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Sunday 27 March 2022

Chairperson

Commission of Inquiry relating to the Crime and Corruption Commission

Email [submissions@ccinquiry.qld.gov.au](mailto:submissions@ccinquiry.qld.gov.au)

Dear Sir,

**Submission with regards to Crime and Corruption Inquiry**

In accordance with your request to limit the amount of supporting documentation I have not attached any. However, if the veracity of my submission is questioned, I will be most willing to provide the documentation and to swear an affidavit as to the truthfulness of the content of this submission.

To be concise and succinct I have adopted the use of short, numerated paragraphs which can be expanded upon should the need arise.

1. It is my contention that for the Commission of Inquiry to comply fully with paragraph 10 of the terms of reference, that the ramifications of any section of the Crime and Corruption Act 2001 needs to be canvassed, commented on, and referenced. Past actions and events of and by the CCC should also be referenced to illustrate the effects and consequences of the conduct and actions of the CCC.
2. It is also my contention that the Human Rights Act 2019 (referenced twice in the terms of reference) gives effect to my contentions contained in paragraph 1. And the content of this submission.
3. This Commission of Inquiry is just as important as the first Fitzgerald Commission of Inquiry, possibly more so, in the light of more recent events.
4. The Parliamentary Crime and Corruption Committee report number 108 raises more questions than answers.
5. As with all trials and commissions of inquiry the examination of witnesses the results and outcomes and the truth of matters are very much dependent on the skills, advocacy, and diligence of the legal practitioners. The conduct of [REDACTED] and [REDACTED] at the hearings cannot be underestimated in their pursuit for truth and fact.
6. All legislation is drafted and legislated by the state parliament. There are times that the legislation is lacking, defective and fails to achieve its objectives. Some legislation is motivated and created on political considerations and is not necessarily soundly principled. The Crime and Corruption Act 2001 even after a name change is failed legislation.

7. The hearings not only brought out evidence of the matters involving the Logan City Council but the wider implications of the conduct, and administration of the Crime and Corruption Commission, the shortcomings and deficiencies of the Crime and Corruption Act 2001, but also, other legislation and other agencies of public administration.
8. The secondment of police to the CCC raises serious issues including a conflict of administration, management, and function. A sworn police officer in the ordinary course of his deployment within the police service is only subject to the administration and supervision of sworn police officers in the police service. Secondment to the CCC changes that.
9. Section 255 CC Act states (3) *An officer or employee seconded to the commission under this section is subject to the direction and control of the chief executive officer* (4) *However, if police officers are seconded to the commission, their efficient deployment is to be the joint responsibility of the chief executive officer and the most senior police officer seconded to the commission.*
10. It should be noted that there is an error in the Crime and Corruption Act 2001, current as at 25 May 2020, Section 255 (5)) states (5) *Without limiting section 174(2), a police officer seconded to the commission under this section continues to be a police officer for all purposes and to have the functions and powers of a police officer without being limited to the performance of the commission's functions. Example for subsection (5)— A police officer seconded to the commission may exercise the powers of a police officer under the Police Powers and Responsibilities Act 2000 for an investigation of alleged corruption involving a relevant offence as defined in section 323 of that Act.* Section 323 CC Act is headed Parliamentary Commissioners report subject to parliamentary privilege and does not contain reference to any relevant offence.
11. It should be remembered that all sworn police officers regardless of rank or position have the same powers under the provisions of the Police Powers and Responsibilities Act 2000, however it was demonstrated in the PCCC report No108 that there are competing agendas and that seconded police officers come under the power and influence of the CCC.
12. The PCCC inquiry No 108 reminds me of two events from the past, firstly, the first thing that police recruits in instruction at the London Metropolitan Training School were told to write in the inside cover of their notebooks, in bold large letters "I am at all times responsible for my own actions". That statement was emphasised on numerous occasions throughout the time at training school. Such a statement is still valid today for any serving police officer, regardless of rank, posting or detachment.
13. The other event was a discussion with a barrister, the late ██████████ who later became a Queens Counsel and the Chairman of the Bar Association in the UK. We were discussing issues with competing and conflicting legislation. When I suggested that there was much legislation which could be rewritten, clarified, and simplified and reduced court time and legal argument. His response was, as he put his hand on my shoulder "My

dear Dave what you are suggesting would put half of the legal profession out of job.” Nothing has changed and ██████████ went on to become the first barrister in the UK to earn ██████████

