint handlers on dealing with risks of harm*, Commonwealth Ombudsman (2022)

## Quick risk assessment tool – Responding to threats of harm to others

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Crime and Corruption Commission
QUEENSLAND

# Information for witnesses

January 2024

**The Crime and Corruption Commission (CCC) recognises and takes seriously the impact that participating in a hearing or investigation may have on witnesses, persons of interest and others directly affected by the exercise of our functions, duties and powers.**

To enable the CCC to consider any potential risk to your health and safety that may arise from your being involved in a hearing or investigation, please advise us as soon as possible:

- If you are unwell or have an existing physical or mental health condition that may affect your involvement in a CCC hearing or investigation, or
- If you believe that any existing physical or mental health condition may be exacerbated by your involvement in a CCC operational activity.

There may be free and confidential support available to you:

- If you are a Queensland public sector employee, you may be able to seek confidential counselling through your agency's Employee Assistance Program (EAP).
- Anyone may contact the mental health access line on 1300 MH CALL (1300 642 255).
- A range of 24/7 crisis services are available including:
  - **Lifeline** – 13 11 14
  - **Suicide Call Back Service** – 1300 659 467
  - **Beyond Blue** – 1300 22 46 36
  - **MensLine Australia** – 1300 78 99 78
  - **Kids Helpline** – 1800 55 1800
  - **1800 RESPECT** – 1800 737 732
  - **13 YARN** – 13 92 76 – for Aboriginal and Torres Strait Islander people
- In an emergency call 000 or go to your local hospital emergency department.

Unless you have been issued with a notice to attend a hearing that is made confidential pursuant to either section 84 or section 202 of the *Crime and Corruption Act 2001*, you may disclose to your health practitioner or counsellor that you are participating in an investigation.

If you have any questions about whether or not you can disclose this information to your health practitioner or counsellor, please contact the relevant contact officer.

Crime and Corruption Commission
QUEENSLAND

# Operations Manual

Part 2: Management of Matters (MM)

Section 3: **Matter reports and publications**

# Contents

# MM03 – Matter reports and publications

## 1. Purpose

The purpose of this policy and procedure is to outline the requirements for the preparation and production of reports or publications for external audiences that are the product of an investigation. As a result of the Queensland Court of Appeal's decision in *Carne v CCC*,[1] the CCC may not prepare public reports arising from its investigations, other than where a public hearing has been held. As such, external reports arising from investigations other than those which involved a public hearing may only be for publication to a UPA, and must be confidential.

## 2. Application

The following information applies to all Commission officers involved in the preparation, production, review and approval of externally focussed reports or publications arising from operational matters.

This policy and procedure does not apply to:

- internal reports produced to support management, governance or matter finalisation requirements
- public reports based on research or prevention.

## 3. Policy

The CCC's policy and standards for the preparation and furnishing of investigation or project reports is set out in Part 4, clause 4.8.3 and 4.8.5 of the Operational Framework.

## 4. Procedure

### 4.1 General principles

Publishing information is a key element of how the CCC communicates outcomes of its investigations and other operational work. Decisions about what to publish and how best to communicate are informed by a number of considerations, including:

- the status of an operational matter and any related activities
- considerations of equity to all stakeholders who have an interest in a matter
- considerations of any criminal prosecution
- the need to afford natural justice to persons adversely affected by a proposed publication, including the need to comply with section 71A of the *Crime and Corruption Act 2001* (CC Act)
- obligations arising from legislative provisions
- how best to communicate the work of the CCC to its stakeholders and increase public confidence and transparency in the use of our powers
- the opportunities to maximise our reach to a particular audience
- opportunities to provide educative or preventative information to stakeholders
- timeliness and cost

[1] That decision is currently under appeal to the High Court.

- longevity of the published material.

The above considerations require careful balancing of the competing demands before decisions are made about what, when, where, who and how to publish.

## 4.2 Types of reports and publications

Publications constitute a stage of the delivery phase of an investigation, incorporating the preparation of reports or similar products that include: confidential reports provided to the head of an agency, recommending specific action to be undertaken in response to a CCC investigation[2]

As a result of the Court of Appeal's decision in *Carne v CCC*, the CCC may not publish reports arising from its corruption investigations. It may prepare reports in the performance of its prevention[3] or research functions[4], or following a public hearing[5]. For this reason, the sections of this policy in relation to public reports should be understood as being confined only to public investigation reports following public hearings.

The CCC has a general power to report in the performance of its functions. However, as a result of the decision of *Carne*, the scope of that provision is unclear.

## 4.3 Planning and approval

### 4.3.1 Planning

The external communication of information should be considered:

- **Within the feasibility stage**: as an anticipated or likely product of an investigation, supporting the business case and forming an element of the high-level delivery plan in the Feasibility Report for the Executive Leadership Team's (ELT) review
- **Within the delivery stage**: as a stage of delivery, thereby included in the high-level delivery plan where requirements and estimates will forecast the resource requirements and completion dates for the publication stage (refer to MM01 – Matter management, planning and conduct for further information).

It is the responsibility of the case manager to liaise with their supervisor and peers to consider on the best format of publication and the intention of that publication. The Director, Corporate Communications or delegate in the Corporate Communications team can provide valuable communications advice to assist the case manager consider the best publication option. This advice will assist the case manager:

- identify appropriate opportunities for the external publication of reports or similar products with reference to the principles outlined in section 4.1
- consider the most appropriate delivery channel(s) and format, based on the audience and their needs, and any requirements specific to that audience (e.g. language or tone)
- identify any additional factors requiring consideration, such as the publication of other material by CCC, timeliness or resource availability
- where relevant, consider printing and distribution requirements, including provision to the Legislative Assembly

[2] Including consideration of prosecution or disciplinary action – see s49 and MM02
[3] s24
[4] ss52, 64 and 69
[5] s69

- the recommended release classification (official or sensitive). Different products from the same investigation may have different release classifications depending on their content and target audience.

Based on these considerations, a discrete plan is developed that incorporates:

- detailed requirements/estimates, including the quality, type and quantity of resources required, and the reliability of those resources based on leave commitments or competing priorities
- the activities required to complete the publication stage of the investigation and who is responsible for completing each activity, and
- the associated timeframe to complete the stage of the investigation.

The publication stage of an investigation is dependent on many factors and estimates are not static. Hence, the case manager is required to review the high-level delivery plan ongoing and in light of the progress of delivery, and liaise with Corporate Communications and other relevant business units to support effective resource planning and ensure a timely and high quality product.

### 4.3.2 Approval to prepare a report or publication

The requirement to prepare a confidential investigation report or a report for the public is a key decision. Approval is dependent on the investigation phase and type of product.

Within the feasibility stage, the investigation products form part of the business case for ELT review. (**Note:** For corruption investigations, the business case is to be considered by the Corruption Investigations Governance Committee (CIGC) prior to referral to the ELT.)

Within the delivery stage, publications comprise a sub-stage of delivery and are reviewed as part of the high-level delivery plan (refer to IM01 – Portfolio assessment and review for further information on governance arrangements). (**Note:** For corruption investigations, publications may be considered by the CIGC.)

Where an investigation or assessment is likely to, or will, involve the making of a recommendation(s) for law reform in relation to a Cabinet process or a matter involving a constitutional convention, refer to MM01 – Matter management, planning and conduct.

The case manager must ensure the ELT decision is recorded in the case management system or for reports in connection with the CCC's Crime Functions, an appropriate record is maintained in the relevant publication Content Manager (CM) file.

## 4.4 Product delivery

### 4.4.1 Content development

In accordance with the discrete publication plan, the officers tasked with specific activities are responsible for:

- delivering content that is technically accurate
- ensuring that the correct security classification is applied
- ensuring that dissemination authority is obtained (refer to MM04 - Disclosure and requests for information)
- ensuring the content adopts the In-house CCC style guide and brand guidelines.

The Principal Investigation Officer (reports), Corruption Investigations is required to assist the Corruption Division with the drafting of corruption confidential reports or reports for the public.

The Case Manager is responsible for liaising with the Corporate Communications team to coordinate their appropriate input to ensure any proposed publication:

- conforms to the CCC brand and writing style guides
- is prepared in a format consistent with existing CCC publication types
- adheres to Queensland Government Standards where necessary (refer to Communications policy and procedure for further information)
- adheres to CCC standards (for example, use of PDF format in a report to a Unit of Public Administration (UPA) or the application of a ”DRAFT” watermark. Refer to Communications policy and procedure for further information and CCC Standards)
- adopts appropriate tone, style and messaging for the identified audience
- is supported with the appropriate permissions to reproduce any copyright material, including images
- has the necessary intellectual property requirements (refer to the Intellectual Property policy and procedure and the Communications policy and procedure)
- has any additional proofing or editing requirements planned appropriately
- has a physical production schedule in place if applicable.

The Corporate Communications team may also identify additional content requirements relating to the production of communications and will liaise with the investigation team accordingly.

### 4.4.2 Content review and approval

Confidential reports provided to the head of an agency, recommending specific action(s) to be undertaken in response to a:

- Crime investigation are reviewed by the relevant operational Director and assigned legal officer, and approved by the Senior Executive Officer (Crime), and
- Corruption investigation are reviewed by the relevant investigating team Director and assigned legal officer, considered by the CIGC, and approved by the Senior Executive Officer (Corruption).

Published CCC materials that are considered a routine matter, are:

- reviewed by the Executive Director (Crime Operations or Corruption Investigations), appropriate legal officer(s), assigned legal and Director Corporate Communications, and
- approved by the Senior Executive Officer (Crime or Corruption).

If a product is non routine, the Senior Executive Officer must consult the Chairperson, and should consult the Chief Executive Officer (refer to the Communications policy and procedure).

A public report following a CCC investigation (currently confined to a report following a public hearing) should be provided to the Commission before it is published. While it is not required that the Commission must adopt the report, the Commission should consider the report unless there is some reason it cannot (such as a conflict of interests).

### 4.4.3 Parliamentary tabling

A report may be tabled under s69 of the Act. That section sets out the processes and circumstances required for publication.

A report on a public hearing must be tabled. A research report or other report may be tabled if the parliamentary committee directs that it be given to the Speaker.[6]

[6] Unauthorised publication of a report to which s69 applies is made an offence by s214 of the Act

*Procedural fairness*

Where a report is to be published (either to be tabled in Parliament or otherwise be published), the CCC must first give a person about whom an adverse comment is proposed to be made an opportunity to make submissions about the report. Where the CCC, having considered the submissions and still proposes to make the adverse comment, the CCC must ensure the person's submissions are stated fairly in the report.[7]

*Process for tabling*

Where a CCC report is sought to be published through the tabling process in s69, the following process will generally occur:

1. Consideration settling and approval of a 'procedural fairness draft' (a draft of the report regarded as final subject to submissions made in the procedural fairness process)
2. Provision of a copy of the procedural fairness draft to affected persons
3. Provision of a copy of the procedural fairness draft to the Commission
4. Provision of a copy of the procedural fairness draft to the Parliamentary Committee, advising the Committee of the CCC's intention to seek a direction for tabling under s69 subject to the procedural fairness process
5. Receipt and consideration of procedural fairness submissions (generally two weeks from provision of the draft), and any necessary changes
6. Approval of the final draft, and provision to the PCCC for tabling

# 5. Definitions

| Term | Meaning |
|---|---|
| CC Act | *Crime and Corruption Action 2001* |
| CIGC | Corruption Investigations Governance Committee |
| ELT | Executive Leadership Team |

# 6. Forms

Nil (refer to MM01 – Matter management, planning and conduct for planning documentation).

# 7. Related policies and procedures

### Relevant Legislation

Nil

### Other relevant information

- IM01 – Portfolio assessment and review
- MM01 – Matter management, planning and conduct
- MM04 - Disclosure and requests for information
- Communications (policy and procedure)
- Intellectual Property (policy and procedure)

[7] s71A

- CCC style guide (in-house)
- 1CCC brand guidelines
- More information about the retention and disposal of public records can be found on the website of the Queensland Government Chief Information Office.

# 8. Administration

| Version | Action | Responsible Officer | Accountable Officer (Approver) | Approval Date | HRCA Y / N | eDRMS no. |
|---|---|---|---|---|---|---|
| V1 | Reviewed – Grammatical changes only | Executive Director, Corruption Investigations | Senior Executive Officer, Crime | 11/02/2023 | N | Policy No: 22/021539 HRCA no: 22/021541 |
| V.2 | Major amendment – Scope of policy reduced to reflect the *Carne* decision | Executive Director, Corruption Investigations | Senior Executive Officer, Crime | 04/04/2023 | Y | Policy no: 23/056484 HRCA no: 23/056473 |
| Next review date: | | 04/04/2024 | | | | |


Crime and Corruption
Commission
QUEENSLAND

Crime and Corruption Commission
QUEENSLAND

Policy and Procedure | June 2023

# Communications Policy and Procedure

## Objective

The purpose of this policy and procedure is to recognise that communication helps the Crime and Corruption Commission (CCC) achieve the objectives set out in our strategic plan and provide guidance to ensure that our communications are approved, accurate, timely, stakeholder-focused and well planned.

## Application

This policy applies to all Commission officers, including officers seconded from the Queensland Police Service or other agencies.

This policy and procedure does not apply to routine business unit correspondence (including letters or other interaction with complainants or units of public administration) or other forms of internal business unit communications such as legal opinions, internal emails, briefing notes, reports or memos.

## Legislative references

*Crime and Corruption Act 2001*

*Public Records Act 2002*

## Definitions

| Term | Definition |
|---|---|
| CCC material | Anything capable of distribution that carries the CCC logo or is authored by the CCC. This usually refers to publications, media releases, website content, social media posts and other corporate communications materials. |
| Communication | Activities and messages containing information which is used to engage and inform stakeholders and the broader community about the activities, functions and outcomes of the CCC. |
| Media | All forms of traditional media including print, broadcast (TV/radio), online news websites and digital media channels including online blogs. |
| Head of Division | The CCC officer who is the head of a division who reports directly to the Chief Executive Officer and has a Tier 1 delegation in the Human Resources Decision Making Framework. |

| | |
|---|---|
| In the course of employment | Work carried out by an employee in the normal course of their duties. This may also include work done outside of normal working hours and outside the CCC offices. |
| Method of communication | The method of distribution of information in all its forms across all types of communications channels including public presentations. |
| Public presentation | Any event or method of communication where information or CCC material is released or presented outside of the CCC's premises or to people who are not CCC officers. |
| Published CCC materials | CCC material that is published electronically or in hard copy. This includes publication on a website, intranet and social media. |
| Distributing CCC materials | A process where CCC materials are distributed or made available to special interest groups and other stakeholders external to the CCC. |
| Special interest groups | Individuals and entities entitled to receive information as provided by the CC Act, memorandum of understanding, policy, or other legislation, which is not ordinarily provided to the broader community. |
| Social media | Online social networks used to disseminate information and facilitate conversation. Social media is a broader term used to describe social networking sites such as Facebook, Twitter and LinkedIn. It also includes video and image/photo sharing websites such as Instagram and YouTube. |
| CCC Social Media Accounts | Twitter: @CCC_QLD and https://twitter.com/CCC_QLD<br><br>Facebook: http://www/facebook.com/crimeandcorruptioncommission<br><br>Youtube: @CCC_QLD and https://www.youtube.com/channel/UCmkYI2wABDiCzZJh4Hx6KMg<br><br>LinkedIn: https://au.linkedin.com/company/crime-and-corruption-commission-queensland- |
| [redacted] | [redacted] |

## Policy statement

As an organisation with unique powers in Queensland, the CCC occupies a privileged position. With the exercise of these powers, the CCC needs to be accountable and communicate transparently with stakeholders about our activities when it is appropriate to do so.

The CCC values communication, both internally with its staff and externally to its stakeholders and partners.

To promote transparency and confidence in the operation and effectiveness of the agency, the CCC will identify opportunities to communicate with our stakeholders to inform and educate them about our work and to increase public confidence in the CCC.

In planning a communication event it is important to appreciate that, once released, anything said or published cannot be recalled. This loss of control may have unintended consequences for you and the CCC if your communications were to be reported beyond your intended audience or contain information that was not approved to be released.

In considering what we will communicate, we have legislative obligations to maintain confidentiality. Therefore, whilst we aim to maximise transparency by communicating the outcomes of our activities, the content of those communications must be balanced against all legislative obligations, including confidentiality provisions of the CC Act

## Procedure

In order to assist you achieve balanced communications outcomes and to improve our stakeholder engagement, the following points are to be considered as part of preparations for your planned communication activity:

- **We communicate as 'One Commission' and only use divisional titles in external communications when it is necessary**
- **Identify the stakeholder and plan the communication to meet their needs. The CCC should adopt of stakeholder-centric approach to communications and not a CCC-centric approach.**
- **Liaise with Corporate Communications to seek advice on the best method of communication**
- **Give careful attention to planning the content, method and timing of your communication activity**
- **All communications must be approved (See TABLE 1)**

Corporate Communications can assist in the production of communication material and help you to plan messaging and maximise the reach of your communications to the intended audience.

