

**Commission of Inquiry relating to the Crime and Corruption Commission
Commissions of Inquiry Order (No.1) 2022**

**Attn: Honourable Gerald Edward (Tony) Fitzgerald AC QC
Honourable Alan Wilson QC**

Subject: Submission to the Inquiry

Dear Sirs,

As you may be aware, on 27 June 2019 I was charged with one count of Official Corruption under section 87 of the Criminal Code following an investigation by the CCC which commenced in July 2018. Almost two years later, on 19 August 2021 the Director of Public Prosecutions elected to drop the charge. At that time the charge had not yet proceeded to a committal hearing.

The decision to withdraw my charge was not as a result of any additional evidence proffered after the charges were brought, nor from any in-roads made at the committal hearing. Rather, it came as a result of the DPP giving proper consideration to the evidence produced in support of the charge and subsequently advising the court they had no evidence to offer.

The evidence provided was grossly insufficient and heavily weighted to “witness statements”. Had proper independent consideration been given to the strength of the case at a much earlier stage, it is my view that I would have never been charged.

To that end, I have elected to write this submission to outline my views and my evidence that supports this, as to why the Crime and Corruption Commission (“**CCC**”) has acted and continues to act outside the purview of their legislative responsibilities, through inherent practices and procedures that are both inadequate and inappropriate in the administration of justice.

Furthermore, it is my belief that the culture within the CCC must be changed, and that their powers and review processes should be challenged, remodelled and thoroughly scrutinised to ensure that the CCC’s future practices no longer deny those person or persons under investigation of their basic human rights.

The Adequacy and Appropriateness of the Structure of the CCC in relation to use of Seconded Police Officers:

In my submission, the adequacy and appropriateness of the structure of the CCC is insufficient and in need of immediate rectification. Seconded Police Officers working under the CCC promote a perpetually ambiguous sense of accountability with respect to the decisions to prosecute.

The implications were discussed in the *Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters* (“**Report**”), where the submission of the Logan City Councillors outlined the following:

“It has long been accepted at common law that it must be the arresting officer who forms the requisite satisfaction, to ensure accountability in light of the compromise between the values of individual liberty and public order. The effect of the internal, rather complicated process of charging within the CCC will often be that the person who made the final decision is not a witness at trial.”

It is my submission that the disparity between the motivation and cause for prosecution by Seconded Officers and the actual evidence adduced by the CCC was the cause for myself being incorrectly charged.

The Seconded Police Officers appear entirely beholden to the CCC and the decision to prosecute has seemingly become a 'rubber stamp' exercise, where insufficient consideration is given by the Seconded Police Officers to the viability of the evidence.

Section 57 of the *Crime and Corruption Act 2001* ("CCA") states that, "The commission 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 use of Seconded Officers in this way does not protect the public interest and creates a culture within the CCC that ignores impartiality by relying on opinions and motivations that are not holistically independent. This is a cultural issue that is present within the CCC that needs to be addressed.

The Adequacy and Appropriateness of Legislation, Procedures, Practices and Processes relating to the Charging and Prosecution of Criminal Offences for Serious Crime and Corruption in the context of CCC Investigations:

The current legislation, procedures, practices and processes of the CCC are woefully insufficient and ignore the common law requirement of procedural fairness, resulting in life changing decisions being made to "innocent until proven guilty" citizens without any regard for public interest, and allow for conflicts of interest to go unaddressed.

The CCC published a set of guidelines in January 2020 titled *Corruption in Focus: A guide to dealing with corrupt conduct in the Queensland public sector* ("**CCC's guidelines**"). According to Chapter 5.6, the CCC's approach in relation to procedural fairness is clear:

"The law of procedural fairness requires a decision-maker to listen to, and take into account, someone's point of view on anything that adversely affects them. A corrupt conduct allegation can certainly affect an individual, especially in relation to their reputation and their employment. In order to comply with the law, as a decision-maker or investigator, you will usually need to seek out a person's version of events and give them a chance to comment on any facts that might be detrimental or adverse to them."

In my view, a review of the last 10 years of the CCC, and more so in the last three years, demonstrates that the CCC's predominant aim and sole focus appears to be the prosecution of elected officials and public servants, more than it is about the prevention of major crime and misconduct, as provided by the Act. In relation to my case, and as is the case with countless defendants before me, it appears clear that there was never any proper consideration given to whether the complaint against me was sustainable, or able to be proven. The narrative the Seconded Officers followed was to instead "shoot first and ask questions later", to "Charge, and the DPP can consider the weight of the evidence".