14. There are no objections to police being seconded to the CCC to be employed to use their purported investigative skills, but they should be removed from arresting and charging people at the behest of the Crime and Corruption Commission.
15. It should be remembered that allegations of crime and corrupt conduct and other matters are addressed to the CCC in the first instance not to the seconded police officer at the CCC. The police officers become agents for the CCC.
16. A simple solution, to prevent a re-occurrence of what was exposed in the PCCC report No 108 is to adopt something like the UK system with the independent Crown Prosecution Service (QPS), free from police and government, to examine the merit of evidence for police to charge a person with criminal offence(s) and success of conviction. The QPS then prosecute the matter through the court and trial process and take full responsibility for the matter, not the police.
17. It should be remembered and considered that the matter of the charging of seven councillors with offences by the CCC is not the first occasion where, when a matter comes to trial that the Director of Public Prosecutions offers no evidence and withdraws the charges. The latest occasion was in ██████████ ██████████ when the former mayor of ██████████ ██████████ after a period of some two years had his matters dropped. That raises the questions as to the decision-making process to charge a person in the first place and why does it take the Director of Public Prosecutions some 2 years before a decision is made to withdraw the charges.
18. Such incidents as described in paragraph 17 goes to the matter of process and decision making and that process must be reviewed.
19. With regards to Section 175(K) Local Government Act 2009. It should be noted and considered that four local governments, namely Logan City Council, Ipswich City Council, Moreton Regional Council and Fraser Coast Regional Councils and both councillors and council employees have all been subject to investigation, prosecution, and involvement with the CCC.
20. The Crime and Correction Act 2001 (CCA) and the Local Government Act (LGA) cannot be referred to in isolation and neither can sections of the Acts. In the matter of ██████████ v Minister for Local Government, Racing and Cultural Affairs [2018] QSC 96 his Honour Justice Burns said in paragraph 45 “*The provisions of Chapter 6 on which the applicant relied upon cannot be read in isolation; they must be read in the context of the whole of the Act*”.
21. A councillor is elected as a member of a local government, Section 8(1) LGA. The automatic suspension of a councillor under Section 175K LGA fails to allow for the presumption of innocence, and Sections 15(3) and (4) Human Rights Act 2019. (The Human Rights Act 2019 being referred to twice in the terms of reference)

22. A councillor being found guilty of committing a disqualifying offence after due process in a court of law is most reasonable and acceptable. However, being suspended before he or she has been proven guilty of a disqualifying offence also denies the electorate of the democratic right to representation in a local government. Lack of democratic representation in local, state of government goes against the basic tenants of a democracy.
23. A councillor is remunerated from rate revenue. Why should the ratepayers pay for representation for which they are not getting whilst the democratically elected councillor is suspended. The length of time between suspension and conviction for committing a disqualified offence is a cost against the community, also becomes a matter for concern.
24. As the PCCC inquiry 108 involves the Chief Executive Officer (CEO) of a local government such a position, appointment and responsibilities and the consequences of such an appointment should be addressed. A CEO is an unelected council employee appointed under Section 194 with responsibilities defined in Section 13 LGA.
25. The LGA does not contain the same checks, balances, constraints, and processes for the conduct of a CEO, executives, managers, and staff that are placed on elected councillors.
26. The administration of a local government is headed by the CEO who not only advises the elected council but is the person responsible for the administration of various Local Government Acts defined in Schedule 4 LGA by way of delegation by the elected councillors.
27. A council CEO is a council employee who can take disciplinary action against other council employees under the Local Government Regulations 2012 (LGR) section 279  
*The chief executive officer may take disciplinary action against a local government employee if the chief executive officer is satisfied the employee has—(a) failed to perform their responsibilities under the Act; or(b) failed to perform a responsibility under the Act in accordance with the local government principles; or(c) taken action under the Act in a way that is not consistent with the local government principles.*
28. Sections 280, 281 283 Local Regulations 2012 provide the penalties for breeches as described in Section 279 LGR
29. There is no provision in the LGA nor the LGR for any person to taken action or give penalty to the CEO for committing any of the acts described in section 279 LGR. A local government CEO is untouchable for his conduct excepting for corrupt conduct as defined in section 15 CC Act. A situation which cannot and should not be ignored.
30. The Crime and Corruption Commission has high public profile because of it being frequently referred to by state politicians as the place to go to take complaints about the conduct other politicians, government, government departments, government agencies and local government. The reality is, that the legislation does not support the publics expectations, nor the conduct and the administration of Crime and Corruption is not all encompassing and is

most selective in what it deals with and frequently uses the reasons of lack of staff, resources, and cost.

31. The CCC has a public history of double standards and not being totally impartial and acting with scrupulous integrity which has an adverse effect on public confidence. That was clearly demonstrated with the CCC's dealings with [REDACTED] How many ordinary member of the community who have issues of corruption or suspected corruption can [REDACTED] [REDACTED]? How many persons who are being investigated by the CCC can [REDACTED] [REDACTED]? The CCC publishes that investigations of complaints by members of the public can take 12 months or more for a result, get politicians complaints are frequently dealt with in a very short time. Such matters have become a matter of credibility and public confidence
32. I have full knowledge and documentation of two formal complaints about corruption, as defined in section 15 CC Act within a place of public administration which have been dismissed out of hand.
33. The process of calling for a review of decisions made by CCC is highly questionable as all reviews are in house. A matter of Caesar judging Caesar. Only a full external review by an outside independent body will demonstrate integrity and impartiality.
34. Unlike other agencies staffed by persons who come under the provisions of the Public Service Act there no such provision within the CC Act. There is no provision for action to be taken against members of the CCC at any level for non-compliance of the Act, no penalty for non-compliance and no provision for rectification of action. The only avenue of recourse is for the Parliamentary Crime and Corruption Committee to make an adverse finding of the conduct of the CCC and table such finding in the State Parliament.
35. The hearing into the matter involving Logan City Council and seven councillors and the subsequent report by the Parliamentary Crime and Corruption Committee clearly demonstrates that the publics expectations from the first Fitzgerald inquiry in 1987 have not been met and that the current culture within the CCC leaves a lot to be desired.

I give my full approve for this submission and my name to be made public.

Yours sincerely

D.G.Barrowcliffe

Dave Barrowcliffe

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