**Roles and responsibilities**

Business units are responsible for:

- gaining approval for the communication from the approver (**See TABLE 1**)
- the technical accuracy of their communications
- obtaining permissions to reproduce any copyright material, including images, in their communications. Corporate Communications can assist business units
- ensuring that the correct security classification is applied and/or dissemination authority is obtained if it is required
- selecting a creative commons if required by using the Intellectual Property policy and procedure. Corporate Communications can provide advice to business units.

Corporate Communications is responsible for:

- assisting business units to develop content. This includes authoring content, editing content and assisting with message development
- ensuring in-house style guides and brand guidelines are correctly applied to communications
- graphic and digital design
- publishing CCC materials on websites, social media and other channels where necessary.

**Table 1 – Approvers of CCC Materials and Communications**

| Type of communication: | Point of contact: | Authorised by: |
|---|---|---|
| Media responses and media releases | Corporate Communications | **Head of Division** – all routine matters relevant to their respective division.<br><br>If a matter is not routine, the Head of Division should consult the CEO and/or Chairperson. |
| Social media – Publishing | Corporate Communications | **Head of Division** – all routine matters relevant to their respective division.<br><br>**Corporate Communications staff** – Twitter, Facebook, Youtube and LinkedIn<br><br>Standard responses in line with pre-approved posts or publishing of content consistent with an existing approval. For example, posting content consistent with media releases, job vacancies or content from reports or publications that are already approved by a Head of Division. |

| Type of communication: | Point of contact: | Authorised by: |
|---|---|---|
| | | **Human Resources staff** – LinkedIn only<br><br>Content relating to recruitment, job vacancies and careers that is already approved by a Head of Division.<br><br>If a matter is not routine, the Head of Division should consult the CEO and/or Chairperson. |
| Social Media – Moderation including hiding posts, deleting posts and banning users. | Corporate Communications | **Director, Corporate Communications** – Responding to private/direct messages or public posts with information that is already approved or available on the CCC's website. Responding to private/direct messages or public posts using pre-approved content.<br><br>Moderating, hiding or deleting posts that are obviously in breach of the CCC's Social Media Terms of Use.<br><br>**Executive Director, Corporate Services** – Matters that are not routine or not obviously against the Social Media Terms of Use that require broader consideration.<br><br>Banning of users not adhering to the Social Media Terms of Use following a recommendation by the Director, Corporate Communications.<br><br>If a matter is sensitive or requires broader consideration, the Executive Director, Corporate Services should consult the CEO and/or Chairperson. |
| Public presentation | Head of Division | **Head of Division** – all routine matters relevant to their respective division.<br><br>If a matter is not routine, the Head of Division is encouraged to consult the CEO and/or Chairperson. |

| Type of communication: | Point of contact: | Authorised by: |
|---|---|---|
| Published CCC materials | Head of Division and Corporate Communications | **Head of Division** – all routine matters relevant to their respective division.<br><br>**Corporate Communications** – Approval of brand application if a corporate template is not being used.<br><br>If a matter is not routine, the Head of Division is encouraged to consult the CEO and/or Chairperson. |
| Distributing CCC materials | Head of Division and Corporate Communications Unit | **Head of Division** – all routine matters relevant to their respective division.<br><br>**Corporate Communications** – Approval of brand application.<br><br>If a matter is not routine, the Head of Portfolio is encouraged to consult the CEO and/or Chairperson. |
| Intranet content | Individual divisions and business units | **Any CCC officer with a Tier 1, Tier 2 or Tier 3 delegation defined in the Human Resources Decision Making Framework**- Routine matters relevant to a business unit or division.<br><br>Managers are encouraged to consult with their immediate supervisor or Head of Division before posting content on the intranet.<br><br>If a matter is sensitive or will impact on staff outside their respective Division, a Head of Division is encouraged to consult with the Director Corporate Communications and other relevant Head of Division, CEO and/or Chairperson. |
| [redacted] | [redacted] | [redacted] |

| Type of communication: | Point of contact: | Authorised by: |
|---|---|---|
| [redacted] | [redacted] | [redacted] |

**Communication planning**

All communications should consider the alignment to the functions of the CC Act, strategic objectives and strategies. Once it has been determined that the communication will provide the opportunities described in this policy, then that release must be appropriately planned.

Communicating operational outcomes and prevention advice can inform and educate our stakeholders, and improve public confidence in the work of the CCC. It is important to plan how operational and prevention outcomes will be communicated before the relevant operational activity is finalised.

Where the proposed communication or release of CCC material is to be brought about as a result of a project plan, the plan should include details of how the project (e.g. its purpose, activities, outcome and impact) will be communicated to stakeholders, both internal and external.

For assistance with communications strategies to support a project, investigation or other operational activity, contact Corporate Communications.

**Media**

The media offer an important mechanism for communicating with the public and can provide a means of quickly providing information to a broad audience.

Corporate Communications is the first point of contact for the media seeking information about the CCC. The CCC has a generic email address and phone number for media to use. These details must be displayed on the CCC's website. The Director Corporate Communications and the Senior Communications Officer are authorised to deal directly with the media to receive enquiries and provide approved responses. Other members of the Corporate Communications team can deal directly with the media to respond to media enquiries if they have relevant skills and experience, and are approved by the Director Corporate Communications.

Unless specifically approved to do so, CCC officers (other than the Chairperson, CEO or Head of Division) are not authorised to deal with or release information or CCC material to the media regardless of whether the officer is on or off-duty, or is inside or outside of the CCC's offices or premises. Any approach by the media to an officer must be referred to Corporate Communications.

**Social media**

The CCC uses social media as a communication channel to reach audiences who consume their information via social media. The CCC's official social media channels are administered and managed by Corporate Communications.

The CCC's corporate Twitter account is:

- @CCC_QLD - https://www.twitter.com/CCC_QLD.

The CCC's corporate Facebook account is:

- www.facebook.com/CrimeandCorruptionCommission.

The CCC's corporate Youtube account is:

- @CCC_QLD - https://www.youtube.com/channel/UCmkYI2wABDiCzZJh4Hx6KMg

The CCC's corporate LinkedIn account is:

- https://au.linkedin.com/company/crime-and-corruption-commission-queensland-

Corporate Communications collaborate with business units to source and develop content. All social media posts and responses must be approved as per **TABLE 1**.

CCC social media posts will align with the messaging contained in other external communications, published CCC materials and media responses. In most cases, social media posts will not be made in isolation of other forms of communication. Publishing to social media will follow the considerations outlined in this policy in the "Published CCC material" section and, where appropriate, posts will link to more information available on the CCC website.

CCC officers are prohibited from personally interacting with any official CCC social media account from their own personal social media accounts. This is to limit the opportunity for other online users to identify you as a CCC officer, which may pose a risk to you and the CCC.

**Twitter**

With respect to Twitter use, interactions that are prohibited include:

- Following the CCC official account
- Retweeting a tweet made by the CCC official account
- Liking a tweet made by the CCC official account
- Replying to a tweet made by the CCC official account
- Mentioning the CCC official account in a tweet from your personal account

- Sending a direct message from your personal account to the CCC official account
- Using a hashtag that has relevance to the CCC official account. Eg #CCC or #crimeandcorruptioncommission or #TaskforceFlaxton

**Facebook**

With respect to Facebook, interactions that are prohibited include:

- Liking or following the CCC official Facebook page
- Liking, sharing or commenting on content posted by the CCC
- Using the reactions feature to react to content posted by the CCC
- Mentioning the CCC official Facebook page in a post from your personal Facebook profile or from a Facebook page you administer
- Sending a message from your personal Facebook profile or a Facebook page you administer to the CCC official Facebook page
- Using a hashtag that has relevance to the CCC official account. Eg #CCC or #crimeandcorruptioncommission
- Checking-in on Facebook at the CCC's headquarters from your personal Facebook account.

**Youtube**

With respect to Youtube, interactions that are prohibited include:

- Liking or subscribing to the CCC official Youtube account
- Liking, sharing or commenting on content posted by the CCC

**LinkedIn**

With respect to LinkedIn, CCC officers can list the CCC as their employer on their personal LinkedIn profile and follow the CCC's corporate LinkedIn account. CCC officers are responsible for assessing whether listing their employer on LinkedIn has any impacts on their role at the CCC or if it creates any risk to them. CCC officers can seek advice from their supervisor, Security Manager and Director Corporate Communications.

Interactions that are prohibited include:

- Liking, sharing, reposting or commenting on content posted by the CCC
- Tagging the CCC LinkedIn account in a post from your personal LinkedIn profile
- Sending a message from your personal LinkedIn profile to the CCC LinkedIn account
- Publishing CCC content via your personal LinkedIn account

CCC officers are encouraged to contact Corporate Communications for further guidance and can refer to the Social Media Guide for Staff on the intranet.

**Social Media Management, Monitoring and Moderation**

The Corporate Communications team manages the CCC's social media accounts. The Director, Corporate Communications is responsible for assigning administration and editing access to members of the Corporate Communications team for the purpose of managing the social media accounts. Members of the Human Resources team can be provided access to the CCC LinkedIn account to post content following approval from the Director Human Resources and Director Corporate Communications.

Corporate Communications must keep a record of any public post published by the CCC.

At times social media users may send the CCC private messages which are not publicly available to all users. These private messages, which are also known as direct messages, provide a forum for a social media user to engage in a one-on-one conversation as opposed to a one-to-many conversation via social media with the CCC.

All private or direct messages received and any response to those messages must be recorded by Corporate Communications.

Corporate Communications is responsible for monitoring the CCC's social media accounts during business hours to assess if any public or private messages require a response or moderation.

Corporate Communications is responsible for maintaining Social Media Terms of Use that clearly articulate the expectations of users when engaging with the CCC on social media. Where users breach the terms of use, their posts can be hidden or deleted. Repeated or significant breaches of the terms of use can result in a user being banned or blocked from engaging with CCC social media accounts.

Corporate Communications must maintain records for why a post was moderated or why a user is banned. A consistent template for this recordkeeping is to be adopted and used.

[redacted]

**Public presentation**

CCC officers may be required to represent the CCC and make a public presentation in a range of forums such as conferences, professional seminars or addresses to community or stakeholder groups.

All requests to provide a public presentation (either internally or externally generated) are to be approved by a Head of Division. A decision to provide a public presentation will be based on:

- The utility of the event, location, the expected audience, and the opportunity to educate and inform the audience about the work of the CCC, discharge our accountabilities or increase public confidence in the use of our powers
- An assessment of the sensitivity of the information and CCC material proposed for presentation, any confidentiality requirements of the group to which the information and/or CCC material is presented to, and the likelihood of harm to the CCC should the information or material be given to an unintended audience
- The networking opportunities arising from the proposed presentation

All presentations must use corporate templates in line with the CCC's brand.

Corporate Communications should be advised where presentations are conducted external to the CCC, especially when in public forums or at conferences where media may be in attendance or the audience may use social media to report on the presentation. This enables the CCC to monitor any media or social media coverage of the event, or identify additional communication opportunities.

The Risk and Compliance team is to be advised once a public presentation has been delivered for the purposes of updating the periodic reports made by the CCC, including reporting to the Parliamentary Crime and Corruption Committee (PCCC).

**Published CCC material**

Publishing information is the key element of the CCC's communication strategy. Decisions about what to publish and the best method of communicating are informed by a number of considerations, including:

- Obligations arising from legislative provisions
- Considerations of equity to all stakeholders who have an interest in a matter
- The commencement, progress or conclusion of any CCC matter
- How to promote the CCC and opportunities to increase public confidence about the use of our powers
- The opportunities to maximise our reach to the target audience
- Timeliness and cost

Guidance is provided from a range of sources, some of which are mandated by the State Government and others which have been implemented by the CCC.

Once a decision to publish has been made, the officer compiling the material for publication can contact Corporate Communications to consult and seek advice on the preparation of the material.

**Government and corporate standards**

- The CCC has adopted a digital-first approach to its communications, resulting in the majority of publishing occurring on the CCC website, social media and intranet. This is in line with Queensland Government publishing requirements to publish online rather than in hard-copy format. It also aligns with the *Queensland Government's Chief Information Officer Website policy*.
- Corporate standards and guidance are provided on the Corporate Communication's intranet page on a range of topics including information on writing and publishing, corporate templates and guidelines on how to use the CCC logo.

**Publishing on the Intranet – Intranet content**

Corporate Communications is responsible for maintaining the homepage and training intranet contributors. Corporate Communications can also provide assistance to any business unit to help publish content.

**Distributing CCC materials**

Publishing on the CCC's website or intranet is the preferred method to distribute CCC materials.

Printing in hard copy is discouraged. However, instances may arise where hard copy documents will be produced. In order to minimise the cost of production, the size of the print run for hard copy documents is to be limited to only that number required to satisfy the identified audience or legislative requirements.

The number of hard copies printed must also satisfy our public record and archiving requirements under the *Public Records Act 2002.* More information about the *retention and disposal of public records* can be found on the website of the Queensland Government Chief Information Office – *QGCIO*).

Corporate Communications is to be contacted prior to the planned distribution date in order to seek advice about managing communications requirements related to the release of the publication.

**Authorship, copyright and intellectual property**

All CCC communications are made on behalf of the Commission and therefore must reflect the position of the CCC, not the personal opinions of the author or speaker.

Communications and other materials, images or designs developed by an employee of the CCC in the course of employment are owned by the CCC. All authorship of publications are to be attributed to the CCC. However, individual contributions may be acknowledged where this is a requirement for professional advancement.

The conditions under which the CCC grants permission to use its materials are set out on the "*Copyright*" section of our website.

Intellectual property is separately dealt with under the CCC's *Intellectual Property policy and procedure* which is available on the GRC.

**Corporate identity and Brand**

Corporate Communications are the brand custodians for the CCC.

Corporate identity is the look and feel of communication materials and encompasses all the visual aspects of our communications, including the CCC logo, graphical element, imagery, signage, preferred fonts, lay-out/design and writing style. The corporate identity is reflected in the suite of templates available on the intranet and in Content Manager.

The CCC logo is the unique symbol of the organisation and a central element of corporate identity, so it is important that it be used correctly.

Any use of the logo externally, or a request for its use by a third party, must be approved by either the respective Head of Division or the Director Corporate Communications.

Staff can consult Corporate Communications before publishing to ensure they are using the CCC's brand correctly.

**Marketing materials**

Marketing materials for use at an event (e.g. during NAIDOC week) should be developed and budgeted for as part of the overall project plan for that activity.

Business units can engage with Corporate Communications as part of the planning process for assistance with developing and producing these materials.

## Related Documents

Intellectual Property policy and procedure (GRC)

Use of ICT facilities and devices (policy) (GRC)

Social media guide for staff (Intranet)

## Review triggers

This policy will be reviewed three years from the date of approval, unless changes in legislation, CCC policy or government policy affecting its operation occur before the three year period has expired. This policy will remain in effect until updated, superseded or declared obsolete.

