

Name: Todd Fuller QC
Phone: [REDACTED]
Your Reference: 602456/1, 6119044
Our Reference: 5333500

April 2022

The Honourable Tony Fitzgerald AC QC
The Honourable Alan Wilson QC

By Email:

Dear Commissioners,

Thank you for your letter of invitation to make a submission to the Commission of Inquiry into specific matters relating to the Crime and Corruption Commission (CCC).

I will seek to provide the information of particular interest as set out in your undated letter to the Director Carl Heaton QC who is currently on leave.

Relevant policies and procedures affecting decisions to commence prosecutions arising out of Crime and Corruption Commission investigations.

The CCC is an investigatory body. The Director's Guidelines are relevant to the exercise of the prosecutorial discretion. Whilst CCC investigations can present some unique challenges in terms of the volume and nature of the evidence, the subject matter and the person/s investigated, no unique considerations are applied to the decision to prosecute.

In recognition of the potential for internal conflicts to arise in relation to some of the material gathered in CCC investigations, a common sense protocol was developed so as to ensure that appropriate cases were quarantined where it was necessary to do so. (**Attachment 1 – Directorate Procedure concerning briefs referred by the Crime and Corruption Commission pursuant to s.49**).

Matters referred to the Office of the Director of Public Prosecutions by the Crime and Corruption Commission

There are certain cases which require the consent of a Crown Law Officer before a prosecution can be commenced, such as Secret Commissions (Chapter 42A of the *Criminal Code*: s.442M(3)). Otherwise, it is noted that the CCC seem to have a protocol, "*Prosecution Protocol*" (effective from 10 February 2016) relating to a decision to refer a case to the DPP. The contents of that protocol refer to s.49(2)(a) of the *CC Act* which has since been amended, although the process described continues to happen from time to time.

During his time as Director, Mr Heaton QC has been asked by the CCC Chair to consider at least two cases prior to charging. On one occasion the CCC Chair later contacted him before he had finalised his view of the material to inform him that the Commission had reviewed its position and

it did not press for charges to be laid. On the other occasion, he provided a written advice to the Commission in which he did not support the charging of the subject person. Those investigations focussed on offences relating to misconduct in public office and fraud. On each occasion, for the sake of confidentiality, the case was considered only by him, and the outcome provided in writing and in consultation directly with the CCC Chair.

There is no formal protocol between the CCC and ODPP in respect of such cases. The decision to refer to the DPP prior to charging is one that is made by the Commission.

From approximately mid-2018, the ODPP established a specialist team to conduct the cases coming from CCC investigations. That corresponded with an increase in the number of cases resulting from CCC investigations, particularly in relation to the activities of members of the legal profession and city councils. That team was staffed by a number of senior legal and prosecution staff who had conduct of most of the CCC cases. In the event that evidentiary conflicts arose, other legal staff and prosecutors were allocated so as to quarantine the material as required. I am aware that the staff of the specialist prosecution team developed close working relationships with the key investigators which resulted in the provision of ad hoc advice from time to time. I am also aware that on an occasion, advice was requested, and the response resulted in no charges being laid against the subject person. We consider that we have staff with the necessary expertise to handle the matters referred to this office by the CCC (we currently have 4 Silks on staff) and can access relevant expertise from the Bar when required.

CCC cases are very much like the briefs received from other investigating agencies. The subject matter, and the investigative resources and techniques utilised, result in CCC briefs being complex and contain large volumes of documents which need to be analysed. The handling of compelled material and claims of Legal Professional Privilege can however be problematic.

The Director's Guidelines are relevant in the same way as with briefs from other agencies. The CCC files are not ordinarily treated differently. Staff of the ODPP liaise with the CCC investigators, in the usual way, prior to any changes being made to charges. It is also usual practice of the ODPP to liaise with the CCC in complex matters, regardless if there is a change to the charges or not, to ensure both the ODPP and the CCC understand the basis in which the charges have been initiated.

On occasions the CCC makes requests of this office to conduct summary hearings and committal proceedings on their behalf in lieu of the Queensland Police Service Prosecutions Corps. They are required to meet the costs of the preparation and conduct of the committal proceeding or summary hearing. Other matters become the responsibility of the office as a matter of course in Brisbane, Southport and Ipswich because of our role in conducting some, if not all, committal proceedings in those jurisdictions. Once committed all CCC matters become the responsibility of this office, irrespective of who conducts the committal proceeding. Private Counsel are from time to time engaged by the CCC to prosecute matters on their behalf summarily or conduct committal proceedings.

Details of those prosecutions, as best they can be captured, over the past 3 years can be found in the attached table. (**Attachment 2**) We do not identify matters on the basis that they come from the CCC, so the Commission itself would be a better source of that information. Of the finalised matters 13 resulted in pleas of guilty, 9 in guilty verdicts at trial, 4 not guilty verdicts, 8 were discontinued and 1 was the subject of successful no case submission. 36 are ongoing.