My treatment while under investigation by the CCC showed a complete disregard to the law of procedural fairness. The investigation immediately took away the rights I had held previously, to the same degree as if I was actually convicted of the charge that was alleged. I was offered no formal rights as promoted in the guidelines above, and as a result of the CCC's procedures at the time, I suffered immense personal, professional and psychological trauma.

On 17 February 2018, immediately after the unsubstantiated claims had been raised, I became "un-electable", despite being portrayed in both mainstream media and the wider public face as the leading Moreton Bay Regional Mayoral candidate at the last Local Government election in 2020. While under investigation, I was issued with three

separate notices from three individual banks requesting that I [REDACTED] cease to be their customer. I was unable to refinance my family home or accept a lower interest rate for my home loan as offered by the institution, and to date, said banking institution refuses to communicate with me regarding the refinancing of my home loan. Due to the CCC's actions I am now refused the basic human right of negotiating my finances. What this meant financially for my family was that we were paying a minimum of one per cent (1%) higher interest rates throughout the entire pandemic, we were officially offered a lower rate but because of my circumstance with the CCC it was withdrawn, and I was still unable to get secure employment to survive and support my family.

Furthermore, in or around early December 2019, we were issued a seizure notice for \$80,000 by the CCC investigators on the basis that I held this amount in "Proceeds of Crime". This abhorrent and clear overreach of investigational powers was unjustified, and I believe a tactic to apply more pressure. Our house had a valuation of \$400,000, which on the face of things, would make it seem both unreasonable and disproportionate that this asset would be seized for the purpose of settling this unjust notice. The Court saw this seizure as heavily unfair also, as it immediately issued a caveat instead be secured over the asset. Again, the CCC's ability to adopt such aggressive tactics in relation to unproven allegations needs to be reviewed through urgent reform. By the time this Court order was issued, I knew the damage to my political and professional reputation, as well as to my personal wellbeing, had already been done.

In my view there was a concerted effort by the CCC to put significant pressure on me [REDACTED] as we were hand delivered the notice unannounced at our residence, presumably in an attempt to have me plead guilty to the charge.

Section 32(1) of the *Human Rights Act 2019* (Qld) states that "A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law." The damage caused to me as a result of the CCC's investigation is not in line with an individual who was presumed innocent. I would submit that I was denied my inherent human rights such as the right to a fair trial and the presumption of innocence under the current practices and procedures of the CCC.

The CCC's approach to adducing evidence [REDACTED] [REDACTED] also an abuse of procedural fairness. Section 31(1) of the *Human Rights Act 2019* (Qld) states the following:

"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."

My experience being investigated by the CCC vigorously detailed that their practices and processes leave inadequate room for such a basic human right to be acted upon by the alleged party. My own experience of this was when the charges against me were not able to be taken to a trial where witnesses could be called and critical evidence produced, but instead, [REDACTED]

[REDACTED]

I would describe the CCC's tactics as akin to bullying. It was the farthest thing from an independent and impartial [REDACTED] that one could imagine. [REDACTED]
[REDACTED]
[REDACTED]

Whilst I accept that there may be extreme circumstances and cases where such coercive powers may be in the public interest, in relation to my case the use of such coercive powers was entirely excessive and it was obvious they were only acted upon because the CCC lacked the evidence to prosecute and was searching for more. [REDACTED]
[REDACTED]

It is outlined in the CCC's guidelines that the purpose of the CCC as an investigative body is to prepare material and produce a report in respect of any alleged misconduct that arises from such an investigation. However, it was my experience that the CCC acted well outside their scope by laying these charges against me prematurely and without a thorough and balanced investigation. The decision to prosecute should be one for the Office of the Director of Public Prosecutions ("DPP") – not the CCC. The DPP makes the decision to prosecute based upon the evidence, the law and the Director's Guidelines. Section 4 of the Director's Guidelines states that the decision to prosecute is based upon a two-tier test, being:

1. Is there sufficient evidence; and
2. Does the public interest require a prosecution?

The alleged "evidence" adduced by the CCC at the time of my charge in no way constituted sufficient evidence as per the DPP's guidelines. This was abundantly clear to the DPP when they ultimately took on the matter, as a number of Court adjournments were initiated by them and I accepted them knowing there was an issue. The DPP first communicated to me on 19 January 2021 that the one charge against me would likely be dropped. Seven months later they were actually withdrawn, due to the CCC's inability to provide the DPP with various requests in a timely matter. The CCC needs to be held accountable for this.