## Metadata

All previous records will be searchable in eDRMS.

| Version | Action | Responsible Officer | Accountable Officer (Approver) | Approval Date | HRCA Y / N | eDRMS no. |
|---|---|---|---|---|---|---|
| v.1 | Updates to the policy include: [redacted] | Director, Corporate Communications | Chief Executive Officer | 4 March 2021 | Y | Policy no:<br>HRCA no: |

| | | | | | | |
|---|---|---|---|---|---|---|
| v.2 | Updates to the policy include:<br><br>Inclusion of LinkedIn as a corporate social media channel, and provides guidance to staff on who can use LinkedIn<br><br>More clearly defines a 'Head of Division' for approvals and links to the HR decision making framework. | Director, Corporate Communications | Chief Executive Officer | 27 June 2023 | N | Policy no:<br><br>HRCA no: |
| Next review date: | | 27 June 2026 | | | | |

**Legislative development of section 50 of the *Crime and Corruption Act 2001***

| Legislation | Excerpt of relevant provision |
|---|---|
| *Criminal Justice Act 1989* – as at 31 October 1989 | **2.30 Principal officer's duty upon Director's report of official misconduct.** (1) Where the Director of the Official Misconduct Division reports to a principal officer of a unit of public administration that—<br>(a) any complaint, matter or information involves, or may involve, official misconduct by a prescribed person in that unit;<br>and<br>(b) the available evidence shows a prima facie case to support a charge of a disciplinary nature of official misconduct against the prescribed person,<br>it is the duty of the principal officer and of persons acting under him to charge the prescribed person with the relevant official misconduct, by way of a disciplinary charge, and to have him dealt with by a Misconduct Tribunal as prescribed by this Act.<br>(2) In subsection (1) the expression "prescribed person" means—<br>(a) a member of the Police Force;<br>(b) a person who holds an appointment in a unit of public administration (other than the Police Force), which appointment or unit is for the time being declared by Order-in-Council to be subject to the jurisdiction of a Misconduct Tribunal. |
| *Criminal Justice Act 1989* – as at 7 December 2001 | **39 Commission's duty on director's report of official misconduct**<br>**(1)** If the director of the official misconduct division reports to a principal officer of a unit of public administration that—<br>(a) any complaint, matter or information involves, or may involve, official misconduct by a prescribed person in that unit; and<br>(b) the available evidence shows a prima facie case to support a charge of a disciplinary nature of official misconduct against the prescribed person;<br>the commission must charge the prescribed person with the relevant official misconduct by way of a disciplinary charge.<br>**(2)** The charge may be dealt with only by a misconduct tribunal under the *Misconduct Tribunals Act 1997*.<br>**(3)** In subsection (1)—<br>**"prescribed person"** means—<br>(a) a member of the police service;<br>(b) a person who holds an appointment in a unit of public administration (other than the police service), which appointment or unit is declared by regulation to be subject to the jurisdiction of a misconduct tribunal.<br>**(4)** A regulation may not declare a court of the State of whatever jurisdiction or an appointment as a judge of, or holder of a judicial office in, any such court to be subject to the jurisdiction of a misconduct tribunal. |

| | |
|---|---|
| *Crime and Misconduct Act 2001* – as at 8 November 2001 | **50 Commission may prosecute official misconduct**<br>**(1)** This section applies if the commission reports to the chief executive officer of a unit of public administration under section 49[11] that—<br>(a) a complaint, matter or information involves, or may involve, official misconduct by a prescribed person in the unit; and<br>(b) there is evidence supporting a charge of a disciplinary nature of official misconduct against the prescribed person.<br>**(2)** The commission may charge the prescribed person with the relevant official misconduct by way of a disciplinary charge.<br>**(3)** The charge may be dealt with only by a misconduct tribunal.<br>**(4)** For the definition "prescribed person", paragraph (b), a regulation may not declare a court or the police service to be a unit of public administration that is subject to the jurisdiction of a misconduct tribunal.<br>**(5)** In this section—<br>**"prescribed person"** means—<br>(a) a member of the police service; or<br>(b) a person (other than a judge or holder of judicial office or a member of the police service) who holds an appointment in a unit of public administration, which appointment or unit is declared by regulation to be subject to the jurisdiction of a misconduct tribunal. |
| *Crime and Misconduct Act 2001* – as at 1 December 2009 | **50 Commission may prosecute official misconduct**<br>(1) This section applies if the commission reports to the chief executive officer of a unit of public administration under section 49 that—<br>(a) a complaint, matter or information involves, or may involve, official misconduct by a prescribed person in the unit; and<br>(b) there is evidence supporting the start of a disciplinary proceeding for official misconduct against the prescribed person.<br>(2) The commission may apply, as provided under the QCAT Act, to QCAT for an order under section 219I against the prescribed person.<br>(3) For the definition *prescribed person*, paragraph (b)—<br>(a) a regulation may not declare a court or the police service to be a unit of public administration that is subject to QCAT's jurisdiction; and<br><br>*continued…* |

| | |
|---|---|
| | (b) for subparagraph (ii), a regulation may declare an appointment, or unit of public administration in which an appointment is or was, to be subject to QCAT's jurisdiction before or after the appointment ends as mentioned in the subparagraph.<br>*Example—*<br>The commission is notified by the chief executive of a unit of public administration about possible official misconduct by A. The commission assumes responsibility for the investigation. A resigns before the investigation is finalised but the commission's investigation continues. The investigation later establishes that A's conduct is so serious that proceedings should be taken against A for official misconduct. At that time, a regulation is made prescribing A's appointment.<br>(4) In this section—<br>***prescribed appointment*** means an appointment in a unit of public administration, which appointment or unit is declared by regulation to be subject to QCAT's jurisdiction.<br>***prescribed person*** means—<br>(a) a person—<br>(i) who is a member of the police service; or<br>(ii) being a member of the police service, whose employment as a member of the police service ends after the official misconduct happens, regardless of whether the employment ends before or after the start of a disciplinary proceeding for the official misconduct; or<br>(b) a person (other than a judge or holder of judicial office, or a member of the police service)—<br>(i) who holds a prescribed appointment; or<br>(ii) being the holder of a prescribed appointment, whose appointment ends after the official misconduct happens, regardless of whether the appointment ends before or after the start of a disciplinary proceeding for the official misconduct. |
| *Crime and Corruption Act 2001* – as at 15 April 2024 | **50 Commission may prosecute corrupt conduct**<br>(1) This section applies if the commission reports to the chief executive officer of a unit of public administration under section 49 that—<br>(a) a complaint, matter or information involves, or may involve, corrupt conduct by a prescribed person in the unit; and<br>(b) there is evidence supporting the start of a disciplinary proceeding for corrupt conduct against the prescribed person.<br>(2) The commission may apply, as provided under the QCAT Act, to QCAT for an order under section 219I against the prescribed person.<br>(3) In this section—<br>***prescribed person*** means—<br>(a) a person— |

| | |
|---|---|
| | (i) who is a member of the police service; or<br>(ii) being a member of the police service, whose employment as a member of the police service ends after the corrupt conduct happens, regardless of whether the employment ends before or after the start of a disciplinary proceeding for the corrupt conduct; or<br>(b) a person (other than a judge or holder of judicial office, or a member of the police service)—<br>(i) who holds an appointment in a unit of public administration; or<br>(ii) who held an appointment in a unit of public administration that ended after the corrupt conduct happened, regardless of whether the appointment ended before or after the start of a disciplinary proceeding for the conduct. |

# Annexure D: Commission Annual Report data 2000 – 2023

# Annexure D: Summary table: Commission Annual Report data 2000-2023

| | 2022-23 | 2021-22 | 2020-21 | 2019-20 | 2018-19 | 2017-18 | 2016-17 | 2015-16 | 2014-15 | 2013-14 | 2012-13 | 2011-12 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | | |
| Corruption complaints received | 3931 | 3889 | 3490 | 3327 | 3109 | 3098 | 3041 | 2674 | 2347 | 3881 | 4494 | 5303 |
| Total allegations | 8398 | 8859 | 8563 | 8726 | 8329 | 8862 | 7898 | 6736 | 5326 | 8688 | 10 311 | 12 559 |
| Complaints assessed by CCC | 3686 | 3943 | 3681 | 3435 | 3381 | 3602 | —— | 2170 | —— | 3943 | 4578 | 5192 |
| Total corruption investigations finalised | 39 | 21 | 29 | 53 | 65 | 56 | 71 | 57 | 45 | 61 | 87 | 73 |
| Tabled investigation reports | 1* | —— | 3 | 2 | 2 | 1 | 1 | 2 | 1 | 2 | 2 | —— |

| | 2010-11 | 2009-10 | 2008-09 | 2007-08 | 2006-07 | 2005-06 | 2004-05 | 2003-04 | 2002-03 | 2001-02 | 2000-01 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Corruption complaints received | 5124 | 4665 | 3873 | —— | Almost 3600 | 3924 | Almost 4400 | 3964 | 2920 | 2795 | 3148 |
| Total allegations | 11 909 | 11 164 | 8911 | > 9000 | 9146 | 9641 | 10 590 | 9559 | 6485 | 5455 | 5498 |
| Complaints assessed by CCC | 5053 | 4649 | 3922 | 3678 | 3565 | 3924 | 4363 | 3965 | 2946 | —— | —— |
| Total corruption investigations finalised | 118 | 63 | 80 | 93 | 107 | 110 | 109 | 105 | 155 | 232 | 347 |
| Tabled investigation reports | 3 | 3 | 1 | —— | 1 | 2 + 1* | 5 | 2 | 4 | —— | 5 |

* Investigation report mentioned in previous year's annual report but tabled in this financial year.

Note: —— indicates no data available in Commission Annual Report

# Annexure E: Expert report

# PUBLIC REPORTING OF CORRUPTION MATTERS:

# RESEARCH REPORT FOR THE INDEPENDENT CRIME AND CORRUPTION COMMISSION REPORTING REVIEW

**Professor Gabrielle Appleby (UNSW), Associate Professor Yee-Fui Ng (Monash University) and Professor A J Brown AM (Griffith University)**

**30 April 2024**

## Table of Contents

## Introduction

This report has been written for the purpose of informing the Independent Crime and Corruption Commission Reporting Review (the Review). The Review was established was following the High Court decision of *Crime and Corruption Commission v Carne* [2023] HCA 28. The High Court held that while the CCC could report generally in relation to the performance of its corruption functions, it does not have the ability to publicly report on individual corruption matters through s 69(1)(b) or any other provision of the *Crime and Corruption Act 2001* (Qld).

In its terms of reference, the Review has been tasked to examine the CCC's ability to publicly report and make statements connected to the performance of its corruption functions and prevention function so far as it concerns corruption, particularly in relation to the investigation, assessment, consideration or disposition of individual corruption matters (whether ongoing or concluded). The Review is also tasked to make recommendations on appropriate legislative amendments to enable the CCC to publicly report and make statements in performing its corruption functions and prevention function so far as it concerns corruption.

In undertaking this review, the reviewer is instructed to have regard to, relevantly, 'the views of the CCC and other relevant experts, including those with specialist expertise in corruption investigations and corruption prevention and human rights' (Terms of Reference, clause 6(g)), as well as 'recent developments, reform and other research in other Australian and international jurisdictions relevant to public reporting on corruption and related human rights' (Terms of Reference, clause 6(i)). Pursuant to this, the Reviewer has commissioned this Research Report from us, the Researchers. The Brief for this Research Report is set out in **Attachment A** to this report. The Researchers were expressly instructed to limit the scope of the literature review to Australian and international academic literature, and exclude government or parliamentary reports, including from anti-corruption commissions across Australia.[1] We understand this material will be considered separately by the Review.

The overarching purpose of the Research Report is 'to identify any principles that might inform the development of a public reporting model'. A number of very specific areas of focus relating to the effect of public reporting on the public sector, on public confidence, in relation to the weighing of reporting against reputational damage, and empirical research on community standards or expectations were set by the Review for focus. As we explain in the Executive Summary, the review of the literature reveals very little research directed at any of these specific areas of focus.

We would like to thank Kyla Hayden and Jane Moynihan for their assistance in preparing this Report for the Review.

Gabrielle Appleby, Yee Fui Ng and A J Brown
30 April 2024

[1] Such as the *Best Practice Principles for Anti-Corruption Commissions* (2022), endorsed by all anti-corruption commissions across Australia.

**Executive Summary**

A brief summary of the literature, based on our review of it, with respect to each of the four specific areas of focus set in the Brief is provided in this Executive Summary. These four areas relate to the effect of public reporting in various ways. *As is explained below, there is very little academic consideration of the different effects of public reporting by anti-corruption commissions.* The full literature review proceeds in Parts I-IV of this Report.

1. **The effect of public reporting on standards of public sector integrity, principally:**
    - **The value of identifying individuals who are the subject of investigations as a means of reducing public sector corruption; and**
    - **The value of reporting specific details of corruption investigations as a means of reducing public sector corruption.**

    ***Summary of Literature:*** *The predominance of literature in Australia and internationally identifies 'public reporting', including annual reports as well as reports on investigations, as a pivotal, or at least a desirable design feature of standing anti-corruption commissions. This is often expressed at a high level of generality, with various assumptions but little detailed consideration regarding the content and process of reporting (see discussion of this literature in Part I(b)). A variety of purposes (or values) of public reporting is identified (see Part II), including effectiveness of fulfilling mandates to reduce corruption within the public sector (see discussion in Part II(c)). So, for instance, public reporting has been identified as performing a role in reaffirming and enforcing norms (Khaitan), operating as a form of informal sanction (Bovens & Wille; Kostadinova), brokering confidence from those in government about the work and independence of anti-corruption agencies (Hoole & Appleby; dela Rama, Lester & Staples), ensuring that the findings and recommendations of the body cannot be ignored by government (IDEA), promoting rational decision making in government (Prasser) and higher standards of government behaviour (Hall). However, there is very little literature that considers specifically the likely value of public reporting of the names of individuals and the details of corruption investigations on public sector integrity, mostly because this is widely assumed (see discussion in Part IV).*

2. **The effect of public reporting on public confidence in the public sector and work of anti-corruption bodies, principally the value of de-identified reports compared to that of reports that identify the subject of an investigation, and whether or not specific case details are included.**

    ***Summary of Literature:*** *Most of the limited literature suggests or assumes there is value in public reporting in a general sense, connecting public confidence in the public sector and the work of anti-corruption bodies (see discussion Part II(c)). For example, the Colombo Commentary on the Jakarta Principles claims that public reporting encourages public support for the work of anti-corruption agencies, and*

*supports their institutional legitimacy. Prenzler & Maguire have claimed that public reporting has established public confidence in the independence and impartiality of police oversight offices. Johnston has claimed that public reporting shows the public that complaints and evidence are taken seriously by agencies. However, this literature is predominantly not grounded in any data linking reporting to public confidence (see Part IV(c)). We have not been able to locate any academic consideration of the effect of public reporting on public confidence in anti-corruption commissions in light of recent controversies. Further, we could not identify any literature that considers the specific questions of when agencies have used or should use de-identified reports compared to reports identifying the subject of an investigation, and whether or not specific case details are included.*

3. **The weighing of potential reputational damage to individuals who are the subject of corruption investigation reports against the public interest in promoting public sector integrity and public confidence in a transparency and independent anti-corruption framework.**

   ***Summary of Literature:*** *There is little human rights scholarship that has specifically considered the effect of anti-corruption agencies and public reporting on the rights to reputation and privacy. There is an assumption throughout the literature that the publication of investigation reports, while beneficial, must be accompanied by procedural fairness to any individual named in the reports, based on the potential reputational damage that may be incurred (see discussion of this literature in Part I(b) and Part III(a)). The commentary on the damage to reputation comes predominantly from practitioners and officers (See discussion of this in Part III). Some of these commentators argue for the restriction on publication in some circumstances (Callinan & Aroney), and the use of exoneration protocols (Cowdroy; The Rule of Law Institute). Others are less concerned by the potential damage to reputation given the other significant benefits of publicity (see, eg, Brown, Laurie, Gleeson & McClintock). Pearce raises questions as to whether safeguards such as legislative statements that findings of corruption by the NSW ICAC are not to be taken as a finding that a person has committed a criminal or disciplinary offence can actually address reputation damage. Commentators connect the potential damage to reputation as an interest that attracts procedural fairness (Donoghue), and there is consideration of the precise content of that procedural fairness obligation (Groves; Hall; Donoghue), informed by the case law in this respect (see Part III(c).*

4. **Any qualitative or quantitative research into current community standards or expectations about the public reporting of corruption investigations.**

   ***Literature:*** *We could not identify any qualitative or quantitative research specifically addressing this question. There has been various advocacy-based quantitative research of Australian citizen opinion confirming the perceived importance of*

*transparency and publicity generally in the work of anti-corruption bodies (see full discussion in Part IV(c)*).

The remainder of this Research Report provides an overview of the literature, and is structured as follows:

- Part I outlines the Australian and international literature that has identified the **general design principles** that should inform the establishment and reform of anti-corruption bodies, such as the Queensland Crime and Corruption Commission
- Part II considers the Australian and international literature that has identified the various **purposes of public reporting**. These purposes include transparency, accountability, independence and effectiveness, and public participation.
- Part III presents the scholarship on **human rights concerns** in relation to the publication of investigations by anti-corruption agencies, .
- Part IV details any specific Australian and international literature on the **design and effectiveness of public reporting** for anti-corruption bodies such as the Queensland Crime and Corruption Commission.

## PART I: Literature on General Design Principles

There are two important developments that frame an understanding of the literature on the powers (including reporting powers) of anti-corruption bodies. The first is the pioneering development of the 'standing royal commission' anti-corruption model in Australian jurisdictions starting in the late 1980s.[2] In this, New South Wales and Queensland led the way not only nationally, but internationally.[3] The second is academic and practitioner support for the maximum institutional independence of this type of agency, to the extent of being reflected in concepts of a fourth or 'integrity' branch of government that emerged in the 2000s,[4] and has continued to attract discourse in Australia,[5] and internationally.[6] Much of this discourse has considered the function of such core 'integrity' agencies, the classification of such agencies, and their key characteristics. Standing anti-corruption bodies, such as Queensland's CCC, are universally accepted as core integrity institutions within these classification debates.[7]

Stemming from this literature, there is now a substantive body of scholarship that identifies **general principles** that should inform institutional design of integrity bodies, including anti-corruption bodies. This literature has broad relevance to the Research Brief in that they emphasise the importance of public reporting powers with respect to these bodies. This literature does not, however, provide specific answers to the questions posed by the Review. Accordingly it is set out, in summary form, below.

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2 The first bodies being established in New South Wales and Queensland: *Independent Commission Against Corruption Act 1988* (NSW); *Criminal Justice Act 1989* (Qld).

3 AJ Brown, 'Australia's National Anti-corruption Agency Arrives: Will it stand the test of time?' *The Conversation* (30 November 2022) <https://theconversation.com/australias-national-anti-corruption-agency-arrives-will-it-stand-the-test-of-time-195560>.

