

# **REVIEW OF THE INSPECTOR'S REPORT TO THE PREMIER: THE INSPECTOR'S REVIEW OF THE ICAC**

**Organisation:** Crime and Corruption Commission Queensland  
**Name:** Mr Alan MacSporran QC  
**Position:** Chairperson  
**Date Received:** 15 August 2016

GPO Box 3123  
Brisbane QLD 4001

Level 2  
North Tower Green Square  
515 St Pauls Terrace  
Fortitude Valley QLD 4006

Tel.: 07 3360 6060  
Toll-free: 1800 061 611  
(in Queensland outside  
Brisbane)

Fax: 07 3360 6333

mailbox@ccc.qld.gov.au  
www.ccc.qld.gov.au

ABN 32 164 714 360

Our Reference: AD-16-0441; 16/098886  
Contact Officer: Rob Hutchings 07 3360 6273

UNCLASSIFIED

20 July 2016

Mr Damien Tudehope MP  
Chair  
Committee on the Independent Commission Against Corruption  
Parliament of New South Wales  
SYDNEY NSW 2000

**By email:** [icaccommittee@parliament.nsw.gov.au](mailto:icaccommittee@parliament.nsw.gov.au)

Dear Mr Tudehope

**RE: Inquiry into the ICAC Inspector's Report to the Premier  
*The Inspector's Review of the ICAC***

Thank you for the opportunity to make a submission concerning the above inquiry.

The CCC understands that the primary issues for the Committee are whether NSW ICAC corruption and prevention hearings should continue to be held publicly; and the content of and effect of pre-hearing notices to discover and hearing attendance notices.

The CCC submission gives the Committee an insight into how the CCC operates relative to ICAC as referred to in the inquiry's terms of reference. The submission then commends sections 75, 82, 84, 85 and 177 of the *Crime and Corruption Act 2001* (Qld) to the Committee as a balanced, workable compromise to these issues.

The submission has been prepared entirely from publicly available resources. Source material has been meticulously referenced to validate the submission and to allow the Committee to undertake any further inquiries or research it might wish to make.

If you or the Committee require any further information or assistance from the CCC, please telephone Mr Rob Hutchings [Director, CCC Legal Services Division] on 07 [REDACTED] or email him at [REDACTED]

Yours sincerely

[REDACTED]  
**A J MacSporran QC**  
Chairperson



**Crime and Corruption  
Commission**

**QUEENSLAND**

## Contents

Abbreviations .....	2
Summary.....	3
Purpose .....	3
The CCC: purpose, origin and evolution.....	3
CCC and ICAC: statutory functions compared and contrasted .....	4
CCC's corruption functions.....	5
CCC's responsibilities .....	5
Corruption complaints .....	5
CCC corruption investigations .....	6
CCC corruption hearings .....	6
Historically .....	7
Currently.....	7
Media reporting .....	9
CCC investigation or hearing reports .....	9
Obtaining, recording and managing documents and things [acquired property].....	10
CCC's structure and governance .....	10
CCC's oversight arrangements.....	11
Other related matters .....	12
An exoneration protocol .....	12
Making allegations of corrupt conduct public.....	14
Conclusion .....	15
Attachment .....	15

## Abbreviations

CC Act	<i>Crime and Corruption Act 2001 (Qld)</i>
CJ Act	<i>Criminal Justice Act 1989 (Qld)</i>
CM Act	<i>Crime and Misconduct Act 2001 (Qld)</i>
CCC	Crime and Corruption Commission organisationally
CJC	Criminal Justice Commission organisationally
CMC	Crime and Misconduct Commission organisationally
Commission	The governing body for the CCC, CJC or CMC [as the case may be]
Committee	NSW Parliamentary ICAC Committee
Fitzgerald Inquiry	Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, presided over by Commissioner Tony Fitzgerald QC from 1987 to 1989
Fitzgerald Report	Report arising from the Fitzgerald Inquiry
ICAC	New South Wales Independent Commission Against Corruption
ICAC Act	<i>Independent Commission Against Corruption Act 1988 (NSW)</i>
Parliamentary Committee	Qld Parliamentary Crime and Corruption Committee
QPS	Queensland Police Service

## Summary

The Queensland Crime and Corruption Commission [CCC] is an independent statutory body established under the *Crime and Corruption Act 2001* (Qld) [CC Act].

The CCC's corruption and prevention functions and powers in respect of corrupt conduct are similar, but not identical, to those of the New South Wales Independent Commission Against Corruption [ICAC]. Compared to the *Independent Commission Against Corruption Act 1988* (NSW) [ICAC Act], 'corrupt conduct' is defined somewhat differently in the CC Act. Those differences, however, are not material to this submission.

In respect of corrupt conduct, the CCC's and ICAC's functions and powers differ in two relevant ways. Firstly, CCC corruption hearings are generally closed, but may be opened to the public and the media. Secondly, the CCC is not empowered to make findings, just balanced, evidence-based opinions and recommendations.

Open CCC corruption and prevention hearings usually address some systemic public sector corruption issue. While statutory checks and balances protect individual rights, open corruption and prevention hearings can restore public confidence in public institutions; and reduce public sector agencies' vulnerability to corruption.

As to whether corruption hearings should be open or closed, the CCC considers that section 177 of the *Crime and Corruption Act 2001* (Qld) demonstratively offers a balanced, workable compromise. The CCC, therefore, commends section 177 to the Committee for its favourable consideration.

## Purpose

This submission does not comment on the merits of the various assertions that others have reportedly made about the issues being considered by the Committee. Those are matters for the Committee and, ultimately, the Parliament of New South Wales. Rather, this submission gives the Committee an insight into how the CCC operates relative to ICAC as referred to in the inquiry's terms of reference.

To assist the Committee in its deliberations, this submission:

- Describes the purpose, origin and evolution of the CCC;
- Compares and contrasts the CCC's statutory functions with those of ICAC;
- Addresses term of reference 1 and the Inspector's recommendations 1 to 5, 7 and 8 by describing and illustrating the CCC's corruption functions and powers, particularly concerning corruption hearings;
- Addresses term of reference 2 by describing the CCC's structure and governance;
- Addresses term of reference 3 by describing the CCC's oversight arrangements; and
- Addresses term of reference 5 by commenting on an exoneration protocol [the Inspector's recommendation 15]; and raising a current public interest issue for the CCC.

## The CCC: purpose, origin and evolution

The CCC is an independent statutory body established under the CC Act. The CCC's main purposes are to combat and reduce the incidence of major crime; and to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector.<sup>1</sup>

The CCC and its predecessors, the Crime and Misconduct Commission [CMC] and the Criminal Justice Commission [CJC], have been dealing with public sector corruption in Queensland for over 25 years.

