

Crime and Corruption (Reporting) Amendment Bill 2024

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, the Honourable Yvette D'Ath, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence make this statement of compatibility with respect to the Crime and Corruption (Reporting) Amendment Bill 2024 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill amends the *Crime and Corruption Act 2001* (CC Act) to introduce new reporting and public statement making powers for the Crime and Corruption Commission (CCC) in relation to corruption matters.

In response to the High Court's decision in *CCC v Carne*,¹ the Government established the *Independent Review into the CCC's reporting on the performance of its corruption functions* (the Review). The Review was led by the Honourable Catherine Holmes AC SC, who delivered her Report on the Review (the Review Report) to Government on 20 May 2024. The Review's terms of reference required it to make recommendations for appropriate legislative amendments to enable the CCC to publicly report and make statements in performing its corruption functions and prevention function so far as it concerns corruption. Amongst other relevant matters, the Review was obliged to consider the compatibility of its recommendations with human rights under the HR Act.

The Bill provides new powers for the CCC to prepare and publish public reports and statements that reflect the important limitations identified in the Review Report. In summary, the amendments provide for:

- an overarching public interest test which must be considered in exercising the discretion to prepare, publish or table a report and to make a public statement
- a specific power to prepare a public hearing report
- a specific power to prepare a corruption investigation report
- a specific power to prepare a corruption prevention report
- specific powers to make public statements about corruption
- additional procedural safeguards
- specific powers to table and publish reports
- new and revised offence provisions for the unauthorised publication of commission reports and draft reports and proposed public statements, and
- the extinguishment of civil liability in relation to past unauthorised reports and public statements.

¹ (2023) 97 ALJR 737.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

I have considered each of the rights protected by part 2 of the HR Act. In my opinion, the human rights that are relevant to the Bill are:

- Freedom of expression (section 21)
- Taking part in public life (section 23)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Right to liberty and security of person (section 29)
- Fair hearing (section 31), and
- Rights in criminal proceedings (section 32).

Consideration of human rights promoted

Role of anti-corruption bodies in promoting transparency and accountability

By ensuring that the CCC is able to release information to the public in the form of reports and public statements about corruption, the Bill promotes the rights to freedom of expression (section 21) and to take part in public life (section 23).

Freedom of expression (section 21)

The right to freedom of expression encompasses the right to seek, receive and impart information and ideas of all kinds and is recognised as foundational for a free and democratic society.² This includes information about corruption, which the Human Rights Committee observes is ‘a necessary condition for the realisation of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights’.³ The Review Report refers to the *United Nations Convention Against Corruption*⁴ as showing the key ways in which anti-corruption bodies, such as the CCC, promote the public’s right to freedom of expression by disseminating information about corruption prevention and risks of corruption in public administration.⁵

Taking part in public life (section 23)

The right to take part in public life gives every person in Queensland the right or opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. As the Review Report observes, ‘people are likely to participate more effectively in the conduct of public affairs if they are properly informed about matters of public concern, including corruption in the public sector.’⁶

² Human Rights Committee, General comment No 34: Article 19: Freedoms of Opinion and Expression, 102nd sess, UN Doc CCPR/C/GC/34 (12 September 2011) [2].

³ Human Rights Committee, General comment No 34: Article 19: Freedoms of Opinion and Expression, 102nd sess, UN Doc CCPR/C/GC/34 (12 September 2011) [3].

⁴ United Nations Office on Drugs and Crime, *United Nations Convention Against Corruption: Chapter II: Preventive Measures, Article 6: Preventive anti-corruption body or bodies*, opened for signature 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005).

⁵ Review Report, p. 139.

⁶ Review Report, p. 140.

Reports and public statements only in the public interest

Under the Bill, a public interest test applies to ensure that the CCC may only prepare a report or make a public statement or table or publish a report where it is satisfied that it is in the public interest to do so. In line with the test recommended by the Review Report, new section 63B of the CC Act requires the CCC to consider a range of factors in determining the public interest, including, but not limited to:

- the need for transparency and accountability in government and the public sector
- the human rights of persons who may be identified in a public report or statement (with specific reference to the right to privacy and reputation, the right to a fair hearing and the right of a person charged with a criminal offence to be presumed innocent until proved guilty according to law)
- the need to ensure that any pending legal proceedings are not prejudiced
- the seriousness of the corruption complaint or corruption investigation to which the report or public statement relates, and
- whether the report or public statement relates to a matter that has already been the subject of prolonged and significant public debate.