Compelled material

The CCC is required to make the office aware of the existence of compelled material in an investigation but it is not to be disclosed, or to form part of the material supplied, to this office except in specific circumstances. The attached draft protocol reflects the practice adopted by this office with respect to compelled evidence. (**Attachment 3-** protocol for handling compelled evidence) We do not keep records of how many files we receive that contain material of that kind.

Compelled material brings with it the complication of how it is to be handled, who should have regard to it and what use can be made of it. Clearly, we cannot ordinarily be exposed to, or have regard to, that material. It may contain material however which impacts upon the decision to prosecute which is to the defendant's benefit. It may raise an issue of credit that diminishes the value of other evidence that is relied upon; give rise to a defence or an exculpatory explanation that is not otherwise disclosed in the material; or provide a basis to suggest that it is not in the public interest to proceed. In those cases, the compelled material may be reviewed and the matter re-briefed to a different prosecutor, with that material removed, once the decision to prosecute has been made. That also occurs if material is inadvertently disclosed to this office as part of a brief.

We have had a limited number of matters where pre-trial arguments have involved the conduct of the CCC, the conduct of the investigation and the use of compelled material. It has been necessary in those cases for this office to brief outside counsel to conduct that litigation to ensure the Crown Prosecutor briefed was not exposed to the compelled material.

The CCC's intention in the future to obtain an independent external advice on complex prosecutions before charges are laid, either from the DPP or other appropriately qualified and independent advisor

I commend to you the views of the former Director Michael Byrne QC in his letter to the Acting Chair of the Parliamentary Crime and Corruption Committee in July of 2015 in relation to the office providing advice prior to charges being laid and adopt his reasoning. (**Attachment 4 - Submission Concerning the Review of the Crime and Corruption Commission**).

It is important to acknowledge that the decision to charge does not equate to a decision to prosecute and the two should not be conflated. The CCC as an investigatory body is staffed with experienced investigators and lawyers. Engaging this office in the investigative phase impacts on the independence of the decision making by the charging officer and the later decision to prosecute the matter. Not only would such a course have a significant impost upon the resources of this office, but it also highlights the concerns about the access to, and use of, compelled material during the investigative and charging phase.


Similarly, whilst the obtaining of independent legal advice may be of some assistance to the CCC in deciding whether to charge, such advice will not be binding on this office and upon the ultimate decision as to whether the prosecution proceeds. I note amongst the list of CCC matters are several which proceeded through committal before a decision was taken to discontinue them. Involvement before charging, without the benefit of representations from their legal representatives, cross examination of witnesses or the provisions of explanations from the defendants for their actions, may not have resulted in a decision not to charge taking place. An ability to rigorously challenge the basis for charging and the evidence upon which it is based is part of the prosecutorial function. That differs from a decision to charge. It follows that the issue raised by the Local Government Association of Queensland may not be addressed by this office being required to review a matter before charging.

This office is almost solely responsible for the prosecution of all indictable offences in the State of Queensland. It is reactive and has no control over the number of matters it receives and is subject to statutorily imposed time frames for the presentation of indictments. Like all agencies it works within the resources it has. As observed by the former Director, the ability to respond to requests for advice adds to the burden upon those resources and delay, in either the provision of that advice, or other work being performed. Added to that is the difficulty in keeping lawyers in a matter long term given the length of time it takes for matters to proceed from charging to conclusion given staff turnover and progression. That necessitates the re-briefing of matters and a necessary duplication of effort.

Ordinarily the office does not have advance notice of what work is likely to be generated by the CCC. The specialist prosecution team was set up in 2018 to better co-ordinate the numerous prosecutions that were anticipated to arise out of two operations being conducted by the CCC at that time. It was necessary to engage other senior staff from time to time to assist the group to cope with that fluctuation. That of necessity required them to be taken off-line for a period of time to consider the material and provide advice about the matter. The team has seen a significant change of staff through those positions since that time and a deal of CCC fatigue given the similar nature of the matters assigned to them. In July 2021 this team was transferred back into main-stream prosecutions, due to the increasing workload of the ODPP and the need to provide them with a variety of work. They have however retained the majority of the CCC matters.

I trust this information has been of assistance and if you would like any further information, please contact myself or the Director upon his return.

Yours sincerely



Todd A Fuller QC
Acting Director of Public Prosecutions

**ODPP Directorate Procedure concerning Briefs Referred by the
Crime and Corruption Commission ("CCC") pursuant to section
49(2)(a) CCC Act.**

1. Upon initial receipt of the brief the Directorate Practice Manager will note the relevant register/s that the material has been received. The Practice Manager will remain responsible at all times for ensuring that the register/s are kept up-to-date with notations of all relevant action taken in respect of the advice, and for ensuring that bring ups are created for any deadlines imposed.
2. The Director will firstly consider the material. The purpose of this initial consideration is to:
 - Identify if the brief contains any material that would be likely to enliven issues considered in *Lee v R (2014) 308 ALR 252*, namely compulsorily obtained statements by the nominated suspect or suspects ("Lee material").
 - To generally assess the complexity of the matter to gauge the likely experience level of prosecutor who would have to be briefed should charges be eventually laid.
3. If as a result of the initial consultation it is apparent that the Director has a conflict of interest, that function will be performed by the Deputy Director, and in turn, if also conflicted, by the Executive Director (Crown Prosecutor).
4. If each of those persons has a relevant conflict of interest, consideration will be given to briefing Senior Counsel to advise a nominated ODPP staff member to whom the task of advising the CCC will be delegated.
5. The person who has the responsibility of advising the CCC is herein called "the decision maker".
6. It is recognised that where the brief contains Lee material, the prosecutor who provides advice as to whether or not charges are warranted cannot conduct any subsequent prosecution.