---

<sup>1</sup> CC Act, ss. 220, 57 & 4(1)

The CJC was originally established in 1989 to restore public confidence in Queensland's public institutions after the revelations of the Fitzgerald Inquiry from 1987 to 1989.<sup>2</sup> The Criminal Justice Commission and the Queensland Crime Commission were amalgamated into the Crime and Misconduct Commission in 2002.<sup>3</sup> The Crime and Misconduct Commission was later renamed the Crime and Corruption Commission in 2014.<sup>4</sup>

### **CCC and ICAC: statutory functions compared and contrasted**

The CCC's statutory functions are similar to, but wider than, ICAC's in many respects. Like ICAC, the CCC has corruption and corruption prevention functions.<sup>5</sup> However, the CCC also has crime, research, intelligence, witness protection and civil confiscation functions.<sup>6</sup>

The CCC is primarily responsible for dealing with complaints about 'corrupt conduct' in all units of public administration including: the Legislative Assembly and parliamentary service; the Executive Council; State courts and tribunals; government departments; statutory bodies; police; correctional centres; local governments; universities; corporate entities [established or maintained by an Act] that collect revenue or raise funds under the authority of an Act; and non-corporate entities [established or maintained under an Act] that are funded or financially assisted by the State.<sup>7</sup>

Certain entities that report to parliament or a parliamentary committee are not units of public administration and, therefore, do not come within the CCC's corruption functions. For example, the Parliamentary Commissioner [who assists the Parliamentary Crime and Corruption Committee oversight the CCC] is not a unit of public administration.<sup>8</sup>

The Queensland Parliament has power to declare that an entity is, or is not, a unit of public administration.<sup>9</sup> TAFE Queensland, for example, has been declared to be a unit of public administration.<sup>10</sup>

Due to meaning of 'corruption' in the CC Act, the CCC deals with both 'corrupt conduct' and 'police misconduct'.<sup>11</sup> In New South Wales, the Police Integrity Commission, not ICAC, deals with the equivalent of police misconduct.<sup>12</sup>

Although expressed differently, the term 'corrupt conduct' is defined similarly in the CC Act<sup>13</sup> and the ICAC Act.<sup>14</sup> While the respective definitions are quite complex, there are some fundamental differences. For example, unlike the ICAC Act, corrupt conduct in the CC Act does not expressly include 'a substantial breach of an applicable code of conduct' by 'a Minister of the Crown'.<sup>15</sup> However, the somewhat different legislative meanings of corrupt conduct are not material to this submission.

<sup>2</sup> The Fitzgerald Inquiry is a commonly used reference to the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, presided over by Commissioner Tony Fitzgerald QC from 1987 to 1989.

<sup>3</sup> *Crime and Misconduct Act 2001* (Qld), s. 220

<sup>4</sup> *Crime and Corruption Act 2001* (Qld), s. 220

<sup>5</sup> CC Act, ss. 33 & 23; & ICAC Act, s. 13

<sup>6</sup> CC Act, ss. 25, 52, 53, 56(1(a) & 56(1(b)

<sup>7</sup> CC Act, s. 20(1)

<sup>8</sup> CC Act, s. 20(2)(a) to (c)

<sup>9</sup> CC Act, ss. 20(1)(h) & 20(2)(d)

<sup>10</sup> *TAFE Queensland Act 2013* (Qld), s. 63

<sup>11</sup> CC Act, Schedule 2 & ss. 35, 46, 47 & 48

<sup>12</sup> *Police Integrity Commission Act 1996* (NSW), ss. 5 & 13

<sup>13</sup> CC Act, ss. 13-19

<sup>14</sup> ICAC Act, ss. 7-9

<sup>15</sup> ICAC Act, s. 9(1)(c)

Unlike ICAC,<sup>16</sup> the CCC has no statutory function or power to make findings in any respect whatsoever, but [as explained below] may express balanced, evidence-based opinions and recommendations.<sup>17</sup>

### **CCC's corruption functions**

#### **CCC's responsibilities**

The CCC is primarily responsible for dealing with corrupt conduct complaints and is also responsible for monitoring how the Commissioner of the Queensland Police Service deals with police misconduct.<sup>18</sup>

Like ICAC, the CCC does not investigate every corrupt conduct complaint; just the more serious complaints, or those involving systemic corrupt conduct in public sector agencies.<sup>19</sup> Subject to the CCC's monitoring role,<sup>20</sup> the Queensland Police Service [QPS] and the other public sector agencies deal with the less serious corruption complaints involving their members.<sup>21</sup>

The CCC undertakes its monitoring role by issuing corruption investigation guidelines to agencies;<sup>22</sup> overseeing or reviewing agency investigations; auditing the outcomes of agency investigations; or assuming responsibility for, and completing, a corruption investigation.<sup>23</sup> The actual monitoring mechanism is decided on a case-by-case or case-type basis, having regard to the particular agency's integrity framework.

The CCC must, at all times, act independently, impartially, fairly and in the public interest.<sup>24</sup>

#### **Corruption complaints**

In 2014-15, the CCC received 2347 complaints involving 5326 instances of alleged corruption. Sixty-six percent of these complaints related to police and 34% related to other public sector agencies, including local government.<sup>25</sup>

Corruption can take many forms. An analysis of CCC investigations from 2009 to 2014 revealed that the most common categories of public sector corruption [excluding police] were: favouritism; unauthorised disclosures of information; misappropriation of assets; and poor procurement processes.<sup>26</sup> Moreover, one third of the CCC's corruption investigations in 2014-15 involved allegations of inappropriate associations; or unauthorised access to, and disclosure of, confidential information by police and other public officials.<sup>27</sup> Similarly, the CCC's monitoring activities from 2012 to 2015 indicated that public sector agencies are particularly vulnerable to corruption in the form of unauthorised disclosures of confidential information.<sup>28</sup>

---

<sup>16</sup> ICAC Act, ss. 13(3)(a), 13(5)(a), 13(5)(c)

<sup>17</sup> CC Act, ss. 49 & 64

<sup>18</sup> CC Act, s. 45

<sup>19</sup> CC Act, ss. 35(1)(f), 35(3) & 46(2)(a)

<sup>20</sup> CC Act, ss. 47 & 48

<sup>21</sup> CC Act, ss. 35(1)(b), 46(2)(b), 46(2)(d) & 46(2)(e)

<sup>22</sup> CCC, *Corruption in focus: a guide to dealing with corrupt conduct in the Queensland public sector*, <http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus>

<sup>23</sup> CC Act, ss. 35(1)(g), 47(1)(c) & 48(1)(d)

<sup>24</sup> CC Act, s. 57

<sup>25</sup> CCC's *Annual Report 2014-15*, <http://www.ccc.qld.gov.au/research-and-publications/publications/ccc/corporate/ccc-annual-report-2014-15>, p. 22

<sup>26</sup> CCC's *Annual Report 2014-15*, p. 17

<sup>27</sup> CCC's *Annual Report 2014-15*, p. 19

<sup>28</sup> CCC's *Annual Report 2014-15*, p. 22-23

### **CCC corruption investigations**

The CCC uses a multi-disciplinary approach to investigating corruption complaints. These disciplines include: civilian and police investigators; financial analysts; forensic computer specialists; intelligence officers; and covert operatives [when necessary].

Although not formally attached to corruption investigation teams, CCC lawyers advise on any legal issues arising during investigations and the available legal options when the investigations are finalised.