In this way, the Bill ensures that the effect of preparing a report, or tabling or publishing it, or making a public statement, on the human rights of persons who may be identified is a mandatory relevant consideration in determining the public interest. Any failure to consider the impact on human rights would be a ground of judicial review.⁷

The proposed public interest test contained in the Bill therefore promotes the specific rights to privacy and reputation, fair hearing and to be presumed innocent, which were highlighted by the Review Report as the rights most readily engaged by public reporting on corruption matters,⁸ along with any other relevant human rights. Properly applied, the test would ensure that the preparation and public release of reports or statements by the CCC are in the public interest and compatible with human rights. The Bill goes further by putting specific limitations on the face of the new discretionary powers, in order to provide greater guidance to the CCC and assurance against disproportionate interferences with human rights.

Enhanced procedural safeguards

The Bill replaces the existing procedural fairness safeguard under section 71A of the CC Act with new provisions to ensure that procedural fairness is afforded more fulsomely in each and every instance to persons who are identified in all commission reports prepared by the CCC under Chapter 2, Part 6, division 2 of the CC Act, including the new commission reports introduced by the Bill.

New sections 68E to 68F apply to draft reports and require individuals who are identified in a report to be given the opportunity to make submissions about the draft report. Where an

⁷ Section 58 of the HR Act, which obliges public entities (of which the CCC is one) to give proper consideration to effected human rights in making decisions, will also apply to the CCC. The public interest test introduced by the Bill and section 58 of the HR Act will operate concurrently but in slightly different ways: *Certain Children v Minister for Families and Children [No 2]* (2017) 52 VR 441. While the public interest test draws the CCC's attention to potential limits on the specific human rights referred to, as well as other relevant rights, it simply requires the CCC to have regard to relevant human rights in assessing where the public interest lies. Section 58, on the other hand, requires the CCC to identify which human rights are limited and whether these limits are justified in accordance with the test of proportionality under section 13 of the HR Act.

⁸ Review Report, p. 138.

individual makes a submission, the CCC must amend the report to reflect the submission and give the individual a further opportunity to comment on the amended report. An individual is then entitled to make a further submission, which must also be reflected in further amendments to the report.

Where a report includes adverse comment about an entity (which includes a person), new section 68G ensures that where the draft report does not fully reflect the basis or evidence upon which the adverse comment is made,⁹ the CCC must provide a copy of the evidence upon which the adverse comment is based or, if this is not possible,¹⁰ a written summary of the substance, or the significant part, of the evidence on which the adverse comment is based. The Review Report indicated that this kind of provision would reflect the position at common law, as interpreted by the High Court in its decision in *AB v Independent Broad-based Anti-corruption Commission* (2024) 98 ALJR 532.¹¹

The Bill also extends procedural fairness to the new public statement powers. New section 68H applies to proposed public statements containing identifying information and requires the CCC to also give the individual the opportunity to make submissions about the public statement.

As noted by the Review Report, enhancing procedural fairness requirements serves to promote human rights, particularly the right to privacy and reputation, including by assisting the CCC to give proper consideration to the impact of its decision on the individual's human rights under section 58(1)(b) of the HR Act.¹²

These are also important safeguards as they will serve to inform a person's decision about whether to take formal legal action against the CCC, for example via an action under the *Judicial Review Act 1991*.

If human rights may be subject to limitation if the Bill is enacted – consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Commission reports

The Bill amends the CC Act to insert new powers to give the CCC the discretion to prepare three different kinds of commission reports:

- a public hearing report on a public hearing held in the performance of the CCC's functions, other than its crime function (new section 63C)
- a corruption investigation report on a completed corruption investigation (new sections 63D – 63H), and
- a corruption prevention report, which may include details of a completed corruption investigation, in the performance of its corruption prevention function (new sections 63I – 63J).

The amendments limit the following rights under the HR Act:

- Taking part in public life (section 23)

⁹ For example, the CCC may consider that it is not necessary or appropriate for the purposes of the public report to include a full account of all the evidence uncovered in a corruption investigation.

¹⁰ For example, this may not be possible because providing the evidence in full may reveal sensitive law enforcement methodologies.

¹¹ Review Report, pp. 243 – 244.

¹² Review Report, p. 245.

- Property rights (section 24)
- Privacy and reputation (section 25)
- Fair hearing (section 31), and
- Rights in criminal proceedings (section 32).

The right to privacy and reputation is limited as commission reports may contain personal information about individuals who are the subject of corruption investigations or other individuals where this can have a negative impact on a person's reputation.

An individual's right to take part in public life and not to be arbitrarily deprived of one's property may be limited if, because of information in a report being made public, the individual's employment prospects, including for public sector employment, are damaged.