It is my submission that the actions by the CCC in my case were a product of extreme bias, a product of the CCC's internal culture of "Local Government assassinations" as heard in the PCCC's enquiry to the Logan City Council case, and conflicting interests. The investigation of me by the CCC was originally brought about as a result of a complaint [REDACTED].

It is my view that the complaint made, and the statements provided to the CCC by [REDACTED], were delivered with the intent to injure my professional reputation, and eradicate any prospect of re-election to public office. [REDACTED] aware that I would be running for the Mayor of the Moreton Bay Regional Council in the upcoming March 2020 election and did not support my appointment. That is to say, [REDACTED] had a vested interest in a prosecution being brought against me.

It is clear that the CCC did not give any consideration to the political machinations occurring within the Moreton Bay Regional Council, and if the "witness statements" were more thoroughly investigated for factual substance, an underlying motivation would have been uncovered. Rather, the CCC investigators saw it as an opportunity to serve the political whim of [REDACTED], and also appease the State Government and its perceived "cleaning up corruption" spiel.

What is defined as corruption for Local Government versus what is defined as corruption for State Government also needs to be investigated and redefined. I submit that there is an inherent disconnect, allowing for the CCC to form their own misguided and unaccountable definition that has shown itself to be consistently incorrect due to the number of high profile and public servant cases dropped by the DPP, who could not supply evidence to support the charges of the CCC in recent years.

The Adequacy and Appropriateness of Section 49 of the *Crime and Corruption Act 2001*

I submit to the Commission that the adequacy and appropriateness of section 49 of the CCA is insufficient and allows for the CCC to continually act outside of its legislative provisions. As outlined previously, the DPP has enforced upon it the provisions of the two-tier test in respect of its ability to prosecute. I submit that there must also be similar and therefore stronger legislative provisions in respect of the CCC's ability to investigate. The CCA is therefore inadequate in this sense. According to section 49, if the CCC investigates a complaint involving corruption and decides that prosecution proceedings or disciplinary action should be considered, then they may report on the investigation to a number of judicial authorities.

The scope of this provision needs to be tightened, as it is my submission that the investigation was not passed on to the appropriate authorities, and that instead the CCC acted outside of this provision and consequently denied me of the human rights to procedural fairness and the presumption of innocence, as outlined previously. I submit that it was also the legislative fault of the CCA in not defining fairer procedural practices and reasonable limitations to the powers of the CCC's investigators. This failure allowed for the incorrect charge to be made against me, when in reality the only action that I believe should have been taken was the production of a report of said investigation, with "evidence" which should have been forwarded to a prosecution authority for review. If the CCC had adhered to the legislative provisions of section 49, the financial, professional and personal damages I sustained as an individual under investigation would have been significantly mitigated.

Submission:

The CCC has established a proven practice of dissecting minute components of evidence relating to an investigation that suits their agenda and specifically rely on what I believe, but wasn't given the opportunity to prove in court, false and misleading statements without cross-referencing with either the citizens named in these alleged false statements, or their own assumptions without more vital probing of surrounding circumstances.

It is my submission that the irreversible damage done to my professional reputation and to the health and wellbeing of me and my family as a result of what was clearly a wrongly brought charge, needs to be considered when addressing the CCC and its investigatory processes. While under investigation by the CCC, I was denied my basic human rights and as a result of the inadequacy and inappropriateness of the current legislation, procedures, practices and processes employed by the CCC, I have sustained damage to my professional and personal reputation that can never be repaired.

Any legislature overhaul should include:-

1. A framework which requires true independent oversight and consideration from a prosecuting body from outside of the CCC before any charges are brought against any defendant;
2. An in-depth and considerable analysis of the internal policies and procedures of the CCC resulting in legislation that provides a more independent, fair and balanced investigatory process;

3. A more stringent and defined process in the legislative components of the CCA that would ensure only certain investigations due to their nature, seriousness and effect on the wider public community qualify for the CCC to exercise the right to use their coercive powers and for the state of witnesses mental and physical health to be considered; and
4. A review of the aggressive and biased treatment of witnesses and suspects by CCC officers in the course of their investigations.