4 See further B Topperwein, 'Separation of Powers and the Status of Administrative Review' (1999) 20 *AIAL Forum* 1; James Spigelman, 'The Integrity Branch of Government' (2004) 78 *Australian Law Journal* 72, Chris Field, 'The Fourth Branch of Government: The Evolution of Integrity Agencies and Enhanced Government Accountability' (2013) 72 *AIAL Forum* 24, John McMillan, 'The Ombudsman and the Rule of Law' (2005) 44 *AlAL Forum* 1; John McMillan 'Re-thinking separation of powers; (2010) 38 *Federal Law Review* 423; David Solomon, 'What is the Integrity Branch?' (2012) 70 *AIAL Forum* 26; Robin Creyke, 'An "Integrity" Branch' (2012) 70 *AIAL Forum* 33; W M C Gummow, 'A Fourth Branch of Government?' (2012) 70 AIAL Forum 19.

5 See, eg, Stephen Gageler, 'Three is Plenty' in Greg Weeks and Matthew Groves (eds) *Administrative Redress In and Out of the Courts: Essays in Honour of Robin Creyke and John McMillan* (Federation Press, 2019) 12; A J Brown, 'The Integrity Branch: A "System", an "industry", or a Sensible Emerging Fourth Arm of Government?' in Matthew Groves (ed) *Modern Administrative Law in Australia: Concepts and Context* (CUP 2014) 302; Anita Stuhmcke, 'Government Watchdog Agencies and Administrative Justice' in Marc Hertogh, Richard Kirkham, and Robert Thomas (eds) *The Oxford Handbook of Administrative Justice* (OUP 2021) ch 6.

6 See, eg, Bruce Ackerman, 'The New Separation of Powers' (2000) 113 *Harvard Law Review* 642, Mark Tushnet, *The New Fourth Branch: Institutions for Protecting Constitutional Democracy* (CUP 2021), Tarunabh Khaitan, 'Guarantor Institutions' (2021) 1 *Asian Journal of Comparative Law* S40; Tarunabh Khaitan, 'Guarantor (or the so-called 'Fourth Branch') Institutions' in Jeff King and Richard Bellamy (eds) *Cambridge Handbook of Constitutional Theory* (CUP 2023); Heinz Klug, 'Transformative Constitutions and the Role of Integrity Institutions in Tempering Power: The Case of Resistance to State Capture in Post-Apartheid South Africa' (2019) 67 *Buffalo Law Review* 701.

7 See, eg, Ackerman (n 6), Field (n 4).

### *(a) Categorising anti-corruption agencies based on forms of accountability*

There is a body of literature that attempts to classify or categorise integrity agencies and anti-corruption commissions based on one of the key initial design choices around the *form* of accountability that an agency provides. What emerges from these classifications is that the power to report, and to publicise findings, is not an additional or incidental design feature of anti-corruption agencies in Australia such as the Crime and Corruption Commission, but a fundamental characteristic for the achievement of their objectives.

The different forms of accountability have been identified in the literature as sitting on a spectrum. Professor Andreas Schedler, a leading political scientist on democracy, for instance, draws a distinction between the 'answerability' and 'enforceability' elements of accountability.[8] Professor Linda Reif, an international expert on oversight institutions, adds a third 'intermediate' form of accountability, which she argues lies between Schedler's 'answerability' and 'enforceability': where a body has the power to investigate, recommend, *report publicly*, and persuade privately, but not to sanction.[9] Australian public law scholars, Professors Lisa Burton and George Williams (2012) draw a similar distinction between soft and hard accountability.[10] 'Hard' accountability produces 'binding consequences' while 'soft' accountability relies on *public reporting*, criticising and demanding explanation.

Anti-corruption agencies in Australia, with varying powers of investigation, referral and reporting, predominantly exercise a form of 'soft' accountability. Their jurisdictions most commonly extend beyond criminal law enforcement, to include identification of other critically salient issues including non-criminal corruption, causes of corruption, imperatives for addressing corruption risk (criminal or non-criminal), cultural issues and opportunities for specific or systemic reform to control corruption. Sitting towards this end of the spectrum, the power of reporting and criticising is not just a desirable feature, but identified as a key dimension of the form of oversight they exercise.

Professor Tarunabh Khaitan, a leading comparative constitutional scholar, has written on what he refers to as 'guarantor institutions'.[11] He has identified *publicity* as a key secondary 'duty' of such institutions. He defines guarantor institutions as those with an obligation to guarantee constitutional norms in terms of their content and impact. The primary duty of securing the content of such norms is achieved through a set of secondary duties which he describes as including:

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8 Andreas Schedler, 'Conceptualizing accountability' in Andreas Schedler, Larry Diamond, and Marc F Plattner (eds) *The self-restraining state: Power and responsibility in new democracies* (Lynne Rienner Publishers, 1999) 13, 14-17.

9 Linda Reif, 'Building democratic institutions: The role of national human rights institutions in good governance and human rights protection' (2000) 13 *Harvard Human Rights Journal* 1, 29.

10 Lisa Burton and George Williams, 'The integrity function and ASIO's extraordinary questioning and detention powers' (2012) 38 *Monash University Law Review* 1, 28, 24, 26.

11 See also Khaitan, 'Guarantor Institutions' (n 6).

> a duty to vigilantly look out for *and publicise* any suspected breach, and to determine whether there has, in fact, been such breach. If this is the case, there may be additional duties to *criticise* and remedy such breach. (emphasis added)[12]

He goes on:

> The duty to publicise a suspected breach can only be performed if the duty bearer has access to the necessary information, regularly examines such information, a*nd can publicly highlight any suspected cases* … Criticism of breaches is a key tool for norm-maintenance, but often overlooked. *Public criticism expresses a reaffirmation of the norm, and by doing so strengthens it: its salience in overly court-centric constitutional scholarship has been underestimated*. (emphasis added)[13]

With respect to ensuring the impact of constitutional norms, Khaitan explains the ability to publicise is also important, although may not always be sufficient.[14]

Reflecting this focus on *reporting* as a defining characteristic of oversight institutions, in 2016, a study by criminologists Joseph De Angelis, Richard Rosenthal and Brian Buchner on civilian oversight of law enforcement in the US found that:

> most civilian oversight agencies reported that they publish public reports (78 percent), although there was slight variation among oversight agencies that provided data for this report, with a slightly smaller proportion of review boards reporting that they publish reports (69 percent) as compared to auditor/monitor (80 percent) and investigative agencies (85 percent).[15]

### *(b) Desirable design features*

Consistent with the importance of public reporting to understanding the purpose of anti-corruption agencies, another set of scholarship and international statements have identified desirable design features of integrity bodies and anti-corruption bodies. These almost universally include public reporting, although the extent and nature of that public reporting, whether it be annual or with respect to specific investigations, is left at a high level of abstraction. This scholarship tends therefore not to draw out the different potential impacts of different forms of reporting.

The 2012 Jakarta Statement on Principles for Anti-Corruption Agencies was produced by current and former heads of anti-corruption agencies (ACAs), anti-corruption practitioners and experts from around the world,[16] who gathered in Jakarta at the invitation of the

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12 Ibid S46.

13 Ibid.

14 Ibid S48.

15 Joseph De Angelis, Richard Rosenthal and Brian Buchner, *Civilian Oversight of Law Enforcement: Assessing the Evidence* (2016) 42.

16 Participants included several heads of ACAs and representatives of regional networks, including Network of National Anti-Corruption Institutions in West Africa, the Southeast Asian Parties Against Corruption, the Arab Anti-Corruption and Integrity Network, the Southern African Forum Against Corruption, the East African Association of Anti-Corruption Authorities, and the European Partners Against Corruption/European anti-corruption contact point network (EPAC/EACN). Representatives

Corruption Eradication Commission (KPK) Indonesia, the United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC) to discuss a set of "Principles for Anti-Corruption Agencies" to promote and strengthen the independence and effectiveness of ACAs. The Jakarta Statement on Principles for Anti-Corruption Agencies provides a requirement for *annual* reporting of their activities to the public:

> PUBLIC REPORTING: ACAs shall formally report at least annually on their activities to the public.

While the Jakarta Statement does not speak to public reporting on *individual investigations*, the Colombo Commentary on the Jakarta Principles elaborates that the 'law should require [annual reporting] of ACAs, but they can also be proactive in publishing reports on their activities and on the impact of their work in order to encourage public support for and understanding of their efforts'.[17]

In 2015, Professor Gabrielle Appleby (one of the authors of this report) identified a set of 'independence markers' that she claimed were necessary for the independence and effectiveness of executive integrity institutions, such as anti-corruption bodies.[18] She identified the following markers (emphasis added):

> (a) statutory guarantees of tenures (during a fixed term);
>
> (b) relatively clear and broad mandates set by statute;
>
> (c) statutory guarantees against being subject to the direction of the government;
>
> (d) adequacy of the powers given to the institution, including the power to investigate;
>
> *(e) the ability of the institution to make public their reports and recommendations without the permission of government;*
>
> (f) a guaranteed transparent, arms-length and merits-based appointment process;
>
> (b) greater guarantees of adequate funding and resourcing; and
>
> (c) an appropriate allocation of responsibilities to integrity institutions.

Appleby's markers capture individual investigative reports and recommendations, as well as annual reporting.

In 2021, leading public administration and accountability expert Professor Mark Bovens (Utrecht University) and public sector specialist Professor Anchrit Wille (Leiden

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from the United Nations Development Programme, the United Nations Office on Drugs and Crime, the United Nations Office of the High Commissioner for Human Rights and Transparency International took part in the proceedings. The Organization for Economic Cooperation and Development and the World Bank also submitted contributions to the Conference.

17 United Nations Office of Drug and Crime, *Colombo Commentary on the Jakarta Statement of Principles for Anti-corruption Agencies* (2020).

18 Gabrielle Appleby, 'Horizontal Accountability: the rights-protective promise and fragility of executive integrity institutions' (2017) 23(2) *Australian Journal of Human Rights* 168.

University)[19] developed a framework for assessing the accountability powers of watchdog mechanisms. They identified three dimensions of watchdog power: (1) formal powers, (2) organizational powers and strength, and (3) the operational exercise of those powers. Within formal powers, they identified a number of indicators that include legal powers to obtain information, to question witnesses and to sanction officials or actors. In relation to the sanctioning power, they explain the importance of public reporting of individual inviestigations:

> Sanctioning power: The extent to which the institution has formal powers to sanction actors when it finds irregularities. The ability to impose sanctions—or hand out rewards—will render an extra "bite" to the judgment of the watchdog institutions and may enhance the chances that their findings and recommendations will lead to improvement of the executive performance. Ideally, watchdogs themselves have the power to impose sanctions on executive actors, but they may also simply act as informants to external principals of executive bodies, such as parliamentary commissions or ministers. *A more informal, but in some cases effective way of sanctioning is the use of naming and shaming … This requires that its reports can be made public*. (emphasis added, references omitted).

In 2017, Dr Grant Hoole (then a post-doctoral fellow at UNSW Law) and Professor Appleby published a paper in the *Adelaide Law Review*[20] that had its basis in a Transparency International Discussion Paper.[21] It advanced a theoretical framework, drawn from legal process theory, for the design of anti-corruption agencies. Their framework, coined 'integrity of purpose', emphasised the importance of providing targeted powers for anti-corruption agencies that were directed at their purpose while respecting the boundaries of their mandate, and the mandates of other government institutions. Fidelity to the purpose of an anti-corruption commissions requires, they argued, adherence to integrity of design, which requires adherence to higher level public values, such as the need to adhere to requirements of procedural fairness and accord appropriate respect for individual rights, including the right to reputation. Within this framework, they argue for the importance of the ability 'to publicly report the findings that result from any hearing, including findings of serious and systemic corruption and their relevant factual foundations.' 'This', they argue, 'is not only consistent with the commission's foundational purpose, it is essential to it.' Hoole and Appleby explain that public reporting of individual investigations must be at the discretion of the agency:

> It is difficult to conceive of how a commission can broker confidence in government if the government itself exercises control over the release of the commission's findings.[22]

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19 Mark Bovens and Ancrhit Wille, 'Indexing watchdog accountability powers: a framework for assessing the accountability capacity of independent oversight institutions' (2021) 15 *Regulation & Governance* 856.

20 Grant Hoole and Gabrielle Appleby, 'Integrity of Purpose: A Legal Process Approach to Designing a Federal Anti-Corruption Commission' (2017) 38 *Adelaide Law Review* 397.

21 Griffith University and Transparency International Australia 'A Federal Anti-Corruption Agency for Australia?' Discussion Paper No 1, 16-17 March 2017.

22 Hoole and Appleby (n 20) 437.

Public reporting has been identified in similar ways by others as an important design feature of anti-corruption commissions, particularly in the context of the campaign to establish and design a federal anti-corruption commission.[23]

Other scholars have identified design dimensions for anti-corruption agencies without necessarily advocating for any particular design within them. For instance, in 2018, US public service and accountability expert Professor Robin J Kempf and Australian criminologist and anti-corruption expert Professor Adam Graycar developed a model that encompassed seven dimensions of jurisdiction and authority for the design of anti-corruption agencies.[24] Within each dimension, they identify the need for'trade-offs' to occur, as different principles (including agency effectiveness as against individual rights, including procedural fairness) are balanced in institutional design. The seven dimensions of jurisdiction and authority are:

(1) Subject matters jurisdiction;

(2) Targets of oversight;

(3) Activities employed;

*(4) Powers granted [including reporting powers];*

(5) The extent to which authority is centralised;

(6) The extent to which authority overlaps with other entities; and

(7) The extent to which independence is granted.

In 2023, Professor Gabrielle Appleby and Associate Professor Yee Fui Ng (the authors of this Report), in a paper delivered to the annual Australian Institute of Administrative Law conference, identified the need to develop a framework through which an assessing the effectiveness of anti-corruption agencies could be undertaken.[25] They noted that most assessments of anti-corruption agencies in Australia and internationally propose a set of 'principles' or 'dimensions' of performance assessment that will facilitate the assessment.[26]

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23 See, eg, former Victorian Supreme Court judge, Stephen Charles, 'A National Integrity Commission?' (2020) 46(2) *Monash University Law Review* 1, 11.

24 Robin J Kempf and Adam Graycar, 'Dimensions of Authority in Oversight Agencies: American and Australian Comparisons' (2018) 14 *International Journal of Public Administration* 1145.

25 Yee Fui Ng and Gabrielle Appleby, *Towards a framework for assessing the design & amendment of anti-corruption commissions in Australia,* Paper delivered at National Administrative Law Conference, August 2023, Adelaide (on file with authors).

26 See, eg, OECD, Measures for promoting integrity and preventing corruption: How to assess? Report of OECD Public Governance Committee GOV/PGC (2004) 24 (October 2004) <www.oecd.org/dataoecd/40/47/34406951.pdf>; OECD, Public sector integrity: a framework for assessment (OECD, 2005); J Johnson, H Hechler, L De Sousa and H Mathisen, How to monitor and evaluate anti-corruption agencies: guidelines for agencies, donors, and evaluators (U4 Anti-Corruption Resource Centre, Issue No. 8, 2011). OECD, Specialised anti-corruption institutions: review of models (OECD, 2nd ed, 2013) 34–5; Transparency International, Anti-Corruption Agencies Strengthening Initiative, Research Implementation (2015) 7; Patrick Meagher and Caryn Voland, *Anti-Corruption Agencies (ACAs): Office of Democracy and Governance Anti-Corruption Program Brief* (Washington DC, United States Agency for International Development, June 2006) 8-14.

Reviewing these frameworks, they developed a set of five principles focussed on institutional design:

(a) The Commission must be independent;

(b) The Commission must be appropriately and proportionately empowered for its functions, while respecting basic rights and liberties;

(c) The Commission must be accountable for the exercise of its powers;

(d) The Commission must be properly resourced to fulfil its functions;

(e) The Commission must work constructively with other government and oversight institutions.

These high-level design principles are then fed into a series of design choices that Appleby and Ng argue must be scrutinised as part of an institutional design assessment. This list is potentially very long, but they identified 10 key design choices (emphasis added), including:

> **Public hearings & publicity:** Whether the Commission is able to hold public hearings and in what circumstances, and the other publicity that is afforded to the Commission's ongoing investigatory work.

## PART II: Purposes of Public Reporting

There are a number of different purposes identified in the Australian and international scholarship that public reporting may achieve. These purposes are not always clearly distinct and often overlap. We have considered the scholarship in relation to four broad purposes:

(a) Transparency

(b) Accountability of agency

(c) Agency independence and effectiveness

(d) Public Participation

### *(a) Transparency*

Many sources identify transparency as the objective driving publicity of anti-corruption agency findings and reports. When referring to transparency, the literature on anti-corruption agencies refers to two related ideas: transparency of government agencies processes that the anti-corruption agency is able to facilitate, and transparency of the anti-corruption agency's processes.