7. In the usual course of events, the Director will receive advice as to whether charges are warranted from the Deputy Director or the Executive Director.
8. Where the complexity of the brief is such that it is likely that any subsequent prosecution (if any) will be conducted by the Deputy Director or Executive Director, and a brief contains Lee material, the Director will request the advice from a Consultant Crown Prosecutor or member of the Bar.
9. A deadline will be nominated for the provision of the advice by the decision maker. The “default” period for the deadline will usually be 2 months from the date of allocation, although it may be shorter or longer if circumstances require. Once set, the deadline may be extended if the person providing the advice requests an extension and the decision maker agrees that circumstances warrant an extension.
10. The person who is briefed to provide the advice will give early consideration to whether submissions should be sought from the suspect/s legal representatives. If that is considered desirable, the person briefed to provide the advice will notify the decision maker who will correspond with the legal representatives.
11. The person who is briefed to provide the advice will consider all material provided, including the Lee material. However, the conclusion as to whether charges are warranted should be reached by not taking into account any inculpatory aspects of the Lee material. The written advice to the decision maker should not make any reference to any inculpatory aspects of the Lee material, but may make reference to any exculpatory aspects of that material.
12. The responsibility to advise the CCC whether or not charges are warranted will remain with the decision maker.
13. All material received for the purposes of the provision of advice will be retained on a Directorate file.

14. This protocol need not be followed if the interests of justice in the particular matter require that other processes be followed.

Matter Name	File #	CYP	DPP had file pre-comm	CCC Request Pre-Comm and cover costs?	Matter progress	Defendant's position/seniority
	096911	FTA	Yes		Ongoing. 590AA judgment delivery 18 March 2022	█ Ipswich City Council █
	089264	FTA	Yes		█ - Ongoing. Trial 26/07/2021. Appealed - █ █ Conviction quashed and retrial ordered. Listed for 24/10/2022	█ of Ipswich City Council
					█ - Pled guilty. Sentenced 03/05/2019 █ █	█ Owner of █ (contractor)
	095286	FTA	Yes		Both LFT 07/01/2021. █ - Jury verdict NG █ - Directed verdict NG	█ of Ipswich City Council █ - Executive officer █
	085835	FTA	Yes		█ - Pled guilty. Sentenced 03/05/2019 █ █	█ - Owner of █ (contractor) █ - Racing Queensland █
	094470	FTA	Yes		█ - Pled guilty to fraud charges (charged in alternate to misconduct in public office). Sentenced 15/02/2021 Defendants pleaded guilty. Sentence 15/02/2019. All defendants applied for leave to appeal against sentence - leave refused.	█ - Ipswich City █ █ - Spouse of █ █ - Contractor who dealt with █ █ Ipswich █
	096079	FTA	Yes	Yes	Summary trial. Verdict of guilty. 22 Appeal - █ █. Appeal upheld, conviction set aside, acquittal entered and appellant discharged. ODPD sought leave to appeal - █ █ further order regarding costs █ Leave refused.	
	087513	FTA	Yes		Trial commenced 16/07/2019. Verdicts of guilty. Sentenced 25/07/2019. All defendants appealed sentence to CoA - see █ █ █ █	█ █ - Former partner of █ █ - █ Ipswich █
	094479	FTA	Yes		█ Indictment discontinued by nolle prosequi. █ █ █	█ - Ipswich █ █ - █ Ipswich █
	104198	FTA	Yes		█ - POG. Sentenced 30/09/2020 █ - POG. Sentenced 30/09/2020 █ - CFT. PRIN 03/02/2022. Defence have listed a judicial review of the committal and will list a stay application █ █ █ █ - LFM 03/02/2022. Will be trial. Likely linked to █ Stay application refused	█ - █ Ipswich █ █ - Property developer █ - Barrister