The CCC finalised 45 corruption investigations in 2014-15. Fifty-five individuals, mainly public officials, were charged with 200 criminal offences. In fourteen other cases, the CCC also recommended that public sector heads prosecute specific public officials in their agencies for criminal offences or disciplinary matters.<sup>29</sup>

The following examples demonstrate the types of criminal prosecutions arising from CCC corruption investigations in 2014-15:

**Case 1:** A senior university academic pleaded guilty in the Magistrates Court Brisbane on 1 April 2016 to fraud; attempted fraud; and forgery and uttering charges. The academic was convicted and sentenced to two years imprisonment, wholly suspended for four years.

The CCC corruption investigation in this case established that the academic [who had been the director of a significant university medical research centre] and an accomplice falsified human research findings and published a false research paper in a prestigious, international medical journal. The academic had also obtained research funding on a false premise and made false reports to benefactors.

The convictions in this case are believed to be the first for 'research fraud' in Australia. Charges against the academic's accomplice are still pending in court.<sup>30</sup>

**Case 2:** A joint CCC/QPS corruption investigation in 2014 established sufficient evidence to charge a former parliamentarian with sixteen fraud and like offences. The charges are still pending in court.<sup>31</sup>

**Case 3:** In October 2014, a CCC corruption investigation resulted in one former public official and one current public official being charged with misconduct in public office. At the relevant times, both officials had been agency executives and had allegedly favoured certain individuals by improperly appointing them to agency positions. Again, the charges are still pending in court.<sup>32</sup>

### **CCC corruption hearings**

Despite periodic variations to the CCC's functions, the CCC has been empowered to hold corruption hearings since its inception as the CJC in 1989.<sup>33</sup>

---

<sup>29</sup> CCC's Annual Report 2014-15, p. 17

<sup>30</sup> CCC's Annual Report 2014-15, p. 18

<sup>31</sup> CCC's Annual Report 2014-15, p. 18

<sup>32</sup> CCC's Annual Report 2014-15, p. 18

<sup>33</sup> *Criminal Justice Act 1989* (Qld) [CJ Act], s. 2.17(1) [renumbered to s. 25(1) in 1994]; & the *Crime and Misconduct Act 2001* (Qld) [CM Act], later renamed the *Crime and Corruption Act 2001* [CC Act], s176

### Historically

Initially, CJC corruption hearings and associated powers were modelled on the Fitzgerald Inquiry. Except for one witness<sup>34</sup> and a few exhibits, Fitzgerald Inquiry hearings between 1987 and 1989 were open to the public and media. Testimony and exhibits were only suppressed where 'safety or continuing law enforcement operations would have been jeopardised'; or 'hearsay evidence ... had no probative value'.<sup>35</sup>

Like the Fitzgerald Inquiry, CJC corruption hearings were usually open, but could be closed in the public interest.<sup>36</sup> This situation was virtually reversed in 1997.<sup>37</sup> Following a Parliamentary Criminal Justice Committee recommendation, the Queensland Parliament considered that CJC corruption hearings should generally be closed to protect people's reputations and amended the CJC's hearing powers in this respect.<sup>38</sup> The CJC was, however, empowered to open hearings for individual fairness and public interest reasons.<sup>39</sup>

Originally referred to as summonses to procure evidence and now as notices to attend hearings, the Chairperson has always had the power to compel people to attend corruption hearings. However, the Chairperson could not initially compel a person to attend a commission hearing to give evidence relative to an official misconduct matter<sup>40</sup> that was already pending against the person in the then Misconduct Tribunal.<sup>41</sup> The *Crime and Misconduct Act 2001* [CM Act]<sup>42</sup> removed this restriction in 2002.

### Currently

As explained above, the CCC may hold corruption hearings.<sup>43</sup> Hearings are generally closed, but may be open to the public [and the media], if a closed hearing would be unfair to a person or contrary to the public interest.<sup>44</sup> Even then, the presiding officer may close a public hearing 'for a particular purpose'.<sup>45</sup>

The presiding officer may decide on the procedures for the hearing; is not bound by the rules of evidence; must act quickly but fairly; and may make non-publication orders.<sup>46</sup>

Presiding officers, lawyers and witnesses at CCC corruption hearings have the same immunities or protections they would ordinarily have as judicial officers, lawyers and witnesses in the Supreme Court.<sup>47</sup>

Similar to disclosure and interrogatory processes in civil proceedings, the Chairperson can compel people to give the CCC information or documents before corruption hearings commence.<sup>48</sup> For example, the Chairperson might issue a notice to discover to a financial institution to produce financial records relevant to the CCC's inquiry. Any issue over a claim for privilege [except self-incrimination

---

<sup>34</sup> An executive police officer who admitted to being corrupt.

<sup>35</sup> Fitzgerald Report, <http://www.ccc.qld.gov.au/about-the-ccc/the-fitzgerald-inquiry>, pp. 4 & 10-11

<sup>36</sup> CJ Act, s. 2(17) [renumbered to s. 25 in 1994]

<sup>37</sup> *Criminal Justice Legislation Amendment Act 1997* (Qld), s. 34

<sup>38</sup> Explanatory Notes, *Criminal Justice Legislation Amendment Bill 1997* (Qld), <http://www.legislation.qld.gov.au/Bills/48PDF/1997/CriminalJustAmdtB97E.pdf>, p. 8

<sup>39</sup> CJ Act, s. 90; & CM Act, s. 177

<sup>40</sup> 'Misconduct' formerly meant official misconduct and police misconduct [CM Act, Schedule 2] and was the precursor to 'corruption'. 'Official misconduct' [CM Act, ss. 14-19] was the precursor to 'corrupt conduct' [CC Act, ss. 13-19].

<sup>41</sup> CJ Act, s. 3.6(2) [renumbered to s. 74(2) in 1994]

<sup>42</sup> CM Act, s. 82(a)

<sup>43</sup> CC Act, s. 176(1)

<sup>44</sup> CC Act, ss. 177(1) & 177(2)(c)

<sup>45</sup> CC Act, s. 177(4)

<sup>46</sup> CC Act, s. 180

<sup>47</sup> CC Act, s. 203

<sup>48</sup> CC Act, s. 75



privilege] in respect of the information or documents is referred to the Supreme Court to decide.<sup>49</sup> Evidence obtained in this way remains confidential, unless and until it is disclosed at a public hearing or for some other legitimate purpose.

The Chairperson can also compel a person to attend a corruption hearing.<sup>50</sup> The attendance notice must state, as far as is reasonably practicable, the general nature of the matters about which the person may be questioned at the hearing.<sup>51</sup> CCC attendance notices routinely contain this information, but the content varies from case-to-case, depending on the circumstances. Even if a notice does not contain this information, the person may still be questioned about any relevant matter at the hearing.<sup>52</sup> The notice may bind the person to secrecy, except for specific purposes such as, seeking legal advice in respect of the notice; or complaining to the Parliamentary Committee about the notice.<sup>53</sup>

An immediate attendance notice can only be issued with the prior approval of a Supreme Court judge.<sup>54</sup>

At the hearing, the presiding officer can direct a person to answer questions; and produce documents or things, despite any claim for self-incrimination privilege.<sup>55</sup> Any evidence that is received, despite a claim for self-incrimination privilege, is regarded as 'objectionable' and is not generally admissible in any criminal, civil or administrative proceedings.<sup>56</sup> Such evidence may, however, be admitted in certain limited proceedings for example, contempt proceedings; proceedings for offences against the CC Act; or with the person's consent.<sup>57</sup> In other words, self-incrimination privilege is abrogated for corruption hearings; a use immunity is available in criminal, civil or administrative proceedings; but derivative use of the information is still possible.