Transparency in government is closely associated with other purposes set out below, including relating to the effectiveness of an anti-corruption agency to uncover corrupt conduct, the accountability of an anti-corruption agency, and public participation. As a democratic ideal, transparency based on the notion that an informed citizenry is better able to participate in government; thus providing an obligation on government to provide public disclosure of information.[27] Transparency in government enhances participatory democracy on the assumption that an informed citizenry is more likely and better able to participate in, and be able to understand and judge, government decision-making than an uninformed one. It also enhances representative democracy because it is likely to lead to electors making better informed choices at periodic elections. It also reduces the risk of corruption and abuses of power by exposing executive activity to public scrutiny, via both vertical (congressional or parliamentary committees, formal audit institutions) and horizontal (civil society organisations, the media, the public) networks of accountability.[28] As the saying goes: 'sunlight is … the best of disinfectants'.[29]

Transparency is closely associated with public reporting in international anti-corruption material. Australia is a signatory to the 2005 United Nations Convention Against Corruption (UNCAC),[30] which introduces a comprehensive set of standards, measures and rules that countries can apply to strengthen their legal and regulatory regimes to fight both public and private sector corruption. In relation to public reporting, the UNCAC provides that State Parties must take measures to enhance *transparency* in public administration. This includes

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27 Daniel J Metcalfe, 'The History of Government Transparency' in Padideh Ala'I and Robert G Vaughn (eds), *Research Handbook on Transparency* (Edward Elgar, 2014) 247, 249.

28 Albert Meijer, 'Transparency' in Mark Bovens, Robert Goodin and Thomas Schillemans (eds), *The Oxford Handbook of Public Accountability* (Oxford University Press) 507.

29 Louis D Brandeis, *Other People's Money and How the Bankers Use It* (F A Stokes, 1914) 92.

30 *United Nations Convention Against Corruption*, opened for signature 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005) ('*UNCAC*').

measures such as publishing information on the risks of corruption, and adopting procedures allowing the public to obtain information on the organisation, functioning and decision-making processes of public administration.[31]

As the UNCAC is an international treaty, it provides high-level principles, rather than prescriptive methods on public reporting on corruption. Article 10 includes a requirement to publish information. The only example given is periodic reports on the risks of corruption, with guidance given on this corruption prevention reporting.[32] There is no specific mention of publishing corruption investigations, but the language is inclusive, meaning that other information may be published consistent with the requirement of public reporting. The UNCAC also identifies publication of corruption findings as relevant to public participation, which we return to below.

The Colombo Commentary on the 2012 Jakarta Principles (introduced above) elaborates that public reporting by government bodies (both with respect to annual reports and individual investigations) is intended to further the core principles of *transparency and accountability*.[33]

In 2022, Australian academics Marie dela Rama, Michael Lester and Warren Staples argued for the then proposed Commonwealth Integrity Commission to be required to publicly report its investigations, as they argued that this would enhancing *transparency*. They explained the multi-faceted objectives that transparency itself could achieve: transparency would promote the agency's capacity to provide an educative and public awareness role, and 'promote and enhance trust that the investigative process is not being compromised by vested interests'. [34] Thus transparency is closely connected to accountability and agency effectiveness. The authors drew on an analogy to Article 10 of the Anticorruption Protocol to the United Nations Convention Against Corruption, which states that a report would be published online by Transparency International once a corruption investigation has been filed by UN inspectors. The authors note that this requirement "addresses the fundamental *transparency* requirements of anti-corruption investigations".[35]

### *(b) Accountability of agency*

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31 Article 10.

32 UN Guidance provides more detail about periodic reports on the threats of corruption: 'All public organizations should report periodically on the threats of corruption and anti-corruption prevention measures undertaken … The report may answer the following questions: What functions does the ministry or department perform? Which processes does it carry out? Which of its processes, systems and procedures are susceptible to fraud and corruption? What are the internal and external risks likely to be? What are the appropriate key anti-fraud and corruption preventive measures in place? How are they assessed in practice?' United Nations Office of Drugs and Crime, *Technical Guide to the United Nations Convention Against Corruption* (2009) 46.

33 United Nations Office of Drug and Crime, *Colombo Commentary on the Jakarta Statement of Principles for Anti-corruption Agencies* (2020) 71.

34 Marie J dela Rama, Michael E Lester and Warren Staples, 'The Challenges of Political Corruption in Australia, the Proposed Commonwealth Integrity Commission Bill (2020) and the Application of the APUNCAC' (2022) 11(1) *Laws* 1, 10-11 <https://doi.org/10.3390/laws11010007>.

35 Ibid 16.

Public reporting of corruption investigations is seen to enhance the accountability of anti-corruption agencies, as it allows the government and the public to evaluate the performance of anti-corruption agencies based on their investigative outcomes, whether they are fulfilling and their objectives effectively and whether the expenditure on oversight is justified.

Internationally, the role that regular reporting to Parliament and the public plays in terms of accountability has been identified, together with transparency and public participation, as its key purpose. For instance, the guidance to the 2012 Jakarta Principles notes:

> Regular reporting by ACAs will enhance their *accountability* by providing clear accounts of their progress. It can also strengthen their institutional legitimacy if the reports are made public. Formal reports serve as another accountability mechanism designed to ensure that the Government and the public can assess the performance of an ACA pursuant to its mandate and allocated budget. (emphasis added)[36]

The International Institute for Democracy and Electoral Assistance (IDEA) considers public reporting as part of the accountability for fourth branch institutions (including anti-corruption agencies) in its Constitution-Building Primer on *Independent Regulatory and Oversight (Fourth Branch) Institutions*:

> *Accountability:* Without compromising their neutrality or independence, independent institutions must be publicly accountable – with provision for public reporting and scrutiny of their activities.[37]

It is not explicit in this material whether this reporting refers to annual reporting, or reporting on individual investigations. However, it goes on to note the importance of requiring responses to public reports, 'so that reports which might be critical of government policy … cannot easily be ignored.'[38] This is typical of academic or official commentary assuming that publication should extend to specific investigation reports and – subject to rights protections for instance through procedural fairness – should contain such detail as is necessary to ensure that investigation outcomes are heeded and not dismissed or downplayed.

The Westminster Foundation for Democracy's 2020 report, *Combatting corruption capably: An assessment framework for parliament's interaction with anti-corruption agencies* identifies the importance of parliament's relationship to anti-corruption agencies through reporting, focussing on annual reports, as 'an important part of the accountability of the [anti-corruption agency] towards the parliament, but they also serve to inform the parliament and the general public about the ACA's work and key developments in anti-corruption efforts.'[39]

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36 United Nations Office of Drug and Crime, *Colombo Commentary on the Jakarta Statement of Principles for Anti-corruption Agencies* (2020) 72.

37 Elliot Bulmer, *Independent Regulatory and Oversight (Fourth-Branch) Institutions* (International IDEA Constitution-Building Primer 19, 2019) 22.

38 37.

39 Franklin De Vrieze and Luka Glušac, *Combatting corruption capably: An assessment framework for parliament's interaction with anti-corruption agencies* (Westminster Foundation for Democracy, 2020) 14.

Anti-corruption adviser to the UN, Samuel De Jaegere, identified in 2012 annual reporting as important for enhancing the *accountability* of anti-corruption agencies, and therefore potentially strengthening their credibility and independence.[40]

In an article considering how to make anti-corruption commissions more *effective*, Jeremy Pope and Frank Vogl, two Transparency International officials note that:

> The agency's work has to be seen as meaningful, which requires that the agency be as open as possible with the press and that it publish frequent reports on its activities.[41]

In the 2022 Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence, led by Judge Deborah Richards, a report was commissioned from leading police and security expert Professor Tim Prenzler and former Irish Police Ombudsman Michael Maguire. They were asked to inquire into 'Models of Police Oversight and Complaints Handling Processes'. This report examined models of external oversight of police by civilian review bodies and identified democratic accountability as a key dimension of public reporting of these bodies. Although not directly analogous to anti-corruption commissions, some anti-corruption commissions in Australia have oversight over police misconduct (eg the Victorian IBAC), and the general principles in relation to oversight of public bodies means that their conclusions are relevant to considering public reporting in the anti-corruption context.

Prenzler and Maguire's report reviewed five decades of experience internationally with different types of systems for investigating complaints against police and regulating police conduct. The report found that reporting key findings of investigations publicly is an important feature of police review agencies:

> Review agencies adopt different powers and processes. Available evidence indicates that the majority are limited to audits of police files; extending to communicating findings and recommendations to police (including recommendations to change procedures), and *reporting key findings publicly*. (emphasis added)[42]

Prenzler and Maguire noted that the ability to publish reports, alongside the 'capacity to hold open inquisitorial hearings and refer matters to a public prosecutor or administrative tribunal' … 'significantly enhances the democratic accountability process'.[43]

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40 Samuel De Jaegere, 'Principles for Anti-Corruption Agencies: A Game Changer' (2012) 1(1) *Jindal Journal of Public Policy* 79, 101.

41 Jeremy Pope and Frank Vogl, 'Making Anticorruption Agencies More Effective' (2000) *Finance & Development* 6, 9.

42 Tim Prenzler and Michael Maguire, *Models of Police Oversight and Complaints Handling Processes Report for the Independent Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence* (22 August 2022) 4.

43 Ibid 10-11. The 2022 Richards Final Report did not recommend publication of investigative reports, but, at a minimum, annual reporting on activities and outcomes: D Richards, *A Call for Change: Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence, Report, Commission of Inquiry* (2022) 30. See also Tim Prenzler and Michael Maguire, Reforming Queensland's Police Complaints System: Recent Inquiries and the Prospects of a Best Practice Model' (2023) 35(3) *Current Issues in Criminal Justice* 324, 333.

Demonstrating the accountability use to which public reporting can be put, in 2015, Transparency International developed a formalised methodology (co-authored by Professor AJ Brown, one of this report's authors) for conducting an assessment of Anti-Corruption Agencies. This assessment tool draws on established practice and UN Development Program-sponsored research to assume that there would be public corruption investigation reports, with part of the assessment including the frequency of including corruption prevention recommendations in the ACA's investigation reports during the previous 3 years, as part of assessing the effectiveness of corruption prevention:

> *Frequency of including corruption prevention recommendations in ACA's investigation reports during past 3 years*
>
> For indicator no. 29, the interviewer collects data on the number of investigation reports completed by the ACA during the past three years and identifies the number of corruption prevention recommendations in these reports so that the frequency of such recommendations can be determined.[44]

Alongside the assumption that individual investigation reports will be published on an 'as needs' or case-driven basis, the TI assessment methodology includes specific information about the ACA's more generalised annual report:

> There are three ways to enhance the ACA's accountability. First, the ACA's annual report provides important and relevant information on its activities to the public. Apart from ensuring accountability to Parliament, the ACA's annual report should provide comprehensive information on its activities during the previous year to all citizens. Is the ACA's annual report, which is submitted to Parliament, published on its website to ensure that it is accessible to the public? The submission of the ACA's annual report indicates that it is accountable to Parliament for its activities. It will be difficult to hold the ACA accountable for its actions if it does not submit an annual report to Parliament.[45]

### (c) *Agency Independence and effectiveness*

A key purpose of public reporting is to ensure the independent and effective operation of oversight bodies.[46] Indeed, as is detailed above in Part I(a), the power of *publishing* reports and findings of corruption investigations is a fundamental characteristic of agencies that exercise 'soft' accountability power, such as anti-corruption commissions.

For instance, public inquiry specialist Scott Prasser (2012) has identified the ability to report to parliament (i.e. publicly) as a key dimension of the *independence* as well as accountability of integrity agencies.[47]

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44 Transparency International, (n 26) 10, 30, 40, 42.

45 Ibid 11.

46 As identified in scholarship already referred to above, such as Appleby (n 18).

47 Scott Prasser, 'Australian Integrity Agencies in Critical Perspective' (2012) 33 *Policy Studies* 21, 30.

In his 2021 book discussing investigatory/inquisitorial and advisory public inquiries,[48] Prasser developed this position, arguing that a signal of a public inquiry's independence is the transparency of its deliberations in the process of fact-finding and reporting (developing the link between independence, transparency and accountability):

> A signal of the independence of an inquiry is the extent it conducts its business in public, what Banks describes as 'ensuring transparency' … What distinguishes an inquiry [from review by a government agency] is the public and transparent character of its deliberations in the process of fact-finding and reporting.[49]

Prasser's work looked at public inquiries (such as royal commissions), that hold hearings and deliver reports in public. While such inquiries differ from the current design of Queensland's Crime and Corruption Commission, with its presumption against public hearings, and restrictions on reporting, nonetheless, the identified benefits of reporting of individual investigations are relevant to the consideration of the ideal design for the reporting powers of the CCC.

Prasser also noted that public inquiries are a 'major instrument of accountability and rational policy-making'[50] and developed a typology of rational policy development and how inquiries perform these activities.[51] The typology suggests that 'public release of [inquiry] reports and formal presentation to government' promotes rational decision-making, as it 'seeks to obtain formal endorsement from government of specific recommendations'.[52] This suggests that public reporting of investigative inquiry outcomes will promote rational government decision-making, and thus enhance the effectiveness of government.

Leading international corruption expert Professor Michael Johnston, writing in 2002, identified four prerequisites for anti-corruption agency success, including independence, permanence, coherence and credibility. In relation to *independence,* he noted that an anti-corruption agency must publicise all of its activities freely and conduct them in a transparent manner to assure citizens that 'the evidence they give will be taken seriously, and that they can file reports without fear or reprisals.'[53]

Peter Hall, a former NSW ICAC Commissioner, has argued in his 2019 book on corruption in public office, one aspect of 'accountability' is that public reporting of corruption investigations by anti-corruption agencies will encourage higher standards of behavior by public officials, that is, increase their effectiveness:

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48 Anti-corruption agencies have investigatory (to establish facts and make recommendations on matters of policy) and inquisitorial functions (to determine in the manner of the police, to assess the facts of an incident or of events of the past).

49 Scott Prasser, *Royal Commissions and Public Inquiries in Australia* (LexisNexis, 2nd ed, 2021) 282.

50 Ibid 268.

51 Ibid 143.

52 Ibid.

53 Michael Johnston, 'Independent Anti-Corruption Commissions: Success Stories and Cautionary Tales' in Cyrille Fijnant & Leo Huberts (eds) *Corruption, Integrity and Law Enforcement* (Kluwer Law International 2002) 257.

> The primary functions of the [NSW ICAC] include the public exposure of corruption. Public inquiries, along with the Commission's public reports, may be seen as an effective mechanism for exposing truth and encouraging high standards of behaviour in public officials.[54]

Writing in the EU context, political scientist Petia Kostadinova noted in 2015, without independent legal enforcement powers, oversight agencies' 'impact' is closely associated with the informal sanctioning through publicity, that is, the '"naming and shaming" public nature of the critical remark and the specificity of the issued suggestions.'[55] In this sense, Kostadinova notes that the informal impact of public critical remarks and subsequent follow-ups can be stronger than the substantive inquiry itself.

The idea of 'naming and shaming' has been explored in other literature as a mechanism for changing behaviour. Expert in social research methodology Professor Ray Pawson identifies it as involving the following process:

> 1. Identifying and classifying that behaviour;
>
> 2. Naming the party involved and describing the behaviour to which complaint is made;
>
> 3. The community responds to this disclosure (the act of shaming); and
>
> 4. As a result the respondent changes its behaviour.[56]

Others have noted the danger of naming and shaming resulting in double-penalties, where a prosecution may subsequently be undertaken.[57] However we note that this risk, which is obviously central to the present inquiry, only pertains where a form of 'hard' accountability (criminal or disciplinary proceedings) is also being applied, or is sufficiently reasonably likely to be applied to mean that the 'soft' accountability effects of publicity should become secondary (whether temporarily or permanently). In all other circumstances, the ability to accurately describe the behaviour, including identifying those party to it, can be central to these strategies for behavioural, cultural, organisational or political change.

Public reporting of the work of oversight agencies has been linked to perceptions of independence and effectiveness in the police oversight context by Prenzler and Maguire (introduced above). The Office of the Police Ombudsman for Northern Ireland provides an independent, impartial police complaints system for the people and the police service of Northern Ireland. A survey of public awareness and perceptions and complainant satisfaction levels from 2014-2020/21 showed a high degree of perception of independence, fairness and satisfaction.[58] Prenzler and Maguire argued that the publication of both critical and

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54 Peter Hall, *Investigating Corruption and Misconduct in Public Office* (LawBook Co, 2019) 777.

55 Petia Kostadinova, 'Improving the Transparency and Accountability of EU Institutions: The Impact of the Office of the European Ombudsman' (2015) 53 *Journal of Common Market Studies* 1077, 1082.

56 See Ray Pawson, 'Evidence and Policy and Naming and Shaming', (2002) 23(3) *Policy Studies* 211.

57 A comment made in the context of corporate tax avoidance: see further Kalmen Dutt, 'To shame or not to shame, that is the question' (2016) 14(2) *eJournal of Tax Research* 486, 489.