	086278	FTA	Yes		Sexual assault - POG. Sentenced 30/09/2020		Ipswich
	090108	FTA	Yes		Receipt of secret commission by an agent, fraud - POG. Sentenced 30/09/2020		Ipswich
	098389	FTA	Yes		Travel fraud - POG. Sentenced 30/09/2020		Ipswich
	098671	FTA	No		Trial 10/06/2019. Jury verdict - Guilty	in Gold Coast City Council election	
	100777	FTA	Yes		Ongoing. LFM 23/02/2022. ODPP have been directed to provide particulars and other material to defence		Logan
	095656	FTA	No		Misconduct in rel to public office; disclosing secrets. Trial - found guilty and sentenced.	Former councillor	
	105862	FTA	No		Trial, awaiting outcome of appeal	Hope Vale Shire Council	
	072761	FTA	No		(Co-accused with - 105862) 2 trials. One NG. One G. Has appealed to the CoA. Yet to be heard		
	100630	FTA	Yes	Yes	Breach of bail. Summary trial. Guilty. Sentenced 03/06/2019	Lawyer	
	106962	FTA	Yes	Yes	Breach of bail. Pleaded guilty. Sentenced 01/08/2019. 222 Appeal. See	Lawyer	
	130581	FTA	Yes	Yes	Appeal dismissed Breach of bail. Pleaded guilty. Sentenced 01/08/2019. 222 Appeal. See	Lawyer	
					Appeal dismissed		
	099591	FTA	Yes	Yes	Fraud. Matter ongoing. CFT 17/12/2021.	Lawyer	
	096028	FTA	Yes		Money laundering. Matter ongoing. LFT 03/06/2022	Barrister	
	088601	FTA	Yes		Perjury Matter is ongoing. PRIN. LFM 03/02/2022. Will be trial,	Barrister	
	121389	FTB	Yes		. Ongoing. Update: Matter approaching committal. 'Full brief' has been disclosed though there remains some further material that the arresting officer is providing following disclosure requests. Consideration and discussion with defence ongoing. Hearing date of 20 April 2022 (whole date in Magistrates Court set aside to finalise any remaining issues, scope of XXN at committal if defence decide that will occur, or for a committal). Review mention of above listed 14 March 2022.	Lawyer	
	119610	FTA	Yes		Ongoing Update: Defence sent a submission on 11 October 2021 in relation to this matter as well as two other files with the office. Committal mention on 31 January 2022 electronically adjourned to 21 February 2022 (but no confirmation from the Court this has happened due to backlog).	Lawyer	

[REDACTED]	100009	FTA	Yes		NETO [REDACTED]	Lawyer
	100012	FTA	Yes		NETO [REDACTED]	Lawyer
	100014	FTA	Yes		NETO [REDACTED]	Lawyer
	118669	FTA	Yes		[REDACTED] Matter ongoing. LFM 04/03/2022. Partial brief received. ODPP awaiting financial analyst statement, advised significant amount of material upheld due to ongoing LPP arguments	Lawyer
[REDACTED]	123921	FTA	Yes		[REDACTED] Matter ongoing. LFM 04/03/2022. Partial brief received. ODPP awaiting financial analyst statement, advised significant amount of material upheld due to ongoing LPP arguments	Lawyer
[REDACTED]	123161	FTA	Yes		[REDACTED] Matter ongoing. LFM 04/03/2022. Partial brief received. ODPP awaiting financial analyst statement, advised significant amount of material upheld due to ongoing LPP arguments	Lawyer
[REDACTED]	122454	FTA	Yes		[REDACTED] Matter ongoing. LFM 04/03/2022. Partial brief received. ODPP awaiting financial analyst statement, advised significant amount of material upheld due to ongoing LPP arguments	Lawyer
[REDACTED]	121463	FTA	Yes		[REDACTED] Matter ongoing. LFM 04/03/2022. Partial brief received. ODPP awaiting financial analyst statement, advised significant amount of material upheld due to ongoing LPP arguments	Lawyer
[REDACTED]	121458	FTA	Yes		[REDACTED] Matter ongoing. LFM 04/03/2022. Partial brief received. ODPP awaiting financial analyst statement, advised significant amount of material upheld due to ongoing LPP arguments	Lawyer
[REDACTED]	121452	FTA	Yes		[REDACTED] Matter ongoing. LFM 04/03/2022. Partial brief received. ODPP awaiting financial analyst statement, advised significant amount of material upheld due to ongoing LPP arguments	Lawyer
[REDACTED]	121441	FTA	Yes		[REDACTED] Matter ongoing. LFM 04/03/2022. Partial brief received. ODPP awaiting financial analyst statement, advised significant amount of material upheld due to ongoing LPP arguments	Lawyer
[REDACTED]	121732	FTA	Yes		[REDACTED] Matter ongoing. LFM 04/03/2022. Partial brief received. ODPP awaiting financial analyst statement, advised significant amount of material upheld due to ongoing LPP arguments	Lawyer
[REDACTED]	121428	FTA	Yes		[REDACTED] Matter ongoing. LFM 04/03/2022. Partial brief received. ODPP awaiting financial analyst statement, advised significant amount of material upheld due to ongoing LPP arguments	Lawyer
[REDACTED]	106376	FTA	Yes	Yes	Computer hacking. Pleaded guilty. Sentenced 03/07/2020	Police Officer
[REDACTED]	120937	FTA	Yes		POG. Sentenced 24/05/2021	Client of [REDACTED]
	127433	FTA	Yes		Matter ongoing. LFS 08/02/2022 at Rockhampton	Client of [REDACTED]
	132843	FTA	Yes	Yes	Committal Mention: 26/4/2022	Police Officer Fraud and Fraudulent Falsification of record
[REDACTED]	118849	FTA	Yes		Matter ongoing. LFS 11/02/2022 in Brisbane	Client of [REDACTED] - Operation Jackal