Where a report or statement is about a matter before, or which is likely to come before, a court, tribunal, or other decision-making body, including where the possibility of an appeal remains, then the right to fair hearing and rights in criminal proceedings would also be limited.

(a) the nature of the rights

The right to privacy and reputation (section 25)

The right to privacy and reputation protects the individual from unlawful¹³ and arbitrary interferences¹⁴ upon their privacy, family, home, correspondence, and unlawful attacks on their reputation. This right contains two limbs.

The first is the right to privacy, for which the underlying value is the importance of protection of a person's freedom from the unjustified involvement of public authorities in their private sphere.¹⁵

The Review Report identifies three aspects of the right to privacy that may be infringed by the publicising of personal information in relation to a corruption investigation:

- the concept of information privacy which encompasses the right of a person to decide when, how and to what extent to release personal information
- mental and bodily integrity, to the extent that a person's psychological wellbeing may be impacted by publication, and
- the protection of the individual's private life, generally, to the extent that public reporting may have negative consequences for a person's social and professional relationships, including the person's ability to work in their chosen profession.¹⁶

¹³ Internal limitations of lawfulness and arbitrariness apply to the right to privacy. The concept of lawfulness means that where an interference with privacy is provided for by law, it will not be unlawful: UN Human Rights Committee, *Views: Communication No 488/1992*, 50th sess, UN Doc CCPR/C/50/D/488/1992 (5 November 1992) [8.3] (*Toonen v Australia*).

¹⁴ 'Arbitrary' means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought: *Thompson v Minogue* (2021) 294 A Crim R 216, 231 [55], 269 [221]; *Attorney-General (Qld) v Grant* [No 2] [2022] QSC 252, [111]. Non-arbitrariness and proportionality are different standards, but if the impact is proportionate under section 13 of the HR Act, it will not be arbitrary: *Thompson v Minogue* (2021) 294 A Crim R 216, 232 [56], [58], 269 [221], 270 [226]. Accordingly, it is convenient to consider lawfulness and arbitrariness when considering proportionality.

¹⁵ *Director of Housing v Sudi* [2010] VCAT 328, [29].

¹⁶ Review Report, pp. 141 – 142.

The second limb of the right is the right to reputation. This protects a person from having their reputation, which includes a person's social as well as professional reputation,¹⁷ unlawfully attacked. The Review Report highlights that generally an allegation that a person has committed a crime or engaged in unprofessional or unethical conduct will be sufficient to limit the right to reputation,¹⁸ but that the right does not extend to protect the loss of reputation following conviction for a criminal offence or finding of misconduct,¹⁹ subject to a wrongful conviction or finding,²⁰ or an appeal.²¹

This right to privacy and reputation is subject to the internal limitation of lawfulness and an additional limitation of arbitrariness applies with respect to privacy. An interference will be unlawful if it is not authorised by law.²²

The Bill provides clear authorisation for public reporting by the CCC and therefore any interference with the right to privacy and reputation will not be unlawful. Nevertheless, having regard to the fact that, under international law, the right to reputation imposes an obligation on state parties to provide adequate protection of reputation in their legislation, the Review Report considered it necessary to also have regard to impacts on reputation in framing its recommendations for new reporting powers.²³

With respect to arbitrariness, an interference with the right to privacy will be arbitrary if it is capricious, unjust, or unreasonable in the sense of not being proportionate to a legitimate aim sought.²⁴ While non-arbitrariness and proportionality are different standards, if the impact is proportionate under section 13 of the HR Act, it will not be arbitrary.²⁵ Accordingly, it is appropriate to consider whether the interference with privacy is arbitrary as part of the proportionality assessment.

The right to take part in public life (section 23) and property rights (section 24)

The right to take part in public life and property rights are also relevant as they may be interfered with as a consequence of damage done to privacy and reputation by the release of information about an individual in a commission report or public statement.

¹⁷ Review Report, p. 142 citing *Denisov v Ukraine* [2018] 1061, [112]; *BZN v Chief Executive, Department of Children, Youth Justice and Multicultural Affairs* [2023] QSC 266, [255] (summarising the applicant's submissions).

¹⁸ Review Report, p. 142 citing *Matalas v Greece* (2021) 73EHRR 26, 977 [45] and also referring to the position at common law in *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625.

¹⁹ Review Report, p. 142 citing Human Rights Committee, *Views: Communication No 2148/2012*, UN Doc CCPR/C/119/D/2148/2012 (2 June 2017) [6.10] ('*MAK v Belgium*'); *Denisov v Ukraine* [2018] ECHR 1061, [98]; *Matalas v Greece* (2021) 73 EHRR 26, 975–6 [39].