A person may, however, decline to answer a question at a corruption hearing on the grounds of legal professional privilege, public interest immunity, or parliamentary privilege. When made, these claims are referred to the Supreme Court to decide.<sup>58</sup>

The CCC can hold a corruption hearing despite any proceeding that may be in, or before, a court or tribunal.<sup>59</sup> To protect a person's right to a fair trial on an indictment prosecuted by, or for, the State of Queensland, the CCC must close the corruption hearing for the duration of the indictable proceedings and make a non-disclosure order.<sup>60</sup> Proceedings for a criminal offence are deemed to have commenced from the moment the charge is laid.<sup>61</sup> If requested by a person charged with any offence, or the person's lawyer, the CCC must [unless the court orders otherwise] give the person or the lawyer a copy of the corruption hearing evidence relevant to the person's defence. This evidence, however, may only be used for the person to defend the pending charge.<sup>62</sup>

Evidence to the hearing and the witnesses' identifying particulars are suppressed, except for limited circumstances such as, public hearings where no non-publication orders are made; or to complain to the Parliamentary Committee about the way the hearing was conducted.<sup>63</sup>

---

<sup>49</sup> CC Act, ss. 75(5)(a), 79, 80 & 196

<sup>50</sup> CC Act, s. 82

<sup>51</sup> CC Act, s. 82(2)(b)

<sup>52</sup> CC Act, s. 82(4)(a)

<sup>53</sup> CC Act, s. 84

<sup>54</sup> CC Act, s. 85

<sup>55</sup> CC Act, ss. 192(1), 192(2) & 331(4)(b)

<sup>56</sup> CC Act, ss. 197(1), 197(2), 197(5) & 197(6)

<sup>57</sup> CC Act, ss. 197(3) & 197(4)

<sup>58</sup> CC Act, ss. 192(2A), 192(3) & 196

<sup>59</sup> CC Act, s. 331(1)

<sup>60</sup> CC Act, ss. 331(2) & 331(4)(a)

<sup>61</sup> CC Act, ss. 331, 202 & 180(3)

<sup>62</sup> CC Act, s. 201

<sup>63</sup> CC Act, s. 202

Sometimes, the CCC will hold combined, or consecutive, corruption and prevention hearings. In those cases, however, the CCC will usually use coercive powers under its corruption functions to inform the prevention component of the hearings. Usually, the corruption hearings are held in private and the prevention hearings are conducted publically. Although rare, this is not always the case. In the Tutt Inquiry in 2009,<sup>64</sup> for example, there was little, if any, prospect of successfully prosecuting any individual. A combined misconduct and prevention hearing was, therefore, held publically over six days.<sup>65</sup>

### Media reporting

The CCC has published on its website information for the media about reporting on CCC coercive hearings. The information applies to hearings under the CCC's various statutory functions generally, including corruption hearings.<sup>66</sup>

### **CCC investigation or hearing reports**

The CCC usually reports the outcome of its corruption investigations or hearings to the relevant agencies.<sup>67</sup> The CCC is not empowered to make any findings, but may express balanced, evidence-based opinions or recommendations.<sup>68</sup> All such reports are generally confidential under the CC Act<sup>69</sup> and exempt from disclosure under the *Right to Information Act 2009* (Qld).<sup>70</sup> However, the Commission may expressly authorise the report, or a summary of it, to be published [usually for a compelling public interest reason].<sup>71</sup>

If the CCC considers that there is sufficient evidence to prosecute a person for a criminal offence, the CCC has no power to prosecute, but must refer the report to the Director of Public Prosecutions or other appropriate prosecuting authority.<sup>72</sup> [Police officers seconded to the CCC retain their police powers and functions, including the discretion to prosecute.<sup>73</sup>] The report must be accompanied by all known information that supports a charge of, or a defence to, a criminal offence arising from the investigation or hearing.<sup>74</sup>

Otherwise, the CCC may: (a) commence disciplinary proceedings for corrupt conduct against a public official in the Queensland Civil and Administrative Tribunal [QCAT];<sup>75</sup> (b) recommend that the agency head consider taking disciplinary action against a public official on similar, or other, grounds;<sup>76</sup> (c) recommend that public sector agencies [generally or specially] take particular action to prevent corruption;<sup>77</sup> and, (d) share intelligence, evidence or other information with relevant Federal, State and Territory agencies.<sup>78</sup>

<sup>64</sup> CCC, *Report on an investigation into the alleged misuse of public monies, and a former ministerial adviser*, <http://www.ccc.qld.gov.au/research-and-publications/research-and-publications/browse-by-type/reports>, December 2010 [Tutt Inquiry report]

<sup>65</sup> 'Misconduct' formerly meant official misconduct and police misconduct [CM Act, Schedule 2] and was the precursor to 'corruption'.

<sup>66</sup> CCC, <http://www.ccc.qld.gov.au/news-and-media/media-information-on-ccc-coercive-hearings>

<sup>67</sup> CC Act, s. 49

<sup>68</sup> CC Act, ss. 49 & 64

<sup>69</sup> CC Act, ss. 66 & 213

<sup>70</sup> *Right to Information Act 2009* (Qld), Schedule 1, item 3 & Schedule 3, item 1

<sup>71</sup> CC Act, s. 62(1)

<sup>72</sup> CC Act, s. 49(2)(a)

<sup>73</sup> CC Act, s. 255(5)

<sup>74</sup> CC Act, s. 49(4)(a)&(b)

<sup>75</sup> CC Act, ss. 50, 219D, 291DA, 219I & 219IA

<sup>76</sup> CC Act, s. 49(2)(f)

<sup>77</sup> CC Act, 24(e) & 51(1)

<sup>78</sup> CC Act, ss. 55, 59, 60 & 62

**Obtaining, recording and managing documents and things [acquired property]**

As indicated above, the Chairperson can compel a person to give the CCC a document or thing before a corruption hearing, subject to a claim for privilege [except self-incrimination privilege].<sup>79</sup> The Chairperson must first reasonably suspect that the person has, or possesses, a document or thing relevant to the corruption hearing.<sup>80</sup>

The notice must: (a) state whether it relates to a corruption investigation;<sup>81</sup> (b) sufficiently identify the document or thing;<sup>82</sup> (c) allow some other person to respond on the notified person's behalf;<sup>83</sup> and (d) allow a reasonable time and manner for the notice to be complied with.<sup>84</sup>

The notice may bind the person to secrecy, except for specific purposes such as, seeking legal advice in respect of the notice; or complaining to the Parliamentary Committee about the notice.<sup>85</sup> Except at the actual hearing, there is no power for any person to be compelled to produce any document or thing immediately.<sup>86</sup>

Once obtained, commission officers may use the document or thing to discharge their duties.<sup>87</sup>

Unlike property seized under a warrant, for example, the CC Act does not specify how documents or things obtained under Notices to Discover should be recorded and managed. Nevertheless, the CCC's policy is to accurately, securely and transparently record and manage all property, however it is acquired. The CCC has, therefore, issued procedural guidelines to commission officers in this respect.