[REDACTED]	104818	FTB	Yes		Fraud. Discontinued by DPP at pre-committal	[REDACTED] Logan City Council
	104818	FTB	Yes	Yes	2x misconduct of public office. Ongoing. LFM 23/02/2022 in DC. [REDACTED] has other matters with [REDACTED]	[REDACTED] Logan City Council
[REDACTED]	108543	FTB	Yes		1x Corruption. Discontinued by DPP at pre-committal	[REDACTED] Moreton Bay Regional Council [REDACTED]
[REDACTED]	112609	FTB	Yes		2x misconduct of public office. Discontinued by DPP at pre-committal	[REDACTED] - Developer [REDACTED] Moreton Bay Regional Council [REDACTED]
[REDACTED]	114247	FTB	Yes		1x Secret commission. Ongoing. LF Committal Hearing w/XXN on 26/07/2022 - 08/08/2022. [REDACTED]	[REDACTED] Metro North Hospital
[REDACTED]	114141	FTB	No		Trafficking, receiving property obtained from trafficking, possess DD< attempt to pervert justice, money laundering. POG. Sentenced 13/12/2021	Former [REDACTED] prosecutor
[REDACTED]	100015	FTB	Yes		Fraud, money laundering. Ongoing. Indictment being drafted. FTA has other [REDACTED] matters. [REDACTED] has carriage	Lawyer
[REDACTED]	110325	FTB	Yes		Perjury. Ongoing. Waiting for deft to be [REDACTED] in NSW. Will be a plea.	Client of [REDACTED]
[REDACTED]	089839	CNH	Yes	Yes	[REDACTED] - 79x secret commission [REDACTED] - 3x corruption, 9x secret commission, 1x stealing [REDACTED] - 1x secret commission [REDACTED] - POG. Sentenced 23/08/2021 [REDACTED] - Discontinued prior to committal [REDACTED] - Application for leave to appeal sentence dismissed by judgment deliver 09/11/2021	
	100594	MLA	Yes	Yes	1x Official corruption; alternatively secret commission. Ongoing. PRIN 21/10/2021. To go to trial	[REDACTED] Locan City Council [REDACTED]
[REDACTED]	113037	TSH	Yes	Yes	[REDACTED] and [REDACTED] - 1x fraud, 1x misconduct in public officer, 1x secret commission [REDACTED] - 1x fraud [REDACTED] and [REDACTED] - ongoing. Both pre-committal. Directions hearing listed 23/03/2022 [REDACTED] - Discontinued in MC on 02/02/2022	Palm Island Shire Council
[REDACTED]	114311	TSG	Yes	Yes	1x fraud in excess 100k [REDACTED] - Charge dismissed during no case submission in MC on 23/11/2021 [REDACTED] - Ongoing. [REDACTED] listed 28/01/2022	

██████████	121654	MAE	No	<p>6x sexual assault; 4x rape</p> <p>Outcome (ongoing): It has had one prior trial listing and it was during conferencing for that trial that ██████████</p> <p>██████████. Late last year, we had a Basha of the AO to confirm whether he disclosed confidential CCC proceedings to the compl. As a result of that hearing (and defence's application), we consented to a Basha of the complainant which is being heard this morning.</p>
██████████	102966	MAD	No	<p>Perjury</p> <p>Outcome (ongoing): ██████████ was charged with perjury after giving evidence at a CCC coercive hearing investigating into a large drug syndicate. The perjury charge is still ongoing and before the Maroochydore District Court. ██████████ also has trafficking charges in the Brisbane Supreme Court. The perjury charges will not proceed until the trafficking charge is finalised.</p>
██████████	093283	HXB	Yes	<p>Trafficking</p> <p>Outcome (ongoing): ██████████ was charged with perjury after giving evidence at a CCC coercive hearing investigating into a large drug syndicate. The perjury charge is still ongoing and before the Maroochydore District Court. ██████████ also has trafficking charges in the Brisbane Supreme Court. The perjury charges will not proceed until the trafficking charge is finalised.</p>
██████████████████	110902	MAD	No	<p>Murder. CCC held coercive hearing prior to charge. Trial proceeded Oct 2020 in BSC, found NG</p>
██████████	107641	WKS	Yes	<p>██████████████████. Ongoing. LFM Major Operations Callover - 04/02/2022</p>
██████████	107963	WKS	Yes	<p>██████████████████ Ongoing. LFM Major Operations Callover - 04/02/2022</p>
██████████████████	107960	WKS	Yes	<p>██████████████████ Ongoing. Awaiting PRIN</p>
██████████████████	104099	WKS	Yes	<p>██████████████████ Ongoing. Awaiting PRIN</p>
██████████████████	107952	WKS	Yes	<p>██████████████████ Ongoing. Awaiting PRIN</p>
██████████████████████████████	104233	WKS	Yes	<p>██████████████████ Ongoing. LFM Major Operations Callover - 04/02/2022</p>

Protocol¹

Between **Crime and Corruption Commission (CCC)**

of Green Square, 515 St Paul's Terrace Fortitude Valley QLD 4006

and **Director of Public Prosecutions (DPP)**

of State Law Building, 50 Ann Street Brisbane QLD 4000

Purpose

1. To document the procedures between the CCC and the DPP in handling evidence that has been compelled by the CCC from witnesses who are then charged with criminal offences.