58 Prenzler & Maguire (2022, n 41) 26-7.

supportive reports have been important towards establishing the independence and impartiality of the Office's work:

> The Office [of the Police Ombudsman for Northern Ireland] has published reports which have been both critical and supportive of the police. This reinforces confidence in the independence and impartially of the work. The publication of reports is extremely important as it provides valuable information to the public about what can be complained about and whether these complaints have been successful.[59]

Canadian doctoral candidate Nicholas Bautista-Beauchesne has written in 2020 on the importance of bureaucratic autonomy and reputation for the effectiveness of anti-corruption commissions, using the case study of how Quebec's anti-corruption agency constructed its bureaucratic reputation over time.[60] His work assumes that bureaucratic autonomy 'is not only a product of [anti-corruption agencies'] legislative frameworks; but equally emanates from their ability to contruct their organisational legitimacy, identity and reputation in the eyes of multiple "audiences" such as citizens, the political sphere or other institutions.'[61] Using a mixed-method including a narrative analysis of commission hearings and semi-structured interviews, paired with quantitative content analysis of media articles and agency web-communications, he identified a distinction between activities that were directed to performance credibility and those that related to reputation management within the bureaucracy. Performance credibility, particularly relating to repression of corruption, was identified by the agency as particularly important during the early phases after its establishment, and relied heavily on public reporting of its investigations in managing external perceptions of the agency's performance reputation.[62] In contrast, reputation management within the bureaucracy required a greater number of multi-faceted activities that were more directed towards the preventative function of the agency. He concludes that these activities do appear to be, however, related, with agencies able to leverage perceptions of performance credibility in other spheres; he also noted, however, the 'non-linearity' of reputation management demonstrated by the case-study during more turbulent periods.[63]

### *(d) Public participation*

The ability of public reporting to enhance not just public understanding of government corruption and the work of anti-corruption agencies, but also for public participation, has also been identified.

Article 13 of the UNCAC, for instance, requires nation states to take appropriate measures to promote active societal participation in the fight against corruption, and to increase public awareness of the existence, causes and gravity of the threat posed by corruption.

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59 Ibid 31.

60 Nicholas Bautista-Beauchesne, 'Crafting anti-corruption agencies' bureaucratic reputation: an uphill battle' (2021) 75 *Crime, Law and Social Change* 297.

61 Ibid 298.

62 Ibid 308-309, 318-319.

63 Ibid 312-313, 318 and 319.

**Article 13: Participation of society**

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to nontolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public [public order] or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

Article 13 includes measures such as ensuring that the public has effective access to information, which can be promoted through publication of corruption investigations. The UN guidance notes that an element of this is the freedom to publish and disseminate information about corruption:

> *Freedom to seek, receive, publish and disseminate information concerning corruption and its restrictions*
>
> States Parties should review their licensing and other arrangements for various forms of media to ensure that these are not used for political or partisan purposes to restrain the investigation and publication of stories on corruption. At the same time, while those subject to allegations may have recourse to the courts against malicious or inaccurate stories, *States Parties should ensure that their legislative or constitutional*

*framework positively supports the freedom to collect, publish and distribute information*.[64]

Dr Samual Siebie Ankamah has identified in 2019 the role that social accountability actors (for instance, journalists, civil society activities, and complainants/whistleblowers) in the effectiveness of anti-corruption agencies.[65] One aspect of that constructive relationship is the 'amplification' of the work and published findings and reports of anti-corruption commissions.[66]

In 2018, anti-corruption expert Sergio Marco Gemperle developed a new index of anti-corruption agencies (ACAs) covering 53 states between 2006 and 2011. In this index, Gemperle identified the institutional determinants of an ACA's capacity, which includes 'powers and accountability'. He notes that 'mechanisms for ensuring better public access to ACAs include regular reporting, expenditure disclosure, and complaint systems or public hearings'.[67] This suggests that regular public reporting enables better public access to anti-corruption agencies.

## Part III: Human Rights concerns relating to public reporting on investigations

There is little direct scholarship that has addressed the human rights concerns relating to public reporting on investigations. Indeed, the anti-corruption scholarship and human rights scholarship on this point have, by and large, not yet intersected. Internationally, the concern of human rights scholars and practitioners has tended to be to demonstrate the link between the need to address corruption, and how that promotes and protects human rights.[68] There has been some scholarship on the institutionalised misuse or political co-option of anti-corruption agencies in general ways that conflict with fundamental civil and political rights,[69] and some on human rights concerns about the sanctioning powers of government agencies against foreign political or business actors, including in the name of anti-corruption.[70] None of this speaks specifically to human rights concerns around when or how public reporting occurs.

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64 United Nations Office of Drugs and Crime, *Technical Guide to the United Nations Convention Against Corruption* (2009) 63.

65 Samual Siebie Ankamah, 'Why do "teeth" need "voice"? The case of anti-corruption agencies in three Australian states' (2019) 78 *Australian Journal of Public Administration* 481. See also A Mungiu-Pippidi and R Dadašov, 'When do anticorruption laws matter? The evidence on public integrity enabling contexts (2017) 68 *Crime, Law and Social Change* 387.

66 Ibid 488-489.

67 Sergio Marco Gemperle, 'Comparing Anti-corruption Agencies: A New Cross-national Index' (2018) 23(3) *International Review of Public Administration* 156.

68 For example, Juliet S Sorensen, *Human Rights and Corruption* (Edward Elgar Publishing, 2021); Zoe Pearson, 'An International Human Rights Approach to Corruption' in Peter Lamour *Corruption and Anti-Corruption* (ANU Press 2013).

69 See, eg, concern about this in the Polish context: Anna Krajewska and Grzegorz Makowski, 'Corruption, anti-corruption and human rights: the case of Poland's integrity system' (2017) 68 *Crime, Law and Social Change* 325.

70 See, eg, Radha Ivory, *Corruption, Asset Recovery and the Protection of Property in Public International Law: The Human Rights of Bad Guys* (Cambridge University Press, 2014).

Much of the general scholarship that sets out design principles for such bodies acknowledges the need for powers, including reporting powers, to be 'balanced' against the rights of individuals involved. The rights engaged include the right to reputation, privacy, a fair trial and fair process.[71] However, there is very little human rights focussed scholarship. The commentary that does exist has come predominantly from practitioners and public officials.

### *(a) Right to privacy and reputation*

Demonstrating the lack of focussed academic scholarship in this area, Following the UN Human Rights Committee's recent findings of a breach of Article 17 of the International Covenant on Civil and Political Rights (ICCPR) (right to privacy) by the NSW ICAC in the Charif Kazal case,[72] there has, as yet, been no academic scholarship published. The only public commentary that has been able to be located has come from journalist Chris Merritt and the organisation of which he is Vice President, the Rule of Law Institute.[73] The Rule of Law Institute refer to Kazal's case as demonstrating the need for judicial review of the findings of anti-corruption bodies, and some form of exoneration protocol (that is, allowing people found corrupt by anti-corruption commission but not convicted in the courts to have their records expunged).[74]

Several Australian commentators have argued that having public reports by anti-corruption commissions that adversely name a person would unfairly tarnish their reputation. For example, Peter McClellan, when he was a barrister and before he chaired the Royal Commission into Child Sexual Abuse, warned about the excessive powers of anti-corruption commissions (focussing on NSW ICAC) as causing 'considerable harm to persons unfairly trapped by the blaze of sensational publicity which can be created'.[75] McClellan contended that there is a potential loss of reputation for individuals named in the context of an inquiry: 'On any view it will do, and has already done, great and irreparable harm to entirely innocent people'.[76] McClellan advocated for the modification of the NSW ICAC inquiry process to only hold public inquiries in limited circumstances, but did not explicitly call for the removal of public reporting of corruption investigations.[77]

Paul Pearce, a member of the New South Wales Joint Parliamentary Committee on the Independent Commission, with legal training and human rights experience, reflected on parliamentary oversight of the NSW ICAC and in particular the statement in the NSW statute

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71 For example, Hoole and Appleby (n 20); Ng and Appleby (n 25), Kempf & Graycar (n 24).

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

73 See, eg, Chris Merritt, 'United Nations puts arrogant ICAC on notice' *The Australian* (1 December 2023); Chris Merritt, 'Onus on Canberra to prevent human rights breaches *The Australian* (8 December 2023).

74 Rule of Law Institute, *Anti-corruption bodies* <https://www.ruleoflaw.org.au/anti-corruption-bodies/>

75 Peter McClellan, 'ICAC: A Barrister's Perspective' (1991) 2(3) *Current Issues in Criminal Justice* 17, 21.

76 Ibid 21.

77 Ibid 28-9.

that findings of corruption conduct are not to be interpreted as a criminal conviction or disciplinary measure:

> This is small comfort to someone found to be corrupt but who is not subsequently charged with any offence by the DPP. That person never gets his day in court. Do these findings have a discriminatory impact on the future employment of a person even though no criminal or disciplinary proceedings are taken? The answer to this question would justify some research I think.[78]

In his 2001 book on permanent commissions of inquiry and royal commissions, Stephen Donoghue (now the Commonwealth Solicitor-General), discussed damage to reputation by commissions as being an interest that attracts procedural fairness (which we consider separately below):

> Commissions may damage the reputations of suspects by publishing evidence, or by making findings, that implicate them in criminal activities. Similarly, they may damage the reputation of witnesses who are not suspects by, for example, finding they are associated with criminals or that they are otherwise unethical or guilty of misconduct. As damage to reputation may be caused by the conduct of the commission as a whole, rather than just by the actions of a commission when using coercive powers against a suspect or witness, commissions may be required to comply with the rules of procedural fairness in relation to any suspect or witness whose reputation may be damaged by the investigation as a whole.[79]

Donoghue analysed several cases, including *ICAC v Balog*[80] and *Re the Anti-Corruption Commission; ex parte Parker*,[81] which explicitly considered the reporting powers of anti-corruption commissions and damage to reputations. He concluded that anti-corruption commissions such as NSW ICAC that publicly publish reports identifying individuals who have engaged in corrupt conduct are likely to be subject to requirements of procedural fairness.[82] However, Donoghue noted that according to the case of *ICAC v Chaffey*[83] procedural fairness did not require a decision in favour of a private hearing when reputations may be damaged; the rules of procedural fairness do not guarantee that no harm will be done to an individual's reputation in the course of an investigation—the rules merely ensure that a person whose reputation is at risk is given an opportunity to be heard.[84]

In 2015, former High Court of Australia Chief Justice Murray Gleeson and Bruce McClintock SC were commissioned by the NSW government to review and advise on

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78 Paul Pearce, 'Parliamentary Oversight from Parliament's Perspective: the NSW Parliamentary Committee on ICAC' (2006) 21 *Australasian Parliamentary Review* 1447.

79 Stephen Donoghue, *Royal Commissions and Permanent Commissions of Inquiry* (Butterworths, 2001) 153.

80 *ICAC v Balog* (1990)169 CLR 625, 635-6.

81 *Re the Anti-Corruption Commission; ex parte Parker* SC(WA), Pigeon, Murray and Wheeler JJ, CIV 2345 of 1997, 8 May 1998, unreported.

82 Ibid 170.

83 (1993) 30 NSWLR 21.

84 Donoghue (n 78) 194-5.

whether the scope of the NSW ICAC's jurisdiction and powers were appropriate.[85] While Gleeson and McClintock noted the capacity of a finding of corrupt conduct to cause reputational damage, nevertheless, they considered that it was appropriate for ICAC to possess these powers:

> There is a limit to the extent to which legislation can provide the solution to criticisms of the kind that have been made of the procedures of the ICAC. The very fact that inquiries are held in public with the obvious potential for reputational damage arising not only from considered findings at the end of an inquiry, but also from publicity associated with the course of the inquiry, creates a risk of serious unfairness. At the same time, publicity itself is a source of protection against administrative excess. From the point of view of the terms of the legislation, the Panel does not consider that amendment or qualification is required.[86]

Former Victorian Supreme Court judge Stephen Charles has written that any national integrity commission should be restricted in its powers to making public findings of fact, which in appropriate cases can be referred to a prosecutorial body for review. He goes on to explain how any concerns relating to reputation or fair trial should be addressed:

> Findings of fact should be open to judicial review, so that anyone affected should be able to have alleged errors reviewed. If a prosecution is contemplated after a public hearing, unfairness can be dealt with by delaying a trial or by appropriate directions from the trial judge. The NIC's report should however be made public at the end of an investigation, at the same time as the report is received by Parliament.[87]

The ACT Integrity Commission is required under the *Integrity Commission Act 2018* (ACT) to issue reputational repair protocols. The statute sets out reputational repair measures that the Commission will undertake if it makes a finding of corrupt conduct against a person that is later not prosecuted or if the person is later exonerated in court.[88] Dennis Cowdroy, former ACT Integrity Commissioner explained the competing interests that led to the ACT approach:

> While privacy is of paramount concern, especially under the Integrity Commission Act 2018, there is also some perceived public benefit in ensuring that issues of corruption in public office are ventilated as a deterrent to others. The holding of a public inquiry carries risks that a person's reputation will indeed be damaged. The ACT Integrity Commission has prepared a policy on reputational repair of damage. It is very mindful of damage that can be occasioned to a person as a result of its legitimate operation.[89]

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85 See generally Murray Gleeson and Bruce McClintock, *Independent Panel - Review of the Jurisdiction of the Independent Commission Against Corruption* (2015).

86 Ibid 17, 68.

87 Charles (n 23), 11.

88 Integrity Commission Reputational Repair Protocols 2020 (ACT) notifiable instrument NI2020–594 made under *Integrity Commission Act 2018* (ACT) s 204.

89 Dennis Cowdroy, 'The ACT Integrity Commission' (2021) 3(101) *AIAL Forum* 7.

The idea of the exoneration protocol has been endorsed by others, including the Rule of Law Institute (see above) and former NSW DPP Nicholas Cowdery, in a piece regarding the lessons for a national anti-corruption commission.[90]

The impact of public reporting on the right to reputation has been identified by Neil Laurie in his commentary on the *CCC v Carne* decision, that we set out in Part IV(b), below.

### *(b) Right to fair trial*

Another connection made by some commentators between public reporting and individuals is the potential for it to affect the right to a fair trial.

An independent advisory panel consisting of former High Court Justice Ian Callinan and constitutional law Professor Nicholas Aroney (2013) to assess the then Queensland Crime and Misconduct Commission (CMC) contended that the identification of individuals by the CMC in the course of its investigations may prejudice the fair conduct of criminal trials, including through contamination by the media:

> It is necessary, therefore, to confine the statements that bodies such as the Police Service and the CMC (and others) may make, not only for the reasons we have earlier set out concerning the detrimental effect upon the reputation of those made subject to a complaint, but also because such statements, whether in the media or otherwise, may affect, even subliminally, potential jurors and may therefore may have a real capacity to prejudice the fair conduct of criminal trials, particularly when there is no strong public interest served by making or publicising the statements. By this we mean statements to the effect that a particular person or events linked to a particular person, are under investigation. [91]

In 2018, leading Australian barrister Brett Walker SC argued in the Whitlam oration that the NSW ICAC's should not be able to make public findings of corrupt conduct and the findings of the commission of criminal offences, linking this to the notion of a fair trial before conviction.[92]

Donoghue in his book also linked the potential for commissions interfering with a person's right to a fair trial through the release of public reports with the requirements of procedural fairness:

> Fair procedures are … important when commissions are established to facilitate prosecutions, both because commissions have the potential to interfere with a suspect's right to a fair trial and because, if they conduct public hearings or release

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90 Nicholas Cowdery, 'Lessons from the NSW ICAC: "This Watchdog has Teeth"' (Paper presented at the Accountability and the Law Conference 2017) 31.

91 Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 90. <https://classic.austlii.edu.au/au/journals/UQLRS/2013/5.html> ('*Review of the Crime and Misconduct Act*').

92 Brett Walker, 'The Information that Democracy Needs', Whitlam Oration, University of Western Sydney, 5 June 2018 <https://www.whitlam.org/publications/the-information-that-democracy-needs>.

> public reports, they may cause irreparable damage to a suspect's reputation, irrespective of the outcome of the subsequent criminal proceedings.[93]

Thus, Donoghue simply emphasised the importance of fair procedures by commissions.

We note that even the most critical commentary from Callinan and Aroney[94] assumed that disclosure of the nature, substance and/or 'subjects' (that is, individuals) of corruption complaints was legitimate and/or necessary for a concluded investigation report, despite recommending significant legislated restrictions on release of that information upon receipt of a complaint or while an investigation was in progress (unless progressing in public). Their recommended restrictions on publication would have been 'permanent', unless named persons made or consented to the disclosure themselves, in the case of no further action by the Commission. But their recommendation did not apply where any finding had been made against a person or persons, or where the Commission was publishing details in order to 'clear' a person or persons, or once formal criminal or disciplinary proceedings commenced."

### *(c) Fair process*

The principle of procedural fairness is fundamental to the exercise of public power, and has been the most directly addressed in scholarship considering the powers of anti-corruption commissions. Basic procedural rights should be provided to people who may be adversely affected by the use of these powers, although these rights can be modified or excluded by statute.[95] As such, the legislative requirement for anti-corruption commissions to publicly report their findings may be accompanied by the requirement for procedural fairness, where the commission must disclose adverse material to a person that they will adversely name in their public reports before the report is finalised.[96]

Following the High Court's recent decision in *AB v Independent Broad-based Anti-corruption Commission,* Australian administrative law expert Professor Matthew Groves has published on this point. In that case, the High Court held that the Victorian Independent Broad-based Anti-corruption Commission (IBAC) must disclose 'adverse material' (referred to in s 162(3) of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic)) in the form evidentiary material upon which those proposed adverse comments or opinions are based, although 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.[97] Thus, the disclosure of the mere proposed adverse comments or opinions in the special report was insufficient. Administrative law expert Professor Matthew Groves argued, in this context, the important question is how to 'strike the balance between the

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93 Donoghue (n 79) 137.