Generally, the CCC will accept and record photocopies of documents obtained under Notices to Discover. Otherwise, the original documents are receipted, photocopied and returned to the owners promptly. Similarly, things [such as mobile phones] will be receipted; the evidentiary material forensically examined, extracted or copied; and the things returned to the owners promptly. The copies of the evidentiary material are then retained with the related corruption investigation or hearing files until the files may be disposed of as authorised under the *Public Records Act 2002* (Qld).

Internal and external audits are conducted periodically to ensure that commission officers have complied with the CCC's policy and procedural guidelines. Depending on the circumstances, failure to comply may be notified to the Parliamentary Committee and the Parliamentary Commissioner as suspected improper conduct by the officer concerned.<sup>88</sup>

**CCC's structure and governance**

The CCC is incorporated under the CC Act and is a statutory body under the *Financial Accountability Act 2009* (Qld).<sup>89</sup>

The nominal term 'Commission' can be used inter-changeably to mean the whole organisation or the organisation's governing body. [As an adjective, the term can also be used to describe a power, a responsibility or an officer.] To avoid any confusion with the nominal term, 'CCC' usually refers to the organisation and 'Commission' usually refers to the organisation's governing body.

The Commission consists of a full-time commissioner who is the Chairperson; and four part-time commissioners, one of whom is the Deputy Chairperson.<sup>90</sup>

<sup>79</sup> CC Act, s. 75(2)(b)&(c)

<sup>80</sup> CC Act, s. 75(1)(b)

<sup>81</sup> CC Act, s. 75(7)(a)

<sup>82</sup> CC Act, s. 75(7)(c)

<sup>83</sup> CC Act, s. 75(8)(a)&(b)

<sup>84</sup> CC Act, s. 75(2)

<sup>85</sup> CC Act, s. 84

<sup>86</sup> CC Act, s. 75B

<sup>87</sup> CC Act, s. 342(1)

<sup>88</sup> CC Act, s. 329, particular s. 329(2)(g)

<sup>89</sup> CC Act, ss. 220 & 221A

The CCC's establishment includes: the Commission; a Chief Executive Officer [CEO];<sup>91</sup> senior officers [for example, the Executive Director (Corruption)];<sup>92</sup> civilian staff of various disciplines [for example, administrative officers, financial investigators, intelligence officers and lawyers];<sup>93</sup> secondees [for example, police officers];<sup>94</sup> and agents or contractors [for example, security officers].<sup>95</sup>

Basically, the Commission is responsible for the CCC's strategic leadership, direction and performance; internal audit charter; and budget.<sup>96</sup> The Chairperson is responsible for presiding at Commission meetings; performing the commission functions and powers delegated to him or her; and performing the statutory functions and powers granted to him or her in that capacity.<sup>97</sup> The CEO is responsible for administering the CCC; performing the commission functions and powers delegated to him or her; performing the Chairperson's functions and powers delegated to him or her; and performing the statutory functions and powers granted to him or her in that capacity.<sup>98</sup> For example, the CEO is responsible for managing and disciplining commission staff.<sup>99</sup>

The functions and powers of the CCC, the Chairperson and the CEO are delegated, or sub-delegated [as the case may be], to various commission officers as and when administratively or operationally required, subject at all times to any limitations in the CC Act or any other relevant statute.<sup>100</sup>

The CCC exercises its corruption functions and powers within a strict legal framework. Reasonable grounds must exist before any power is exercised. Some powers can only be exercised with prior judicial approval, and all corrupt conduct investigations are subject to judicial review.<sup>101</sup> For example, an immediate attendance notice can only be issued with the prior approval of a Supreme Court judge.<sup>102</sup> Similarly, some functions are reserved for the Supreme Court. For example, disputed claims for privilege over seized property or a refusal to give evidence at a corruption hearing are decided in the Supreme Court.<sup>103</sup> Additionally, proceedings for contempt at corruption hearings can only be dealt with in the Supreme Court.<sup>104</sup>

### **CCC's oversight arrangements**

As well as judicial scrutiny, the Parliamentary Committee, a Parliamentary Commissioner and the responsible Minister all scrutinise the performance of the CCC's corruption or administrative functions and powers.<sup>105</sup> By dealing with complaints about the CCC's activities and commission officers' conduct, the Parliamentary Committee ensures that the CCC is accountable to Parliament. The Parliamentary Commissioner regularly audits the CCC's use of its powers and assists the Parliamentary Committee to ensure that the CCC and its officers are accountable. As the responsible Minister of State, the Attorney-General ensures that the CCC is financially and administratively accountable.<sup>106</sup>

---

<sup>90</sup> CC Act, s. 223

<sup>91</sup> CC Act, s. 223A

<sup>92</sup> CC Act, s. 245

<sup>93</sup> CC Act, s. 254

<sup>94</sup> CC Act, s. 255

<sup>95</sup> CC Act, s. 256

<sup>96</sup> CC Act, s. 251

<sup>97</sup> CC Act, s. 252

<sup>98</sup> CC Act, s. 253

<sup>99</sup> CC Act, ss. 254(6) & 273A to 273F

<sup>100</sup> CC Act, ss. 269-271

<sup>101</sup> CC Act, s. 332

<sup>102</sup> CC Act, s. 85

<sup>103</sup> CC Act, ss. 111 & 196

<sup>104</sup> CC Act, ss. 198-200

<sup>105</sup> *CCC's Annual Report 2014-15*, p. 40

<sup>106</sup> *CCC's Annual Report 2014-15*, p. 40

Communications between the CCC and the Parliamentary Committee are generally confidential.<sup>107</sup> However, the CCC can produce public reports in a number of ways depending on the subject matter.<sup>108</sup> Reports on public hearings, for example, are given to the Parliamentary Committee, the Speaker of the Queensland Parliament and the responsible Minister. If parliament is sitting, the Speaker must table the report on the next sitting day. Otherwise, the Clerk of the Parliament publishes the report.<sup>109</sup>

## Other related matters

### An exoneration protocol

The CCC does not have an exoneration protocol for corruption investigations or hearings. As explained above, the CCC is not empowered to make findings. Although commentators and others might refer to CCC findings, the CCC does not make findings; just balanced, evidence-based opinions and recommendations as to what [if any] prosecution, disciplinary or preventative action public officials might consider taking in respect of any identified, or similar, corruption [that is, corrupt conduct or police misconduct].

Public statements about closed CCC corruption investigations or hearings do not contain any adverse comment by the CCC about any person, just the alleged conduct. The following is a recent example of a CCC media release about the outcome of a CCC corruption investigation:

#### **Police officer charged for unauthorised access and disclosure of confidential information - 22 June 2016**

A 47-year-old current serving Sergeant from the Brisbane Region was charged today for alleged unauthorised use of the Queensland Police Service QPrime database system following a Crime and Corruption Commission investigation.