The CCC's role

2. The CCC's key functions include the investigation of crime² and corruption³.
3. In undertaking those investigations, the CCC is required to gather evidence to support prosecution action⁴.
4. In support of this function the CCC refers briefs of evidence to the DPP for the prosecution of criminal offences⁵.

The DPP's role

5. The DPP prepares, institutes and conducts criminal proceedings on behalf of the Crown⁶.

Disclosure Obligation

6. In any prosecution proceedings, the prosecution is under an ongoing obligation to fully disclose to an accused person all evidence the prosecution relies upon, and any evidence which may tend to help the case for the accused⁷.

CCC Hearings

7. The CCC may conduct hearings to support its crime and corruption functions⁸.

¹ DPP Reference: 5351049

² Section 25 of the *Crime and Corruption Act 2001* (CC Act).

³ Section 35(1)(f) CC Act.

⁴ Sections 26(b) and 35(1)(h) CC Act.

⁵ For example, section 49(2)(a) CC Act.

⁶ Section 10 *Director of Public Prosecutions Act 1984* (DPP Act).

⁷ Chapter 62, Division 3 *Criminal Code*, sections 590AB to 590AX.

⁸ Section 176 CC Act.

8. The Chairperson of the CCC may issue an attendance notice to a person requiring that person to attend and give evidence⁹. Failure to attend is an offence¹⁰.
9. Witnesses at hearings must answer questions put to them¹¹.
10. The witness is not entitled to remain silent and is not entitled to refuse to answer a question on the grounds of self-incrimination privilege¹².
11. If a witness:
 - 10.1 claims self-incrimination privilege in relation to an answer;
 - 10.2 apart from the CC Act, the person would not be required to answer the question; and
 - 10.3 the person is required to answerthe answer is not admissible in evidence against the person in any civil, criminal or administrative proceedings¹³ (except in very limited circumstances, such as perjury or contempt).

Compelled Evidence

12. In some CCC investigations, witnesses who are compelled to attend hearings and give evidence are charged with criminal offences, and a brief of evidence is provided to the DPP to prosecute those offences.
13. In those cases, the CCC will have in its possession recordings and transcripts of the answers provided under compulsion by the accused person (compelled evidence).
14. The possession by a prosecutor of the compelled evidence of an accused fundamentally alters the accusatorial process of a criminal trial. It may place the prospect of an accused's fair trial at risk and alter the accusatorial process to such an extent as to warrant a stay of prosecution¹⁴.
15. A recent Queensland decision has confirmed this principle applies to CCC's investigations¹⁵.

Agreement for dealing with compelled evidence of the accused

16. For the purposes of the following clauses, "compelled evidence" means any answer given, statement, document or thing produced to the Commission by an individual upon requirement, despite an objection on the basis of self-incrimination privilege, to giving or producing any of those things.
17. In referring briefs of evidence to the DPP -
 - a. the CCC will **not** include the compelled evidence of an accused in the brief of evidence to the DPP for the prosecution of that accused person (other than prosecutions for perjury arising out of a CCC hearing, dealt with in clause 20 below);

⁹ Section 82 CC Act.

¹⁰ Sub section 82(5) CC Act.

¹¹ Section 190 and 192 CC Act.

¹² Sub sections 190(2) and 192(2) of CC Act

¹³ Sub sections 197(1) and (2) CC Act.

¹⁴ *Lee v The Queen* (2014) 253 CLR 455; *X7 v Australian Crime Commission* (2013) 248 CLR 92; *R v IBAC* (2016) 90 ALJR 433.

¹⁵ *R v Hoppner*, unreported District Court decision delivered by Richards J, 8 March 2017.

- b. the CCC will include a description of the compelled evidence in an index to brief;
- c. the index to brief provided by the CCC will set out:
 - i. exhibits tendered at CCC hearings;
 - ii. notification to the DPP that compelled evidence exists;
 - iii. contact details of the CCC investigating officer/s.
- d. the CCC will provide a copy of the compelled evidence directly to the accused or their lawyers to comply with the prosecution's disclosure obligations;
- e. the CCC will contact the DPP in writing, to ascertain who the accused's lawyers are, if unknown at the time the CCC are required to disclose the material to the accused's lawyers;
- f. the CCC will advise the DPP in writing, when copies of the compelled evidence have been provided to the accused or their lawyer.

18. As part of the DPP's ongoing disclosure obligations, the DPP will disclose a copy of the '*CCC Index to Brief*' to the accused lawyers as soon as a copy is received by the DPP.

19. If at any time the DPP wishes to access the compelled evidence, then:
- a. the DPP can make a written request to the CCC to access the compelled evidence;
 - b. the CCC will provide a copy of the compelled evidence to the DPP.

