

# **Commission of Inquiry into specific matters relating to the Crime and Corruption Commission**

Submission by Legal Aid Queensland

## Commission of Inquiry into specific matters relating to the Crime and Corruption Commission

Legal Aid Queensland (LAQ) welcomes the opportunity to provide feedback on the legislation, procedures and prosecutions in the context of Crime and Corruption Commission (CCC) investigations.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way” and is required to give this “legal assistance at a reasonable cost to the community and on an equitable basis throughout the State”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

### Feedback on paragraph 3b of the Order in Counsel Containing Terms of Reference of the Inquiry into Crime and Corruption Commission (No.1 of 2022)

Legal Aid Queensland (LAQ) regularly provides legal advice to individuals served with Notices to Attend in relation to CCC investigative hearings. Often notification and contact with our office occurs within extremely tight timeframes. However, given the style of the hearings, and repercussions if witnesses don’t attend or cooperate with the process, LAQ is keen to provide this service.

Up until recently, we also provided legal representation at the hearings to those who met the LAQ means tests for grants of legal aid on the basis that costs would be recovered from DJAG. In our view this representation service is important given the nature of the hearings, the compulsions and removal of certain witness privileges and the consequences of not cooperating. This representation does not fall within our State or Commonwealth funding priorities and guidelines, however through the operation of section 205 of the *Crime and Corruption Act 2005* (the Act) we have been able to arrange representation for this important work.

Section 205 of the Act identifies that a person may apply to the Attorney-General for financial help to enable the person to obtain legal services in connection with an investigative hearing. The Department of Justice and Attorney-General (DJAG) has managed this financial assistance on behalf of the CCC and applies strict means guidelines, similar to LAQ means guidelines, regarding entitlement to the assistance.

Up until recently DJAG recognised the similarities between our agencies' financial guidelines. Given the tight timeframes between service of notices and requirement to attend as a witness to a hearing (often less than 48 hours) there was a commitment from DJAG to reimburse our costs of funding these matters without waiting for their internal approval processing if we identified the individual would have been entitled to a grant of legal aid under our means test.

This arrangement was partly brought about by the significant delays of the DJAG internal processes to pay out this assistance (at its worst on average 9-12 months after the date of hearing) initially experienced by LAQ when this assistance was introduced. These delays in payment meant private solicitors and barristers had no guarantee at the time of taking the work that they would get paid, and if funding was approved, they did not see payment for 9-12 months after the fact. From a commercial point of view this is extremely unacceptable and made it incredibly undesirable work to take on. Given the tight timeframes, we are dependent on the support of private solicitors and barristers throughout the State as well as our in-house practices to deliver this service.

For the best part of the last decade the above-mentioned arrangement operated to give LAQ the confidence that we could issue special grants of aid for this representation knowing we would be reimbursed. LAQ funding is limited. We have statutory obligations under the *Legal Aid Queensland Act 1997* to deliver services in a financially responsible way, hence our strict means test.

Unfortunately, the above arrangements were stalled over 12 months ago. Uncertainty of payment even for those meeting our own financial guidelines, and significant delays were again experienced in the provision of financial assistance from DJAG through section 205. In this current financial environment, given our limited budget and obligations to deliver legal assistance in the most effective, efficient and economical way, it has meant that we have had no choice but to cease providing this important representation service.

As your terms of reference identify, frequently those required to attend CCC hearings are subsequently charged with serious criminal offences. Often the evidence given during the hearings is crucial to these prosecutions (either as accused or witnesses). Their participation at the hearing therefore has significance. Given the absence of fundamental procedural fairness and breach of

certain recognised human rights in these hearings, we feel representation, albeit limited, is important.

These rights are fundamentally protected in police investigations but are not retained or enshrined with appropriate protections within the CCC or other legislation. Representation will help to ensure that evidence gathering has integrity and that prosecutions will occur where there is a basis for doing so.

The current arrangement unfortunately ensures inequality. Those who can afford legal representation will continue to be assisted and have their interests protected while some of our community's most personally and financially disadvantaged attend unrepresented.

This could easily be resolved through direct funding of LAQ for the of this representation. We would support legislative change and the allocation of additional funding to our organisation to ensure we can provide these services in some of the most extreme, serious and hostile environments of our criminal justice system.

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