The officer was served with a Notice to Appear in court to face the following charges:

- 3 x Misconduct in relation to public office contrary to section 92A(1)(a) *Queensland Criminal Code 1899* with alternate charges of 3 x Computer hacking and misuse contrary to section 408E(2) *Queensland Criminal Code 1899*

The man is expected to appear in the Brisbane Magistrates Court on 18 July 2016. As the matter is now before the courts, the CCC is unable to comment further. Last updated: 22 June 2016<sup>110</sup>

Public reports about public CCC corruption hearings might contain an adverse comment about a person's possible corruption, but any such comment: (a) is not expressed as a finding; (b) is balanced and evidence-based; and (c) made only to explain [where necessary] the hearing's outcome or the CCC's recommendations. In explaining why no criminal prosecution or disciplinary action was recommended in the Flavell Inquiry report in 2008, for example, the CMC stated that:

The CMC considers that Mr Flavell placed himself in a position of a conflict of interest with respect to the future company because of the extent of his assistance and the personal nature of it. By continuing to deal with Mr Wills as he did, he breached his duty to act in the public interest. This was also reflected in his dissemination of departmental materials without — by his own admission — proper consideration.

While these actions may, if proved, have constituted official misconduct, no disciplinary action could be considered as Mr Flavell was no longer employed by the public sector.

<sup>107</sup> CC Act, ss. 66, 213 & 214

<sup>108</sup> CC Act, s. 64

<sup>109</sup> CC Act, s. 69

<sup>110</sup> CCC news and announcements, <http://www.ccc.qld.gov.au/news-and-media/ccc-media-releases/police-officer-charged-for-unauthorised-access-and-disclosure-of-confidential-information-22-june-2016>

The CMC therefore reviewed and considered the evidence in the context of possible criminal charges. It subsequently referred the matter to the Director of Public Prosecutions (DPP) for consideration of prosecutions under s. 85 of the *Criminal Code*, disclosure of official secrets. The DPP has advised that the Crown could not prove to the requisite standard, on the evidence, that Mr Flavell had a duty to keep secret the information disclosed or that the disclosure was unlawful.<sup>111</sup>

After recommending some legislative changes in the Flavell Inquiry report, the CMC said:

These recommendations are intended to bring the rules surrounding post-separation employment and lobbying in Queensland — where little regulation currently exists — into line with the advances in other national jurisdictions.<sup>112</sup>

Any person aggrieved by a CCC corruption investigation or hearing may: (a) apply to the Supreme Court for a mandatory or restrictive injunction against the CCC under section 332 of the CC Act; (b) apply to the Supreme Court for a declaration under the Court's inherent jurisdiction; or (c) complain to the Parliamentary Committee.<sup>113</sup>

Applications to the Supreme Court are rare; most aggrieved people complain to the Parliamentary Committee.

In over 25 years, only two people have applied to the Supreme Court for orders under section 332 of the CC Act, or any comparable earlier provision.<sup>114</sup> In both cases, one in 1992<sup>115</sup> and the other in 2001,<sup>116</sup> the primary judges dismissed the applications and the Queensland Court of Appeal later upheld the primary decisions.<sup>117</sup>

Although statistics are not readily available, some other people have sought declarations from the Supreme Court in respect of some aspects of some CCC corruption investigations or hearings. Recently, for example, a police officer asked the Court to declare that the CCC had no power to assume responsibility for, and complete, a QPS corruption investigation, which the CCC had originally referred to the QPS. Basically, the officer argued that an Assistant Police Commissioner's decision to take managerial, rather than disciplinary, action had finalised the matter. The Court rejected this argument; found that the CCC's actions were valid; and dismissed the application.<sup>118</sup> The Queensland Court of Appeal upheld the primary decision and dismissed the officer's appeal, which was essentially based on the same ground and argument as in the Court below.<sup>119</sup>

---

<sup>111</sup> Flavell Inquiry, <http://www.ccc.qld.gov.au/research-and-publications/publications/misconduct/public-duty-private-interests-issues-in-pre-separation-conduct-and-post-separation-employment-for-the-queensland-public-sector.pdf>, 12.2008, pp. viii-ix

<sup>112</sup> Flavell Inquiry, p. ix

<sup>113</sup> CC Act, ss. 292(a), 295(1)(a)

<sup>114</sup> CM Act, s. 332; & CJ Act, s. 2.25 [renumbered to s. 34 in 1994]

<sup>115</sup> *Re Whiting* [1992] QSC 181 (92/0469) Williams J. 29 May 1992

<sup>116</sup> *Le Grand v CJC* [2001] QSC Chief Justice 20 August 2001 [unreported]

<sup>117</sup> *Re Whiting* [1993] QCA 121; [1994] 1 Qd.R. 561 (92/0120) Macrossan CJ. Pincus JA. Moynihan J. 8 April 1993; & *Le Grand v CJC* [2001] QCA 383

<sup>118</sup> *Lee v Crime and Corruption Commission & Anor* [2015] QSC 226

<sup>119</sup> *Lee v Crime and Corruption Commission & Anor* [2015] QCA 145

The Parliamentary Committee is able to investigate complaints, or concerns, about the conduct, or activities, of the CCC or commission officers.<sup>120</sup> The Parliamentary Committee may ask the Parliamentary Commissioner to investigate a complaint and report to the Committee.<sup>121</sup> The Parliamentary Commissioner can investigate such complaints, including coercively, and report to the Committee.<sup>122</sup>

Indeed, Mr Flavell complained to the Parliamentary Committee in 2011 about the CCC's earlier public hearing into his conduct. The Parliamentary Commissioner investigated the complaint and reported to the Committee. Essentially, the Parliamentary Commissioner considered that the complaint was without foundation. The Parliamentary Committee, without any apparent dissent, accepted the Parliamentary Commissioner's report; effectively dismissed the complaint; and, in the public interest, tabled a report in Parliament.<sup>123</sup>

In her foreword to the Parliamentary Committee's report to Parliament, the Committee Chairperson said:

Mr Flavell is clearly aggrieved at the investigation and report of the CMC regarding his actions whilst Director-General of DET. However, his disagreement with the actions and recommendations of the CMC does not render the conduct of the CMC inappropriate.

Conversely, it was the actions of Mr Flavell that contributed to a change in the law in Queensland to prevent such conduct from the State's employees, particularly senior officials with access to significant departmental information and resources and cabinet material.<sup>124</sup>

The Parliamentary Committee's report was tabled in Parliament on 23 May 2013.<sup>125</sup> In later speaking to the report in Parliament on 22 August 2013, the Committee Chairperson: (a) re-enforced her observations in the Committee's report; and (b) noted that the legislative changes, which had already resulted from the CMC's recommendations, had 'enjoyed bipartisan support in the parliament'.<sup>126</sup>

### **Making allegations of corrupt conduct public**

Although not numerous, the CCC is concerned at a tendency, mainly during election campaigns, for public disclosures to be made about corruption complaints having been made to the CCC.