Exceptions for providing CCC hearings material to the DPP

20. If a charge of perjury arises out of a CCC hearing –
- a. the CCC will include the compelled evidence of an accused in the brief of evidence to the DPP for the prosecution of a perjury charge only if such charge arises from the evidence given in a CCC hearing by the accused;
 - b. the CCC will ensure that the evidence relating to the perjury charge is not combined with the brief of evidence relating to the substantive charge that the DPP has carriage of;
 - c. the DPP will ensure that the brief of evidence for the perjury charge is **not** given to the same Legal Officer and Crown Prosecutor who has carriage of the substantive charge;
 - d. the DPP must ensure that the perjury brief and the brief relating to the substantive charge/s are kept separated at all times during the prosecution of both matters.



A/Director of Public Prosecutions – Michael Byrne QC

Name: Michael Byrne QC
Phone: [REDACTED]
Our Ref:
Your Ref:

Office of the
Director of Public Prosecutions

Department of
Justice and Attorney-General

28 July 2015

Mr P Russo MP
Acting Chair
Parliamentary Crime and Corruption Commission
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Russo

Re: Submission Concerning the Review of the Crime and Corruption Commission.

I am writing in response to your letter dated 9 June 2015 and addressed to the former Director of Public Prosecutions which invited submissions concerning the review currently being undertaken by the PCCC.

I write in respect of one matter only and which is concerned with the practical implications of some aspects of the operation of section 49 of the *Crime and Corruption Act 2001* ("the Act").

Similar issues to that which I raise herein were noted in a submission dated 4 April 2003 by the then Director General of the Department of Justice and Attorney-General, Dr Ken Levy, to the Three Yearly Review of the Crime and Misconduct Commission conducted by the Parliamentary Crime and Misconduct Committee. I note that the report of the PCMC resulting from that review, Report No. 64, contained recommendations numbered 14 – 16 that would likely have alleviated many of the concerns raised.

The Government declined to follow those recommendations. Whilst I respect the decision of the Government to not implement those recommendations, some recent decisions of the High Court of Australia have made it timely to again raise the concerns that were voiced in 2003 by way of submission to your committee's review.

Section 49 of the Act is contained within the legislative division concerned with the Commission's corruption function. The provision of briefs for consideration as to whether any prosecution proceedings are warranted is limited to those corruption investigations. Whilst I acknowledge that in the 2014/15 financial year the ODPP received only two such briefs, there were eleven the previous financial year. I do not know how many corruption investigations resulted in prosecutions which were not referred to the ODPP for consideration.

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As a matter of practice, senior legal staff are usually required to consider the brief and provide advice to the Director. As the former DPP, Mrs Leanne Clare (as her Honour then was) said the briefs can be complex and/or lengthy. Anecdotal evidence strongly suggests that all briefs are now at least lengthier, if not more complex since the earlier submission was made. The reality is that due to competing priorities, they regularly languish for months in the ODPP before a proper advice can be provided back to the Commission. The undesirability of the finalisation of a criminal investigation and/or prosecution being delayed for that period of time is obvious and affects the public confidence in the administration of the criminal justice system in general and in respect of the Commission in particular.

The referral of an investigation for advice prior to charging is a procedure not afforded to other investigative bodies in this State, other than in rare circumstances – see Director's Guideline 26 issued under the *Director of Public Prosecutions Act 1984*. It has the effect of bridging the divide between the investigative function and the independent prosecutorial function. The Commission employs lawyers and has sworn police officers attached to it. They, amongst others employed there, have the experience to and are capable of providing appropriate advice as to whether charges should result from an investigation or not.

The ODPP is not specifically funded to undertake this work which, due to the sensitivity, size and sometime complexity of the material is usually time consuming. It is an undesirable impost on the finite budgetary resources of this Office.

The matters that I have mentioned thus far are in effect the same as those raised in 2003. More recently the High Court of Australia has delivered three judgments which create, from a practical perspective, further reasons why the power of referral under section 49 is undesirable.

The trilogy of decisions, namely *X7 v Australian Crime Commission* (2013) 248 CLR 93, *Lee v New South Wales Crime Commission* (2013) 248 CLR 196 and *Lee v The Queen* (2014) 88 ALJR 656, apply to investigations during which a defendant (whether charged at the time or later) is required to answer questions or otherwise provide evidence in the investigation. For present purposes, examples of that compulsion can be found in notices issued under section 74 of the Act and in the course of hearings conducted under Chapter 4 of the Act where the witness declines to answer questions and is directed to do so.

The decisions mean, from a practical perspective, that where a prosecution is commenced against a witness who was earlier compelled to provide evidence and the prosecution relates to the same subject matter about which the compelled evidence was obtained, the prosecution cannot proceed where there is to be any reliance on the compulsorily obtained evidence. Further and importantly for the purposes of this submission, it is very likely that the prosecution of any such person will not be permitted to proceed where any witness and/or any member of the prosecution team has been exposed to the compulsorily obtained evidence, even though that evidence is not to be relied upon in the prosecution.

The effect of these decisions on the manner in which briefs referred under section 49 of the Act are considered by this Office is considerable.