94 Callinan and Aroney (n 91).

95 *Kioa v West* [1985] 159 CLR 550.

96 See eg *IBAC Act* s 162.

97 [2024] HCA 10. See Matthew Groves, 'What's in a Name? Fairness and a Reasonable Opportunity: AB v Independent Broad-Based Anti-Corruption Commission' (2023) 45(4) *Sydney Law Review* 525.

competing interests of an investigative agency such as IBAC and the people who are affected by its investigations'.[98]

In his detailed book on investigating corruption in public office, former Chief Commissioner of the NSW ICAC Peter Hall noted that the issue of balance would differ based on the individual circumstances of the case:

> the issue of "balance" will depend upon considerations such as the nature of the commission of inquiry and its jurisdiction, the nature of the investigation in question and the issues arising. The balance between ensuring that the integrity of an investigation is preserved and the need to ensure fairness and prevent avoidable damage to reputation of affected persons is one to be carefully achieved having regard to the facts and circumstances of each case, there being no rigid rule. An appropriately considered approach is required rather than a one-size-fits-all formula.[99]

Hall has emphasised the ability of an affected person to make submissions in public even at an early stage of proceedings, such as to respond to the opening address of counsel assisting:

> Where an opening address in a public inquiry attracts considerable media attention with particular attention upon the conduct of individuals the subject of investigation into possible corrupt conduct, fairness usually requires that such persons have an early opportunity to respond to opening comments. That may serve at least three purposes. First, identification of relevant matters said to be exculpatory of wrongdoing. Second, as assistance in identifying issues likely to arise and that require particular scrutiny. Third, as a reputational safeguard against unwarranted or sensationalised media reporting at the outset of a public inquiry.[100]

There is thus a detailed articulation about the requirements of procedural fairness in the context of anti-corruption commissions.

Donoghue in his work has analysed the requirements for procedural fairness for those subject to commissions, and has identified several individual procedural rights that we have set out above, including the right to notice of adverse conclusions, accompanied by the right to answer those adverse findings.[101]

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98 Groves (n 97).

99 Hall (n 54) 780.

100 Ibid 779.

101 Donoghue (n 79) 181-4.

## PART IV: Design and effectiveness of public reporting

### *(a) Scholarship on design of public reporting*

As we explained in Part I(b), much of the scholarship directed towards the characterisation and design of anti-corruption agencies has included as a key characteristic, or design feature, the ability to publicly report findings and outcomes, which must be balanced against individual reputation and fair process rights, there is relatively little that considers the design of public reporting directly.

One exception to this is the work of public integrity expert Professor AJ Brown (one of this report's authors). Brown, writing in 2014 and responding to the 2013 Callinan-Aroney review of the Crime and Corruption Commission, identified the need not just for public reporting, but for it to be at the anti-corruption agency's discretion:

> … it typically remains central to the statutory purpose and political legitimacy of such agencies that they have the freedom to investigate what they see fit, as they see fit, *and to report when and what they see fit (subject to law)*.[102]

He goes on to explain that there has been a general acceptance that 'an integrity agency must have its own discretion to inform those it deems need to know, including the media or general public, where reasonably satisfied that this is in the public interest, and provided it is following statutory procedures and observing procedural fairness.'[103]

Brown was responding to a position taken by Ian Callinan and Nicholas Aroney with respect to the ability of any party (including an anti-corruption agency but more relevantly, third parties) to use the fact of a corruption complaint to then publicise that complaint, in their 2013 *Review of the Crime and Misconduct Act [Qld] and Related Matters*.[104] Callinan and Aroney recommended a very restrictive ability to publicly report on complaints or investigations, at least while in progress:

> The law should be that it is 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 fact of any investigation by the CMC subject only to three exceptions. The first exception should be that, in the case of a public investigation, fair reporting of, and debate about it, will be permissible. The second exception should be as authorised by the Supreme Court in advance of publication or disclosure if there be a compelling public interest in such publication or disclosure. The third is the case of a person cleared or not proceeded against who authorises in writing disclosure of it. Disclosure could of course occur if otherwise required by law, such as by Court processes or Court order.[105]

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102 Brown (n 5) 322.

103 Ibid.

104 Callinan and Aroney (n 91).

105 Ibid Recommendation 8, 216.

This recommendation was based on the 'traditional approach' of police forces undertaking investigations, where there are only limited circumstances in which public statements are allowed to be made.[106] Brown also responded:

> It is doubtful that the solution [the Callinan and Aroney recommendation of a blanket criminal offence of disclosure] would be workable, given the impracticability of the restrictions, which on Callinan and Aroney's account surpass any such restrictions on other investigative bodies such as the police. However, the key point is that rather than preserving the independence of the agency by imposing a balanced discretion, the independent discretion to make information public would simply be removed.[107]

However, we note that the above debate related primarily to complaints or investigations in process, not concluded investigations. We also note that despite subsequent recommendations (including by the CCC) for a more balanced approach to law reform to control the inappropriate publicisation of corruption allegations in specific circumstances, no reform was proceeded with based on the Callinan and Aroney recommendations.

In 2018, Parliamentary Inspector of the Corruption and Crime Commission of Western Australia Michael Murray delivered a paper that defended the restrictions on public reporting by the West Australian Crime and Corruption Commission, by reference to a test of 'public interest'. He stated:

> Otherwise, public disclosure is, in Western Australia and generally, confined to circumstances where it is considered to be in the public interest to advance the fight against corruption in particular circumstances. It ordinarily occurs by way of the process of reporting to Parliament (usually by way of a report to its bipartisan standing committee) and even then it should be the case that an opinion or finding formed in respect of the conduct of an individual public officer or other person who is found to be party to or in some way involved in the corruption should not name the individual unless necessary for the purpose mentioned above.[108]

The highly restrictive ability to disclose material on individual investigations under the South Australian *Independent Commissioner Against Corruption Act 2012* (SA) due to legislative amendments in 2021, has been subject to limited academic analysis. Yee Fui Ng (one of the authors of this report) and Stephen Gray have criticised the wide-ranging reduction of jurisdiction and powers of the South Australian ICAC in 2021, including restrictions on public reporting on findings or suggestions of criminal or civil liability, stating that '[w]hile there were clear procedural deficiencies in previous investigations, the evisceration of the Commission's jurisdiction goes far beyond any concerns raised by the controversies'.[109] Ng and Gray have argued that the restriction on the public reporting function 'means that the

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106 Ibid 91.

107 Brown (n 5) 324.

108 Michael Murray, 'A National Integrity Commission' (2018) 93 *AIAL Forum* 45.

109 Yee-Fui Ng and Stephen Gray, 'Robust Watchdogs, Toothless Tigers or Kangaroo Courts? The Evolution of Anti-Corruption Commissions in Australia' *UNSW Law Journal* (forthcoming 2024).

Commission cannot publicise any findings of corrupt conduct, reducing its ability to achieve its deterrence, corruption prevention, and educative functions'.[110]

Brian Lian, student editor at the *Adelaide Law Review*, has attributed the prohibition on the Commission from making a public statement or publishing a report which includes findings or suggestions of criminal or civil liability, to the events that stemmed from Operation Bandicoot (involving allegations that eight police officers had been stealing property from crime scenes), and a public media release of the South Australian ICAC relating to that investigation.[111]

### *(b) Scholarship responding to ACCC v Carne*

There is very little scholarship responding directly to the High Court's decision in *CCC v Carne*,[112] and in particular the point regarding the desirability of public reporting on individual investigations (as opposed to the parliamentary privilege point). Neil Laurie, Clerk of the Queensland Parliament, has published two pieces on the decision.[113] On the question of the desirability of public reporting, and what that public report might entail following the *Carne* decision, he argues:

> In my submission, it is not necessary for independent commissions to make findings of corrupt conduct or criminal behaviour against individuals in a public report. Such matters can be decided by other more appropriate bodies. However, Commissions should be able to report a narrative of facts, expose broad behaviour and corruption risks and advise that they have referred matters to the appropriate body. It is necessary for the public to be appraised of the wider facts of a matter and the behaviours of public officials and an appreciation of the mischief at hand.[114]

He went on, critical of the 'balance' struck by the provision as interpreted by the High Court between the efficacy of the Crime and Corruption Commission, and the rights of the individuals involved:

> Without statutory amendment, the public will remain 'in the dark' about the outcomes of a large number of corruption investigations where a decision does not result in criminal proceedings but nonetheless contain lessons for, and usually recommendations to reduce the incidence of corruption or misconduct in, Queensland's public sector. Also, the very real benefit in some people under

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110 Ibid.

111 Brian Lian, 'A More Effective Corruption-Busting Tool' or an Effectively Busted ICAC? Examining the 2021 Crime and Public Integrity Policy Committee Amendments to the Independent Commissioner against Corruption Act 2012 (SA)' (2022) 43(1) *Adelaide Law Review* 507, 518.

112 *Crime and Corruption Commission v Carne* [2023] HCA 28.

113 Neil Laurie, 'Removing the watchdog's bark: Crime and Corruption Commission v Carne' (24 October 2023) https://www.auspublaw.org/blog/2023/10/removing-the-watchdogs-bark-crime-and-corruption-commission-v-carne; Neil J Laurie, 'Mount Erebus to Ann Street: Forty years of judicial supervision of ad hoc and permanent commissions of inquiry and the intersection with parliamentary privilege and doctrines of mutual respect; (2023) 38(2) *Australasian Parliamentary Review* 73.

114 Laurie 'Mount Erebus' (n 113) 94.

investigation, who may have been wrongly accused or slurred, to have a public report clearing their name cannot also be understated. Should we be so protective of individual rights (reputation) that it keeps the public in the dark about matters of corruption and misconduct by public officials? Should the public not be able to judge for themselves the conduct of public officials by knowing the factual circumstances of an issue and the behaviours that occurred?

Should we be so protective of individual rights (reputation) that it keeps the public in the dark about matters of corruption and misconduct by public officials? Should the public not be able to judge for themselves the conduct of public officials by knowing the factual circumstances of an issue and the behaviours that occurred?[115]

### *(c) Data on effectiveness of public reporting*

We could not identify any direct empirical (qualitative or quantitative) research currently available on the public expectations relating to public reporting, nor on the impact of public reporting on public confidence.

There is significant empirical data confirming strong public perceptions as to the desirability of anti-corruption commissions being able to conduct their proceedings transparently and publicly, in the form of the ability to conduct public hearings.[116] Most of this was collected as part of advocacy relating to the design of the new National Anti-Corruption Commission. This may give an indication of likely answers if the same questions were asked in empirical research, regarding the ability of agencies to publicly report their findings. However, there is no data that we have been able to locate directly considering the perceived performance of anti-corruption commissions relative to their powers to report publicly. As we noted in Part III(c), Prenzler and Maguire draw conclusions from data about high public awareness, perception and complainant satisfaction about the effect of public reporting, but there is no data drawing this relationship. Surveys conducted by the New South Wales ICAC (the last of which was conducted in 2006) revealed data in relation to public knowledge of the work of

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115 Ibid.

116 See The Australia Institute, *Poll shows PM Backing a Winner on National Anti-Corruption Body* (12 December 2017) <https://australiainstitute.org.au/post/poll-shows-pm-backing-a-winner-on-national-anti-corruption-body/>; The Australia Institute, *Poll: 80% of Australians Support a National Integrity Commission with Strong Powers* (15 April 2019) https://australiainstitute.org.au/post/poll-80-of-australians-support-a-federal-integrity-commission-with-strong-powers/; The Australia Institute, *Only 1. In 5 Support Exceptional Circumstances Restriction on NACC Public Hearings* (12 October 2022) < https://australiainstitute.org.au/post/only-1-in-5-support-exceptional-circumstances-restriction-on-nacc-public-hearings/>. See also Griffith University and Transparency International, Global Corruption Barometer survey for Australia https://www.griffith.edu.au/__data/assets/pdf_file/0023/518252/20Aug-Global-Corruption-Barometer-Release-Griffith-University-TI-Australia-EMBARGOED.pdf; and the Australian Election Study (AES), which is the leading study of political attitudes and behaviour in Australia: see the 2022 report: Sarah Cameron et al, *The 2022 Federal Election: Results from the Australian Election Study* (Report, 2022) <https://australianelectionstudy.org/wp-content/uploads/The-2022-Australian-Federal-Election-Results-from-the-Australian-Election-Study.pdf>.

ICAC and individual matters, but did not directly connect this to the public hearings or public reporting of that body.[117]

In general, the lack of data on which to base conclusions as to the 'effectiveness' of different design aspects and operation of anti-corruption commissions has been commented on, for instance, in relation to the correlation between the establishment of anti-corruption commissions and public perceptions of corruption and trust in government institutions,[118] and in relation to the effectiveness of education programs conducted by anti-corruption agencies.[119]

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117 See New South Wales Independent Commission Against Corruption, *Community Attitudes to Corruption and the ICAC – Report on the 2006 Survey* (December 2006) 26-30.

118 See, eg, Gilbert + Tobin Centre of Public Law, Submission to the Select Committee on the Establishment of a National Integrity Commission (Submission 19, 20 April 2016), referring to empirical findings in relation to public perception of corruption in Diana Bowman and George Gilligan, 'Public awareness of corruption in Australia' (2007) 14(4) *Journal of Financial Crime* 438; Ian McAllister, 'Corruption and confidence in Australian political institutions' (2014) 49(2) *Australian Journal of Political Science* 174.

119 See further Catherine Cochrane, 'Teaching integrity in the public sector: evaluating and reporting anti-corruption commissions' education function' (2020) 28(1) *Teaching Public Administration* 78.

**Researcher Profiles**

**Professor Gabrielle Appleby** (UNSW) is a leading expert in government integrity. Her expertise includes the role of public lawyers in ensuring government integrity, the integrity of the judicial branch, and parliamentary law. Gabrielle is the Director of The Judiciary Project and the Gender and Public Law Project at the Gilbert + Tobin Centre of Public Law (UNSW). She sits on the Board of the Centre for Public Integrity and the Australian Studies Institute (ANU), is the constitutional consultant to the Clerk of the House of Representatives and a Fellow of the Australian Academy of Law. She has consulted across government, including for the New South Wales Legislative Council, the Victorian Department of Justice, the Australian Human Rights Commission and the Australasian Institute of Judicial Administration. She is the co-editor of the Hart Publishing series *Rule of Law in Context*, and was the inaugural editor of AUSPUBLAW, Australia's leading public blog. In 2016-2017, she worked as a pro bono constitutional adviser to the Regional Dialogues and the First Nations Constitutional Convention that led to the Uluru Statement from the Heart. She has previously led a team of researchers investigating the public perceptions of corruption in South Australia (2014). She has published extensively on government accountability, including *The Role of the Solicitor-General: Negotiating Law, Politics and the Public Interest* (Hart Publishing, 2016), as the lead author of *Australian Public Law* (Oxford University Press, 4th ed, 2023), and co-author of *The Tim Carmody Affair: Australia's greatest judicial crisis* (New South Publishing, 2016) and *Government Accountability* (Cambridge University Press, 2014). She has held visiting positions at Cambridge Law School, Edinburgh Law School, Bingham Centre for the Rule of Law and the Colorado Law School. She worked previously for the Crown Solicitor of Queensland and the Victorian Government Solicitor's Office.

**Yee-Fui Ng** is an Associate Professor at Monash University. She researches in the areas of political integrity and the law, as well as the interaction between public law and politics. Yee-Fui is the author of *The Rise of Political Advisors in the Westminster System* (Routledge, 2018) and *Ministerial Advisers in Australia: The Modern Legal Context* (Federation Press, 2016), which was a finalist of the Holt Prize. Yee-Fui was a 2021-22 Fulbright Scholar and undertook research at New York University on the digital welfare state. Her work has been cited by the High Court of Australia, State Supreme Courts, federal and state parliaments, as well as various government inquiries. In 2023, Yee-Fui was the winner of the Monash University Vice-Chancellor's Award for Research Excellence by an Early Career Researcher (HASS) (the University's highest honour for outstanding research excellence and impact).