While freedom of speech, accountability and transparency are important legal concepts and community expectations, disclosures of this nature can cause reputational damage; compromise the CCC's effectiveness; and jeopardise criminal or disciplinary proceedings.

<sup>120</sup> CC Act, ss. 292(a) & 295

<sup>121</sup> CC Act, s. 295(2)(d)

<sup>122</sup> CC Act, ss. 314(2)(b), 314(4)(b), 314A, 317, 318 & 314(2)(f)

<sup>123</sup> Parliamentary Committee, *Report on a complaint by Mr Scott Flavell: Report No. 91 Parliamentary Crime and Misconduct Committee*, May 2013,

[http://www.parliament.qld.gov.au/documents/Committees/PCCC/2013/rpt-09123May2013.pdf#search=%22Report No%22 AND \(report AND no AND 91\)](http://www.parliament.qld.gov.au/documents/Committees/PCCC/2013/rpt-09123May2013.pdf#search=%22Report%20No%22%20AND%20(report%20AND%20no%20AND%2091))

<sup>124</sup> Parliamentary Committee, *Report No 91*, pp. v-vi

<sup>125</sup> Queensland Parliament, *Records of Proceedings*,

[http://www.parliament.qld.gov.au/documents/Hansard/2013/2013\\_05\\_23\\_WEEKLY.pdf#search=Flavell](http://www.parliament.qld.gov.au/documents/Hansard/2013/2013_05_23_WEEKLY.pdf#search=Flavell), 23 May 2013, p. 1764

<sup>126</sup> Queensland Parliament, *Record of Proceedings*,

[http://www.parliament.qld.gov.au/documents/Hansard/2013/2013\\_08\\_22\\_WEEKLY.pdf#search=Flavell](http://www.parliament.qld.gov.au/documents/Hansard/2013/2013_08_22_WEEKLY.pdf#search=Flavell), 22 August 2013, p. 2778

Despite various attempts since 1992, this issue remains unresolved. The CCC is, therefore, currently examining whether, on balance, it is in the public interest to publicise allegations of corrupt conduct; and, if it is not, what legislative or other options are available to prevent this.<sup>127</sup>

## Conclusion

Coercive powers, including corruption hearings are, and have always been, integral to dealing with and preventing public sector corruption in Queensland.

In exercising these powers, the CCC often has to balance individual rights with the public interest. Except where individual rights are lawfully protected or abrogated, the public interest usually prevails. Like the Fitzgerald Inquiry, however, the public interest sometimes requires the CCC to suppress information where safety or continuing law enforcement operations could be jeopardised; or hearsay evidence has no probative value.

CCC corruption hearings are generally closed, but may be open to the public and the media in certain circumstances [including in the public interest]. Even then, the presiding officer may close a public hearing 'for a particular purpose'.

Open hearings usually address some systemic public sector corruption issue.

The success of corruption hearings should not be measured by whether the hearings are closed or open; or whether the hearings result in criminal prosecutions or disciplinary actions. As the Favell Inquiry clearly demonstrated, an open corruption and prevention hearing can restore public confidence in public institutions; and reduce public sector agencies' vulnerability to corruption. This concept is an extremely important consideration in measuring the effectiveness of the work undertaken by the CCC. The strategic direction of the agency is currently to undertake more public hearings, provided they are clearly in the public interest, and, not on balance, unfairly prejudicial to the interests of the subjects of such hearings.

Whether CCC corruption hearings are open or closed:

- Pre-hearing notices to discover sufficiently identify the discoverable documents or things; cannot require immediate compliance, but allow a reasonable time and manner for the notices to be complied with; and may bind people to secrecy [except for specific purposes];
- Hearing attendance notices routinely describe the general nature of the matters about which the recipients may be questioned at the hearings; may bind recipients to secrecy [except for specific purposes]; and can only require immediate attendance with the prior approval of a Supreme Court judge; and
- Options are available to address people's grievances with hearings, including by the Parliamentary Committee and the Parliamentary Commissioner.

Although such disclosures are not numerous, the CCC is currently examining whether, on balance, it is in the public interest to publicise allegations of corrupt conduct; and, if it is not, what legislative or other options are available to prevent this.

As to the content and effect of notices to discover and attendance notices; and as to whether corruption hearings should be open or closed, the CCC considers that sections 75, 82, 84, 85 and 177 of the *Crime and Corruption Act 2001* (Qld) demonstratively offer a balanced, workable compromise. The CCC, therefore, commends these provisions to the Committee for its favourable consideration.

## Attachment

1. Sections 75, 82, 84, 85 and 177 of the *Crime and Corruption Act 2001* (Qld)

---

<sup>127</sup> CCC Publications and research, <http://www.ccc.qld.gov.au/research-and-publications/browse-by-topic-1/legislation-reviews/publishing-allegations/publicising-allegations>





# **Crime and Corruption Act 2001**

**Current as at 5 May 2016**

## **Subdivision 2      Corruption investigations and specific intelligence operations (corruption)**

### **75      Notice to discover information**

- (1) This section applies—
  - (a) only for a corruption investigation or a specific intelligence operation (corruption); and
  - (b) only if the chairperson reasonably suspects that a person, whether or not the person holds an appointment in a unit of public administration, has information, or possession of a document or thing, relevant to the investigation or operation.
- (2) The chairperson may, by notice (*notice to discover*) given to the person, require the person, within the reasonable time and in the way stated in the notice, to give an identified commission officer—
  - (a) an oral or written statement of information of a stated type relevant to the investigation or operation that is in the person's possession; or
  - (b) a stated document or other stated thing, or a copy of a stated document, relevant to the investigation or operation that is in the person's possession; or
  - (c) all documents of a stated type, or copies of documents of the stated type, containing information relevant to the investigation or operation that are in the person's possession.
- (3) The person must comply with the notice.

Maximum penalty—85 penalty units or 1 year's imprisonment.

- (4) A person does not, by complying with the notice to discover in relation to the information, document or thing—
- (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the information, document or thing; or
  - (b) incur any civil liability in relation to the information, document or thing.
- (5) A person who fails to comply with the notice does not commit an offence if the information, document or thing—
- (a) is subject to privilege; or
  - (b) is a secret process of manufacture applied by the person solely for a lawful purpose.

*Note—*

If a claim of privilege is made, the commission officer is required to consider the claim under section 80 and, if the requirement is not withdrawn, the person may apply to, or be required to attend before, the Supreme Court to establish the claim under section 196.

- (6) The chairperson may require the person to give an oral statement of information under oath and a written statement of information by way of statutory declaration.
- (7) The notice to discover must—
- (a) state whether it relates to a corruption investigation or a specific intelligence operation (corruption); and
  - (b) if it requires a statement of information—indicate briefly the general nature of the information the person is suspected of having, by reference to a particular matter or to the type of information sought; and
  - (c) if it requires the giving of a document or other thing—identify the document or thing sufficiently to enable the person to know what is required.
- (8) The notice—

- (a) may provide that its requirement may be met by some person acting for the person to whom it is directed; and
- (b) may specify the person or class of person who may so act.