²⁰ Review Report, p. 142 citing William A Schabas, *UN International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (NP Engel, 3rd ed, 2019) 493–4 [61]–[63].

²¹ Review Report, p. 142 citing *Denisov v Ukraine* [2018] ECHR 1061, [121].

²² Human Rights Committee, *General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Article 17 of the International Covenant on Civil and Political Rights)*, UNHRC, 32nd sess (8 April 1988) [4].

²³ Review Report, p. 143 citing Queensland Human Rights Commission, first submission, dated 4 April 2024, 3. See also Human Rights Committee, *General comment No 16: Article 17 (Right to privacy)*, 32nd sess (1988) [11]; Human Rights Committee, *Views: Communication No 3088/2017*, UN Doc CCPR/C/138/D/3088/2017 (11 April 2024) [8.3] ('*Kazal v Australia*'); William A Schabas, *UN International Covenant on Civil and Political Rights: Nowak's CCPR Commentary* (NP Engel, 3rd ed, 2019) 493 [60].

²⁴ *Thompson v Minogue* (2021) 294 A Crim R 216, 231 [55], 269 [221]; *Attorney-General (Qld) v Grant* [No 2] [2022] QSC 252, [111].

²⁵ *Thompson v Minogue* (2021) 294 A Crim R 216, 232 [56], [58], 269 [221], 270 [226].

The right to take part in public life includes the right to have access, on general terms of equality, to the public service and to public office. This right guarantees the opportunity to secure a job in the public service, subject to any legitimate qualifications.²⁶ It also protects against suspension or dismissal from the public service.²⁷

Property rights under section 24 of the HR Act include the right not to be arbitrarily deprived of one's property. This can include the goodwill associated with a right to practise a person's profession.²⁸ Where the release of a public report or statement results in a person's dismissal, or loss of any future prospect of public sector employment or position in public office, then these rights are also impacted.

The right to fair hearing (section 31) and rights in criminal proceedings (section 32)

The right to fair hearing under section 31 of the HR Act provides that '[a] person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing'.

Closely related are rights in criminal proceedings under section 32 of the HR Act, which include the requirement that a person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law and not be compelled to testify against themselves or confess guilt, which at common law is referred to as the privilege against self-incrimination.

The scope of these rights extends to obliging public entities, such as the CCC, to avoid interfering with these rights by not making public statements or reports that include prejudicial statements or information about an accused person,²⁹ where the risk of prejudicial publicity and impacts on these rights remains but is reduced by the time of an appeal.³⁰ The Review Report highlights several factors relevant to whether public statements made by public authorities will breach the right to fair hearing, including: the nature of the statement; where an unequivocal statement of guilt will fall foul of the right³¹ whereas a statement that there was sufficient evidence to warrant an investigation or charge will not;³² the timing of public comments, where greater caution must be exercised where a matter is still under investigation;³³ and, the identity of the public authority making the statement, where greater

²⁶ Alistair Pound and Kylie Evans, *Annotated Victorian Charter of Rights* (Lawbook, 2nd ed, 2019) 172.

²⁷ Review Report, p. 144 citing Human Rights Committee, *General Comment No 25*, 57th sess, UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996) [23].

²⁸ Review Report, p. 145 citing *Van Marle v Netherlands* (1986) 8 EHRR 483, 491 [41]-[42]; *Malik v United Kingdom* [2012] ECHR 438, [94]-[100].

²⁹ Review Report p. 147, citing Human Rights Committee, *General Comment No 32 – Article 14: Right to equality before courts and tribunals and to a fair trial*, 90th sess, UN Doc CCPR/C/GC/32 (23 August 2007) 9 [30], citing Human Rights Committee, *Views: Communication No 770/1997*, UN Doc CCPR/C/69/D/770/1997 (18 July 2000) [3.5], [8.3] ('Gridin v Russian Federation'). See also Lord Lester Hill et al (eds), *Human Rights Law and Practice* (LexisNexis, 3rd ed, 2009) 333–4 [4.6.63].

³⁰ Review Report p. 148, citing *Matsoukatidou v Yarra Ranges Council* (2017) 51 VR 624, 648 [75] and *Craxi v Italy [No 1]* [2002] ECHR 797, [104].

³¹ Review Report p. 147.

³² Review Report p. 147 citing *Yeung Chung Ming v Commissioner of Police* (2008) 11 HKCFAR 513, 526 [23]; *GCP v Romania* [2011] ECHR 2231, [58]; *Burzo v Romania* (European Court of Human Rights, Third Section, Application Nos 75109/01 and 12639/02, 30 June 2009) [163].