**A J Brown AM** is professor of public policy and law in the School of Government & International Relations, Griffith University, and co-leader of the Centre for Governance & Public Policy's integrity, leadership and public trust program. He is also Chair of Transparency International Australia, having served on the TI Australia board of directors since 2010, and from 2017-2023 on the TI global board. He has worked or consulted at all levels, and across all branches of government in Australia, including as a senior investigator for the Commonwealth Ombudsman and Associate to Justice G E Tony Fitzgerald AC KC. He was a member of the Commonwealth's Ministerial Expert

Advisory Panel on Whistleblower Protection (2017-2019). In 2024, he was appointed to the Public Sector Governance Council of Queensland for a three year term. AJ has led seven Australian Research Council projects into public integrity and governance reform since 2005, including the 2020 Australian Research Council Linkage Project report, 'Australia's National Integrity System: The Blueprint for Reform'. He currently leads a $1.2 million Australian Research Council Discovery project on public trust, mistrust and distrust. He is a past President of the Australian Political Studies Association (2017-18), a Fellow of the Academy of Social Sciences in Australia, and a Fellow of the Australian Academy of Law. In 2023, he was made a Member of the Order of Australia for services to the law and public policy, particularly through whistleblower protection.

**Full Bibliography**


Bruce Ackerman, 'The New Separation of Powers' (2000) 113 *Harvard Law Review* 642

Gabrielle Appleby, 'Horizontal Accountability: the rights-protective promise and fragility of executive integrity institutions' (2017) 23(2) *Australian Journal of Human Rights* 168.

Nicholas Bautista-Beauchesne, 'Crafting anti-corruption agencies' bureaucratic reputation: an uphill battle' (2021) 75 *Crime, Law and Social Change* 297

Mark Bovens and Ancrhit Wille, 'Indexing watchdog accountability powers: a framework for assessing the accountability capacity of independent oversight institutions' (2021) 15 *Regulation & Governance* 856

Diana Bowman and George Gilligan, 'Public awareness of corruption in Australia' (2007) 14(4) Journal of Financial Crime 438;

Louis D Brandeis, *Other People's Money and How the Bankers Use It* (F A Stokes, 1914)

AJ Brown, 'Australia's National Anti-corruption Agency Arrives: Will it stand the test of time?' *The Conversation* (30 November 2022) <https://theconversation.com/australias-national-anti-corruption-agency-arrives-will-it-stand-the-test-of-time-195560>

A J Brown, 'The Integrity Branch: A "System", an "industry", or a Sensible Emerging Fourth Arm of Government?' in Matthew Groves (ed) *Modern Administrative Law in Australia: Concepts and Context* (CUP 2014) 302

Elliot Bulmer, *Independent Regulatory and Oversight (Fourth-Branch) Institutions* (International IDEA Constitution-Building Primer 19, 2019)

Lisa Burton and George Williams, 'The integrity function and ASIO's extraordinary questioning and detention powers' (2012) 38 *Monash University Law Review* 1

Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013)

Sarah Cameron et al, *The 2022 Federal Election: Results from the Australian Election Study* (Report, 2022) <https://australianelectionstudy.org/wp-content/uploads/The-2022-Australian-Federal-Election-Results-from-the-Australian-Election-Study.pdf>

Stephen Charles, 'A National Integrity Commission?' (2020) 46(2) *Monash University Law Review* 1

Catherine Cochrane, 'Teaching integrity in the public sector: evaluating and reporting anti-corruption commissions' education function' (2020) 28(1) *Teaching Public Administration* 78

Nicholas Cowdery, 'Lessons from the NSW ICAC: "This Watchdog has Teeth"' (Paper presented at the Accountability and the Law Conference 2017)

Dennis Cowdroy, 'The ACT Integrity Commission' (2021) 3(101) *AIAL Forum* 7

Robin Creyke, 'An "Integrity" Branch' (2012) 70 *AIAL Forum* 33

Joseph De Angelis, Richard Rosenthal and Brian Buchner, *Civilian Oversight of Law Enforcement: Assessing the Evidence* (2016)

Samuel De Jaegere, 'Principles for Anti-Corruption Agencies: A Game Changer' (2012) 1(1) *Jindal Journal of Public Policy* 79

Franklin De Vrieze and Luka Glušac, *Combatting corruption capably: An assessment framework for parliament's interaction with anti-corruption agencies* (Westminster Foundation for Democracy, 2020)

Marie J dela Rama, Michael E Lester and Warren Staples, 'The Challenges of Political Corruption in Australia, the Proposed Commonwealth Integrity Commission Bill (2020) and the Application of the APUNCAC' (2022) 11(1) *Laws* 1 <https://doi.org/10.3390/laws11010007>.

Stephen Donoghue, *Royal Commissions and Permanent Commissions of Inquiry* (Butterworths, 2001)

Kalmen Dutt, 'To shame or not to shame, that is the question' (2016) 14(2) *eJournal of Tax Research* 486

Chris Field, 'The Fourth Branch of Government: The Evolution of Integrity Agencies and Enhanced Government Accountability' (2013) 72 *AIAL Forum* 24

Stephen Gageler, 'Three is Plenty' in Greg Weeks and Matthew Groves (eds) *Administrative Redress In and Out of the Courts: Essays in Honour of Robin Creyke and John McMillan* (Federation Press, 2019) 12

Gilbert + Tobin Centre of Public Law, Submission to the Select Committee on the Establishment of a National Integrity Commission (Submission 19, 20 April 2016)

Murray Gleeson and Bruce McClintock, *Independent Panel - Review of the Jurisdiction of the Independent Commission Against Corruption* (2015)

Griffith University and Transparency International Australia 'A Federal Anti-Corruption Agency for Australia?' Discussion Paper No 1, 16-17 March 2017

Griffith University and Transparency International, Global Corruption Barometer survey for Australia https://www.griffith.edu.au/__data/assets/pdf_file/0023/518252/20Aug-Global-Corruption-Barometer-Release-Griffith-University-TI-Australia-EMBARGOED.pdf

Matthew Groves, 'What's in a Name? Fairness and a Reasonable Opportunity: AB v Independent Broad-Based Anti-Corruption Commission' (2023) 45(4) *Sydney Law Review* 525

W M C Gummow, 'A Fourth Branch of Government?' (2012) 70 AIAL Forum 19

Peter Hall, *Investigating Corruption and Misconduct in Public Office* (LawBook Co, 2019)

Grant Hoole and Gabrielle Appleby, 'Integrity of Purpose: A Legal Process Approach to Designing a Federal Anti-Corruption Commission' (2017) 38 *Adelaide Law Review* 397

Independent Commissioner Against Corruption South Australia, 'Six South Australian Police Officers Arrested as a Result of Investigation Headed by the Independent Commissioner

Against Corruption' (Media Release, 13 October 2014) 1 <https://web.archive.org.au/awa/20160302152200mp_/http://www.icac.sa.gov.au/sites/default/files/20141013_six_police_officers_arrested.pdf>

Radha Ivory, *Corruption, Asset Recovery and the Protection of Property in Public International Law: The Human Rights of Bad Guys* (Cambridge University Press, 2014)

*Jakarta Statement on Principles for Anti-Corruption Agencies* (2012)

J Johnson, H Hechler, L De Sousa and H Mathisen, How to monitor and evaluate anti-corruption agencies: guidelines for agencies, donors, and evaluators (U4 Anti-Corruption Resource Centre, Issue No. 8, 2011)

Michael Johnston, 'Independent Anti-Corruption Commissions: Success Stories and Cautionary Tales' in Cyrille Fijnant & Leo Huberts (eds) *Corruption, Integrity and Law Enforcement* (Kluwer Law International 2002)

Robin J Kempf and Adam Graycar, 'Dimensions of Authority in Oversight Agencies: American and Australian Comparisons' (2018) 14 *International Journal of Public Administration* 1145

Tarunabh Khaitan, 'Guarantor Institutions' (2021) 1 *Asian Journal of Comparative Law* S40

Tarunabh Khaitan, 'Guarantor (or the so-called 'Fourth Branch') Institutions' in Jeff King and Richard Bellamy (eds) *Cambridge Handbook of Constitutional Theory* (CUP 2023)

Heinz Klug, 'Transformative Constitutions and the Role of Integrity Institutions in Tempering Power: The Case of Resistance to State Capture in Post-Apartheid South Africa' (2019) 67 *Buffalo Law Review* 701

Petia Kostadinova, 'Improving the Transparency and Accountability of EU Institutions: The Impact of the Office of the European Ombudsman' (2015) 53 *Journal of Common Market Studies* 1077

Anna Krajewska and Grzegorz Makowski, 'Corruption, anti-corruption and human rights: the case of Poland's integrity system' (2017) 68 *Crime, Law and Social Change* 325

Neil Laurie, 'Removing the watchdog's bark: Crime and Corruption Commission v Carne' (24 October 2023) https://www.auspublaw.org/blog/2023/10/removing-the-watchdogs-bark-crime-and-corruption-commission-v-carne;

Neil J Laurie, 'Mount Erebus to Ann Street: Forty years of judicial supervision of ad hoc and permanent commissions of inquiry and the intersection with parliamentary privilege and doctrines of mutual respect; (2023) 38(2) *Australasian Parliamentary Review* 73

Brian Lian, 'A More Effective Corruption-Busting Tool' or an Effectively Busted ICAC? Examining the 2021 Crime and Public Integrity Policy Committee Amendments to the Independent Commissioner against Corruption Act 2012 (SA)' (2022) 43(1) *Adelaide Law Review* 507, 518

Ian McAllister, 'Corruption and confidence in Australian political institutions' (2014) 49(2) *Australian Journal of Political Science* 174

Peter McClellan, ‘ICAC: A Barrister’s Perspective’ (1991) 2(3) *Current Issues in Criminal Justice* 17

John McMillan, 'The Ombudsman and the Rule of Law' (2005) 44 *AlAL Forum* 1

John McMillan ‘Re-thinking separation of powers; (2010) 38 *Federal Law Review* 423;

Sergio Marco Gemperle, ‘Comparing Anti-corruption Agencies: A New Cross-national Index’ (2018) 23(3) *International Review of Public Administration* 156

Patrick Meagher and Caryn Voland, *Anti-Corruption Agencies (ACAs): Office of Democracy and Governance Anti-Corruption Program Brief* (Washington DC, United States Agency for International Development, June 2006)

Albert Meijer, ‘Transparency’ in Mark Bovens, Robert Goodin and Thomas Schillemans (eds), *The Oxford Handbook of Public Accountability* (Oxford University Press) 507

Chris Merritt, ‘United Nations puts arrogant ICAC on notice’ *The Australian* (1 December 2023)

Chris Merritt, ‘Onus on Canberra to prevent human rights breaches *The Australian* (8 December 2023)

Chris Merritt, ‘Reputational Damage at the Heart of ICAC Probe into Operation Bandicoot’, *The Australian* (online, 18 February 2021) <https://www.theaustralian.com.au/business/legal-affairs/reputational-damage-atheart-of-icac-probe-into-operation-bandicoot/news-story/7d51781f46036d524e5a54dd9d1b7904>

Daniel J Metcalfe, ‘The History of Government Transparency’ in Padideh Ala’I and Robert G Vaughn (eds), *Research Handbook on Transparency* (Edward Elgar, 2014) 247

A Mungiu-Pippidi and R Dadašov, ‘When do anticorruption laws matter? The evidence on public integrity enabling contexts (2017) 68 *Crime, Law and Social Change* 387

Michael Murray, ‘A National Integrity Commission’ (2018) 93 *AIAL Forum* 45

New South Wales Independent Commission Against Corruption, *Community Attitudes to Corruption and the ICAC – Report on the 2006 Survey* (December 2006)

Yee Fui Ng and Gabrielle Appleby, *Towards a framework for assessing the design & amendment of anti-corruption commissions in Australia*, Paper delivered at National Administrative Law Conference, August 2023, Adelaide (on file with authors).

Yee-Fui Ng and Stephen Gray, ‘Robust Watchdogs, Toothless Tigers or Kangaroo Courts? The Evolution of Anti-Corruption Commissions in Australia’ *UNSW Law Journal* (forthcoming 2024)

OECD, Measures for promoting integrity and preventing corruption: How to assess? Report of OECD Public Governance Committee GOV/PGC (2004) 24 (October 2004) <www.oecd.org/dataoecd/40/47/34406951.pdf>

OECD, Public sector integrity: a framework for assessment (OECD, 2005)

OECD, Specialised anti-corruption institutions: review of models (OECD, 2nd ed, 2013) 34–5

Ray Pawson, 'Evidence and Policy and Naming and Shaming', (2002) 23(3) *Policy Studies* 211

Paul Pearce, 'Parliamentary Oversight from Parliament's Perspective: the NSW Parliamentary Committee on ICAC' (2006) 21 *Australasian Parliamentary Review* 1447

Zoe Pearson, 'An International Human Rights Approach to Corruption' in Peter Lamour *Corruption and Anti-Corruption* (ANU Press 2013)

Jeremy Pope and Frank Vogl, 'Making Anticorruption Agencies More Effective' (2000) *Finance & Development* 6

Scott Prasser, 'Australian Integrity Agencies in Critical Perspective' (2012) 33 *Policy Studies* 21

Scott Prasser, *Royal Commissions and Public Inquiries in Australia* (LexisNexis, 2nd ed, 2021)

Tim Prenzler and Michael Maguire, *Models of Police Oversight and Complaints Handling Processes Report for the Independent Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence* (22 August 2022)

Tim Prenzler and Michael Maguire, Reforming Queensland's Police Complaints System: Recent Inquiries and the Prospects of a Best Practice Model' (2023) 35(3) *Current Issues in Criminal Justice* 324

Linda Reif, 'Building democratic institutions: The role of national human rights institutions in good governance and human rights protection' (2000) 13 *Harvard Human Rights Journal* 1

D Richards, *A Call for Change: Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence, Report, Commission of Inquiry* (2022)

Rule of Law Institute, *Anti-corruption bodies* <https://www.ruleoflaw.org.au/anti-corruption-bodies/>

Andreas Schedler, 'Conceptualizing accountability' in Andreas Schedler, Larry Diamond, and Marc F Plattner (eds) *The self-restraining state: Power and responsibility in new democracies* (Lynne Rienner Publishers, 1999) 13

Samual Siebie Ankamah, 'Why do "teeth" need "voice"? The case of anti-corruption agencies in three Australian states' (2019) 78 *Australian Journal of Public Administration* 481.

David Solomon, 'What is the Integrity Branch?' (2012) 70 *AIAL Forum* 26

Juliet S Sorensen, *Human Rights and Corruption* (Edward Elgar Publishing, 2021)

James Spigelman, 'The Integrity Branch of Government' (2004) 78 *Australian Law Journal* 72

Anita Stuhmcke, 'Government Watchdog Agencies and Administrative Justice' in Marc Hertogh, Richard Kirkham, and Robert Thomas (eds) *The Oxford Handbook of Administrative Justice* (OUP 2021) ch 6

The Australia Institute, *Poll shows PM Backing a Winner on National Anti-Corruption Body* (12 December 2017) <https://australiainstitute.org.au/post/poll-shows-pm-backing-a-winner-on-national-anti-corruption-body/>

The Australia Institute, *Poll: 80% of Australians Support a National Integrity Commission with Strong Powers* (15 April 2019) https://australiainstitute.org.au/post/poll-80-of-australians-support-a-federal-integrity-commission-with-strong-powers/

The Australia Institute, *Only 1. In 5 Support Exceptional Circumstances Restriction on NACC Public Hearings* (12 October 2022) < https://australiainstitute.org.au/post/only-1-in-5-support-exceptional-circumstances-restriction-on-nacc-public-hearings/>

B Topperwein, 'Separation of Powers and the Status of Administrative Review' (1999) 20 *AIAL Forum* 1

Transparency International, Anti-Corruption Agencies Strengthening Initiative, Research Implementation (2015) 7

Mark Tushnet, *The New Fourth Branch: Institutions for Protecting Constitutional Democracy* (CUP 2021)

*United Nations Convention Against Corruption*, opened for signature 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005) ('*UNCAC*')

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

United Nations Office of Drug and Crime, Colombo Commentary on the Jakarta Statement of Principles for Anti-corruption Agencies (2020)

United Nations Office of Drugs and Crime, *Technical Guide to the United Nations Convention Against Corruption* (2009)

Brett Walker, 'The Information that Democracy Needs', Whitlam Oration, University of Western Sydney, 5 June 2018 <https://www.whitlam.org/publications/the-information-that-democracy-needs>

# Annexure F: Staff of the Review

**Independent CCC Reporting Review – Staff ***

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|---|---|
| **The Hon Catherine Holmes AC SC** | The Reviewer |
| **Kyla Hayden** | Executive Director (19 February - 12 April) |
| **Jane Moynihan** | Senior Director (19 February – 12 April part-time)<br>Executive Director (15 April – 20 May) |
| **Brad McNamara** | Senior Principal Lawyer |
| **Kent Blore** | Senior Principal Lawyer |
| **Nikki Larsen** | Principal Lawyer |
| **Kim Fulcher** | Policy Officer |
| **Laura Elliott** | Legal Research Officer (part-time 2 days per week) |
| **Joshua Beale** | Legal Research Officer (part-time 2 days per week) |
| **Tobias Kennett** | Legal Research Officer (part-time 2 days per week) |
| **Sasha Ness** | Legal Research Officer (part-time 2 days per week) |
| **Laura Cooling** | Office Manager (part-time 3 days per week) |
| **Damon Guppy** | Principal Communications Officer (13 May – 20 May) |

* Full time staff, unless otherwise indicated