The Commission must, pursuant to section 49(4) of the Act, provide all relevant information that, *inter alia*, supports a charge and supports a defence. Practically, that means that the compulsorily obtained information must be provided to this Office. That in turn means that the senior staff member who provides the initial advice has been exposed to the material and cannot prosecute the matter, should that be the result of the advice provided. The creation of "Chinese walls" around the prosecution results in a double handling of a brief which is usually complex and lengthy and is a further impost on the finite budget resources of this Office.

It is submitted that legislative amendment to remove the availability of this procedure is desirable.

On a more general note, I am happy to report that the relations between this Office and the Commission continue to be professional and productive. I look forward to continuing to develop a mutually productive working relationship with the Commission in the future.

Yours sincerely


Michael Byrne QC

Acting Director of Public Prosecutions (Qld)

Name: Carl Heaton QC
Phone: [REDACTED]
Your Reference: 602456/1, 6119044
Our Reference: 5333500

2 May 2022

The Honourable Tony Fitzgerald AC QC
The Honourable Alan Wilson QC

By Email: [REDACTED]

Dear Commissioners,

I refer to your letter of 22 April 2022 seeking clarification in relation to the reference to independence referred to in the letter from Mr Todd Fuller QC of 8 April 2022.

Clarification of Aspect of submission

The response reflects the desire for independence in decision making by prosecutors focussed on the Prosecution Guidelines, ethical obligations and the interests of justice and free from influence or investment in any particular outcome. The demarcation which has been a hallmark of the system in Queensland for many years ensures that the prosecutorial discretion is exercised by reference to applicable legal and evidentiary considerations only.

The passage your referred for clarification draws on the observations of the former Director, Mr Michael Byrne QC (as His honour then was) in his letter to the PCMC on 28 July 2015, particularly

The referral of an investigation for advice prior to charging is a procedure not afforded to other investigative bodies in this State, other than in rare circumstances - see Director's Guideline 26 issued under the Director of Public Prosecutions Act 1984. It has the effect of bridging the divide between the investigative function and the independent prosecutorial function. The Commission employs lawyers and has sworn police officers attached to it. They, amongst others employed there, have the experience to and are capable of providing appropriate advice as to whether charges should result from an investigation or not.

The ODPP is not specifically funded to undertake this work which, due to the sensitivity, size and sometime complexity of the material is usually time consuming. It is an undesirable impost on the finite budgetary resources of this Office.

A prosecution service independent of the investigators ensures a second process of decision making, focussed on the objective and dispassionate assessment of the evidence with the interests of justice firmly in mind, free from investment in any particular outcome, the potential influence of emotions and the interests of any particular person. Consequently, engagement by prosecutors in the investigative or evidence gathering phase of a case (as opposed to what I understand you now to be proposing) risks blurring the focus of proper decision making at the prosecutorial level.

As now understood, your enquiry contemplates a proposed function of reviewing the state of the evidence already gathered by the investigating agency for a determination to be made as to whether the evidence is sufficient to satisfy the test for the exercise of the prosecutorial discretion. Such a process essentially shifts the exercise of the prosecutorial discretion to a point in the process which precedes charges being laid. That process mirrors that which occurs in relation to the charges which require the consent of a Crown Law officer before proceedings can be commenced, such as *Secret Commissions* and *Maintaining an unlawful sexual relationship with a child under 16 years*, for example. It is also the process which has taken place on a number of occasions (in my experience) when the Commission has sought advice on the state of the evidence prior to charges being laid (despite the strict terms of s.49). That function, which has always been undertaken by the Director when asked, reflects the collaborative working relationship between the Commission and the DPP.

Clearly in these examples, independence of decision making can, and has always been, maintained. Extending the scope of cases in which such a review takes place before proceedings are commenced (which is what I understand to be in contemplation) would not impact upon that independence. The decision to implement such a framework is really a matter of policy having regard to the practical implications of undertaking this review function, the funding implications on the DPP and the matters earlier raised by former Directors Ms Leanne Clare (as her Honour then was) at paragraph 4.10.2 of the *Three Year Review of the Crime and Misconduct Commission* by the *Parliamentary Crime and Misconduct Commission*, Report No.64, March 2004, and Mr Byrne QC (as His Honour then was) in relation to the structure and capacity of the Commission.

Request for documents

Following the submission by the *Office of the Director of Public Prosecutions (Submission 24)* referred to at paragraph 5.4.3 of the *Review of the Crime and Corruption Commission Report No.97*, Director-General of the *Department of Justice and Attorney-General*, Mr David Mackie, wrote, on 20 July 2016, to the Director inviting feedback on the recommendations of the PCCC in the 2016 report. Amongst those was ***Recommendation 5*** relating to the amendment to s.49 of the CC Act.

Relevantly, Mr Byrne QC wrote simply in response;

Recommendation 5 arises from a submission I made to the PCCC. Accordingly I actively encourage the adoption of that recommendation.

There seems to be no further documents relating to the review or written submissions in relation to the relevant amendment.

I trust this information is of assistance and clarifies the matters in contention. Please contact me should you require any further information.

Yours sincerely


Carl Heaton QC
Director of Public Prosecutions