

**Commission of Inquiry relating to the Crime and Corruption Commission
A.J. MacSporran QC**

1. The focus of this submission is upon possible recommendations which might be made pursuant to point 10 of the Terms of Reference of the Inquiry.
2. The Qld community is rightly entitled to expect that a powerful law enforcement agency such as the Crime and Corruption Commission (CCC), entrusted as it is with extraordinary powers, will always exercise those powers with objectivity, impartiality and fairness. This is essentially mandated by s57 of the *Crime and Corruption Act 2001* (the CC Act).
3. For the CCC to do otherwise, would undermine public trust and destroy the agency's effectiveness and credibility.
4. In this context, it must be expected that the work of the CCC will always be closely scrutinised and on occasions subject to criticism be it constructive or unfounded. This is to be expected and is a necessary ingredient of a healthy democracy which values transparency and accountability.
5. Therefore, a body like the CCC must be one which embraces these values and acknowledges the need to strive for continuous improvement and to view any mistakes or errors of judgement simply as opportunities to learn and avoid such pitfalls going forward.
6. The sentiments expressed above are so fundamental that they are often taken for granted.
7. The CCC's effectiveness and ability to function in the public interest and generate public confidence in its independence is equally important.
8. The public readily understand the need for an investigative body such as the CCC to operate without fear or favour.
9. This will most often translate to the outcome of an investigation leading to charges being brought or if not, a public report which transparently details the nature of the investigation and relevant methodology and although the conclusion reached may not be universally accepted, at least the reasoning will be evident and open to scrutiny.
10. The independence of the CCC is also the fundamental plank upon which members of the public rely in having the confidence to come forward and report wrongdoing.
11. It engenders confidence that comes with knowing that you will be listened to, taken seriously, supported through the process and ideally, be informed of the outcome.
12. This is critically important because unless there is public confidence in the independence of the CCC, there will always be public cynicism and an ingrained reluctance to report wrongdoing.
13. If wrongdoing is not reported, the basis upon which the CCC is able to operate effectively collapses, corrupt conduct goes unreported, and flourishes unchecked.
14. A practical aspect of this issue was highlighted in the recent Logan City Council matter, the subject of the PCCC report giving rise to this Inquiry.
15. There, the issue raised for consideration was the protection of a public interest discloser and how that statutory obligation could be adequately managed when the CCC was simultaneously investigating serious alleged corrupt conduct.
16. The PCCC report failed to analyse that issue or arrive at any possible solution. The importance of clarifying these separate but interrelated obligations cannot be overstated.
17. Unless public interest disclosers can be confident that they will be adequately protected by an independent and committed CCC when they report wrongdoing, the perception will be that reporting is actively discouraged.
18. An important role for the CCC in the Queensland integrity framework has been to foster a culture promoting early reporting of wrongdoing and the protection of those who come forward to do so.
19. This message, promoted across the public sector by the CCC as the lead anti-corruption agency in Qld, is a critically important educative and prevention tool.

**Commission of Inquiry relating to the Crime and Corruption Commission
A.J. MacSporran QC**

20. Although the review of the *Public Interest Disclosure Act 2010 (Qld)* completed by the Ombudsman some years ago made many sensible recommendations for reform, the government has thus far failed to implement those changes.
21. Professor Brown of Griffith University is an internationally recognised expert who has lead some of the world's leading research into public interest whistleblowing and how legislated whistleblowing protections operate in various jurisdictions around the world.
22. His opinion, especially regarding possible solutions to the difficult questions concerning the protection of the public interest discloser in the Logan City Council case would be invaluable since the identified solution would have widespread application across the sector.
23. There are other aspects concerning the question of the independence of the CCC which need to be addressed.
24. The first is the question of politics. During the original Fitzgerald Inquiry there was almost universal support from the public and media for the work of the Inquiry and ultimately the recommendations which followed.
25. Regrettably, since then and the formation of the CJC as it was originally known, there have been periods of sustained attack upon the agency.
26. In essence, there have been attempts to wind these reforms back from the time the reforms were implemented following the Fitzgerald report.
27. These attempts have taken various forms and have to varying degrees sapped resources from the agency, caused stress to staff and undermined public trust in the work of the agency.
28. Often, these attacks appear to have been politically motivated and in one notable case (the Connolly Ryan Inquiry) it was prevented from reporting following a successful challenge due to bias.
29. That Commission of Inquiry had itself been established in response to the CJC commissioning an Inquiry into the arrangements entered into between the Queensland Police Union of Employees Executive and the then Opposition in the lead up to an election. This was known as the Carruthers Inquiry.
30. The attack on integrity agencies has become a common theme around Australia. We saw it recently in South Australia where both houses of Parliament voted unanimously to severely curtail the powers of the ICAC.
31. According to media reports, there is currently an attack on IBAC in Victoria.
32. The complaint appears to be that the IBAC is responsible for the suicide of the mayor of a local council who took her own life after receiving a draft report of an IBAC investigation providing her with the necessary opportunity to comment on potentially adverse findings proposed to be made against her.
33. Any death, particularly a suicide is tragic and it is mentioned here only to highlight the inherent difficulties that confront anti-corruption agencies in carrying out their work in a manner whereby the public are able to understand the full facts behind some of the actions taken during the course of such investigations.
34. Provisions imposing confidentiality on the investigative processes and functioning of such integrity bodies inevitably make it very difficult to articulate circumstances which in the ordinary course would provide a sensible explanation for the processes undertaken by the agency and the necessary reasons justifying that approach.
35. Regrettably, it is not uncommon for the CCC to be used by all sides of politics as a weapon against opponents when it is deemed to be advantageous for that purpose.
36. The CCC has openly warned against the practice and advised that if anyone is genuinely concerned that corruption is occurring, they should report their concern to the CCC in confidence so the matter can be appropriately assessed and dealt with confidentially.