## **Division 4            Notice to attend**

### **82        Notice to attend hearing—general**

- (1) The chairperson may issue a notice (*attendance notice*) requiring a person to attend at a commission hearing at a stated time and place for 1 or more of the following purposes until excused—
  - (a) for a hearing in relation to a crime investigation or corruption investigation—
    - (i) to give evidence; or
    - (ii) to produce a stated document or thing; or
    - (iii) to establish a reasonable excuse or claim of privilege under section 72 or 74;
  - (b) for a witness protection function hearing—to establish the reasonable excuse or claim of privilege the subject of the hearing;
  - (c) for an intelligence function hearing—
    - (i) to give evidence; or
    - (ii) to produce a stated document or thing.
- (2) An attendance notice must state—

- (a) whether it is issued in the context of—
    - (i) a crime investigation; or
    - (ii) without specifying which, a crime investigation or the witness protection function; or
    - (iii) a corruption investigation; or
    - (iv) the intelligence function; and
  - (b) so far as reasonably practicable, the general nature of the matters about which the person may be questioned at the commission hearing.
- (3) A person does not, by giving evidence or producing a stated document or thing at a hearing in compliance with an attendance notice—
- (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the evidence, document or thing; or
  - (b) incur any civil liability in relation to the evidence, document or thing.
- (4) A failure to comply with subsection (2)(b) does not prevent the commission from questioning the person about—
- (a) for an attendance notice issued in the context of a crime investigation or corruption investigation—any matter that relates to an investigation; or
  - (b) for an attendance notice issued in the context of a witness protection function hearing—any matter that relates to the matter for which the attendance notice was issued; or
  - (c) for an attendance notice issued in the context of an intelligence function hearing—any matter that relates to the matter for which the attendance notice was issued.
- (5) A person given an attendance notice must not—
- (a) fail, without reasonable excuse, to attend as required by the notice; or

- (b) fail, without reasonable excuse, to continue to attend as required by the presiding officer until excused from further attendance.

Maximum penalty—200 penalty units or 5 years imprisonment.

- (6) A prescribed person's fear, whether genuinely held or not, of—
  - (a) personal physical harm or damage to the person's property; or
  - (b) physical harm to someone else, or damage to the property of someone else, with whom the person has a connection or bond;

is not a reasonable excuse to fail to comply with the attendance notice for a hearing in relation to a crime investigation or the intelligence function if the investigation or function relates to a criminal organisation or a participant in a criminal organisation.

- (7) If the commission hearing is being held under an authorisation under section 55F, the chairperson may issue an attendance notice requiring a person to attend immediately at the commission hearing at a stated place.
- (8) This section, other than subsection (7), is subject to section 85.
- (9) In this section—

***prescribed person*** means a person who is a participant in a criminal organisation.

## **Division 5      Confidential documents**

### **84      Notice may be a confidential document**

- (1) A notice given by the chairperson under this part may provide that it is a confidential document.
- (2) A person must not disclose the existence of a confidential document to anyone else, unless the person has a reasonable excuse.

Maximum penalty—85 penalty units or 1 year's imprisonment.

- (3) It is a reasonable excuse for a person to disclose the existence of a confidential document if—
  - (a) the disclosure is made for the purpose of—
    - (i) seeking legal advice in relation to the document or an offence against subsection (2); or
    - (ii) obtaining information in order to comply with the document; or
    - (iii) making a complaint to the parliamentary committee about the document; or
    - (iv) the administration of this Act; and



- (b) the person informs the person to whom the disclosure is made that it is an offence to disclose the existence of the document to anyone else unless the person has a reasonable excuse.

## **Division 6                      Restriction on power**

### **85       Notices requiring immediate attendance may be issued only by or with the approval of a Supreme Court judge**

- (1) The chairperson may issue an attendance notice requiring a person to attend immediately at a commission hearing at a stated place only with the approval of a Supreme Court judge.
- (1A) If the attendance notice is to be issued in the context of a witness protection function hearing, the chairperson must give the judge a certificate stating that the notice relates to a witness protection function hearing.
- (2) The judge may approve the issue of the attendance notice only if the judge is satisfied, on reasonable grounds, that—
  - (a) for a notice issued in the context of a crime investigation or corruption investigation, delay in attendance might result in—
    - (i) the commission of an offence; or
    - (ii) an offender or suspected offender absconding; or
    - (iii) the loss or destruction of evidence; or
    - (iv) serious prejudice to the conduct of an investigation being conducted by the commission; or
  - (b) for a notice issued in the context of a witness protection function hearing, delay in attendance and resolution of the reasonable excuse or claim of privilege the subject of the hearing might threaten—
    - (i) the security of a protected person; or

- (ii) the integrity of the witness protection program or other witness protection activities of the commission; or
- (c) for a notice issued in the context of an intelligence function hearing under an authorisation under section 55A, delay in attendance might result in the loss of an opportunity to obtain timely intelligence—
  - (i) in advance of a significant event; or
  - (ii) that may help prevent a risk to public safety.

*Note—*

An attendance notice issued under section 82(7) that requires the immediate attendance of someone at a commission hearing does not require the court's approval under this section.

- (3) Subsection (3A) applies to an attendance notice issued in the context of a crime investigation or corruption investigation or the performance of the intelligence function under an authorisation under section 55A.
- (3A) The notice need not state the general nature of the matters about which the person may be questioned if the chairperson is satisfied that, in the particular circumstances of the investigation or the performance of the function, stating the matters would prejudice the effectiveness of the investigation or the performance of the function.
- (4) For an attendance notice to be issued\* in the context of a witness protection function hearing, nothing in this section requires the chairperson to give the judge—
  - (a) information about the identity or former identity of a protected person; or
  - (b) details about the protection given to a protected person or the reasons for the protection; or
  - (c) information about the identity of any person if the information would threaten—
    - (i) the security of a protected person; or

- (ii) the integrity of the witness protection program or other witness protection activities of the commission.
- (5) A certificate mentioned in subsection (1A) is evidence of the matters stated in it.

**177 Whether hearings are to be open or closed**

- (1) Generally, a hearing is not open to the public.
- (2) However—
  - (a) for a hearing for a crime investigation, the commission may open the hearing to the public (*public hearing*) if it—
    - (i) considers opening the hearing will make the investigation to which the hearing relates more effective and would not be unfair to a person or contrary to the public interest; and
    - (ii) approves that the hearing be a public hearing; or
  - (b) for a witness protection function hearing, the commission may open the hearing to the public if it—
    - (i) considers opening the hearing will make the hearing more effective and—
      - (A) would not be unfair to a person or contrary to the public interest; and
      - (B) would not threaten the security of a protected person or the integrity of the witness protection program or other witness protection activities of the commission; and
    - (ii) approves that the hearing be a public hearing; or
  - (c) for a hearing other than a hearing mentioned in paragraph (a) or (b), the commission may open the hearing to the public if it—
    - (i) considers closing the hearing to the public would be unfair to a person or contrary to the public interest; and
    - (ii) approves that the hearing be a public hearing.
- (3) A decision about whether a hearing should be a public hearing must not be delegated.

- (4) If the commission decides to open a hearing to the public, the presiding officer for the hearing may close the hearing for a particular purpose.