**Commission of Inquiry relating to the Crime and Corruption Commission
A.J. MacSporran QC**

37. A solution is not easy to identify but one is required because the practice does much to interfere with the ability of the CCC to concentrate on the work it is required to carry out and perhaps more concerningly, has the tendency to undermine public trust, not only in the work of the CCC but also in the political process.
38. The practice is something on display in the recent federal election campaign. The then Prime Minister, Mr Morrison, publicly referred to the NSW ICAC as a kangaroo court and openly supported the former premier of NSW who was a focus of an ongoing investigation by the ICAC and had resigned following appearances before an ICAC investigative hearing. The Prime Minister was promoting the former Premier as a possible candidate in the federal election.
39. This is not to suggest that there should not be close scrutiny of the operation of the CCC. There clearly should be, as mentioned above, however, there should also be recognition of the good work carried out, often under very difficult circumstances.
40. The second issue is that of funding.
41. There is no doubt that the capacity of the CCC to fulfill its legislated obligations, depends upon the adequacy of its funding and the simplest way in which the CCC could be rendered ineffectual would be to starve it of necessary funding.
42. The CCC has previously made submissions to the PCCC promoting a funding model where the decision as to the allocation is made by Parliament. The PCCC did not endorse such a model.
43. The ICAC in NSW has made similar submissions again without success. Those submissions were themselves based upon a report of the NSW Auditor General who endorsed the approach as enhancing the necessary independence of ICAC.
44. A workable model could be one where the CCC formulated a business case which could be independently assessed by a designated officer, such as the Auditor General. Following such an assessment, a recommendation would go to Parliament supported by the analysis enabling a fully informed decision to be made by the Parliament. The Parliament would be required to give reasons for their decision as to the allocation.
45. Such a model would do much to enhance transparency and accountability and further protect the independence of the CCC.
46. The third issue concerning independence concerns s236(4) of the CC Act, which sets out the means by which officers of the CCC, including the Chairperson, can be terminated following a bipartisan recommendation of the PCCC which is approved by the Legislative Assembly.
47. This issue is raised not as an attempt to relitigate the merits of the PCCC report but to highlight a serious deficiency in the model under which the CCC is established to operate.
48. It is important to understand that this procedure is controlled by the Parliament and is subject to Standing Orders. Standing Orders require the principles of natural justice to be applied but the interpretation as to what that requires is left to the Parliament.
49. The procedure applied recently permitted legal representation of the CCC and its officers the subject of the Inquiry but not the right to examine or cross-examine any of the witnesses. Similarly, counsel representing the CCC was not permitted to raise objection as to the form of questioning which took place.
50. Even coercive hearings conducted by the CCC (the so called star chamber hearings which are routinely criticised for their heavy handed approach), permit legal representation, the right to examine the witness and clarify evidence or adduced evidence from their witness. Objections to the form of questioning and legal objections are also permitted.
51. This, with respect, seems a curious model upon which to potentially base a decision as serious as a recommendation to terminate an officer of the Commission, including the Chairperson the CCC. This is especially the case where there is no right to review such a decision.

**Commission of Inquiry relating to the Crime and Corruption Commission
A.J. MacSporran QC**

52. The application of such a model has the tendency to undermine the independence of the CCC and act as a disincentive for talented, committed individuals being prepared to take on the onerous work involved at the CCC. That outcome cannot be in the best interests of the wider Queensland community.
53. Giving full effect to the principle of the supremacy of the Parliament, a possible compromise would be to require the Standing Orders to more clearly establish the requirements of natural justice proportionate to the seriousness of the potential outcome or provide a right of review to the Supreme Court in relation to such a recommendation similarly to rights available in a Judicial Review.

Alan MacSporran QC