³³ Review Report p. 147 citing *GCP v Romania* [2011] ECHR 2231, [57]. Note this case was not in a corruption context. GCP was a private citizen rather than a public servant.

caution is expected from public officials, such as prosecutors, compared to politicians.³⁴

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

A number of statutory principles apply to the CCC's performance of its corruption functions under section 34 of the CC Act, including the public interest principle under which it has an overriding responsibility to promote public confidence in the integrity of units of public administration (UPAs) and if corruption does happen within a UPA, in the way it is dealt with. Having regard to this guiding principle, the Review Report considered that the CCC should have reporting powers to ensure that it is able to inspire that confidence.³⁵

The CCC also has a prevention function as it pertains to major crime and corruption by virtue of section 23 of the CC Act. The CCC's prevention function brings a broader deterrent or educative aspect to the CCC's work in informing the public sector and broader community about corruption and corruption risks in order to prevent future corruption from occurring. The Review Report considered that the CCC should be able to report to highlight a corruption risk or make recommendations to avoid such risk.³⁶

Giving the CCC powers to issue certain kinds of public reports therefore serves a two-fold purpose: (1) to enhance public confidence in how the CCC deals with corruption in the performance of its corruption function, which in turn promotes confidence and trust in the public sector, our systems of government and the democratic process; and (2) to assist the CCC to prevent corruption in the performance of its prevention function. This is a proper purpose consistent with a free and democratic society based on human dignity, equality, and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The Bill provides the CCC with carefully circumscribed powers to prepare commission reports on a public hearing, on a completed corruption investigation, or in the performance of its corruption prevention function. Not being able to issue these reports, which may include identifying information in appropriate circumstances, would mean that the public sector and the general public would be kept in the dark about the CCC's work, including the outcomes of significant corruption investigations. Eventually, this may lead to distrust in the CCC and public sector more broadly. It would also mean that public sector entities would not have the benefit of important lessons learned, in terms of risk areas and practices uncovered by the CCC in the course of corruption investigations.

Therefore, to the extent that public reporting limits the human rights identified in (a) above, this directly supports the identified purpose to enhance public confidence in how the CCC deals with corruption and its ability to perform its corruption prevention function.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

The first alternative is to maintain the status quo which at present is that the CCC has no power

³⁴ 'In the case of public statements by politicians made in the course of legitimate public debate, "a certain degree of exaggeration and liberal use of value judgments with reference to political rivals" will more likely be condoned.': Review Report, p. 148, citing: *GCP v Romania* [2011] ECHR 2231, [59].

³⁵ Review Report, p. 171.

³⁶ Review Report, pp. 208 – 211.

to report publicly on its corruption investigations.³⁷ However, this would mean that the public sector and broader public would have limited available information upon which to assess the CCC's performance or appreciate the nature of corruption risks in the public sector.

The second alternative is to grant the CCC an unfettered discretion to publish reports in relation to corruption complaints and investigations at any time from the point a complaint is received by the CCC. This option represents the greatest potential for incursion on individual rights (particularly before an investigation is complete), specifically the right to privacy and reputation, the presumption of innocence, and the right to a fair trial.

A third alternative would be to further delineate the circumstances in which the CCC may prepare a report on a completed corruption investigation via the separate report types recommended by the Review Report.³⁸ This approach provides the greatest protection against potential interference with human rights because of the guidance built into the scope of each power to report. However, this approach is also more complex, and it is important that the CCC has clarity and flexibility in its ability to prepare public reports.

While the approach taken by the Bill, which reduces reporting on a completed corruption investigation to a single report, may not be the least restrictive option in all the circumstances, it is still a reasonably available option³⁹ having regard to the importance of ensuring that the CCC has clarity and flexibility in its ability to prepare public reports and the significant safeguards that apply.

With respect to a public hearing report, the starting point under the CC Act is that hearings will generally be closed, and the ability to hold a public hearing subject to an initial threshold assessment by the CCC regarding whether a closed hearing would be unfair to a person or contrary to the public interest.⁴⁰ A public hearing report is also the most limited reporting power as it is not a report on a completed investigation, rather it is intended to be no more than 'a report of the evidence and submissions given and made at the hearing, without reference to information or evidence emerging from elsewhere.'⁴¹ Additional impacts on rights arising from reporting on the hearing will be minimal and outweighed by the benefit of ensuring an accurate summary of the hearing is in the public domain.

The preparation of corruption investigation and corruption prevention reports is subject to significant limits concerning the circumstances in which a report can identify an individual. These limits are adjusted to be greater where the risk of harm to an individual's privacy and reputation, and other rights, is highest.

The risk to privacy and reputation is elevated where the individual is identified as the subject

³⁷ *Crime and Corruption Commission v Carne* (2023) 97 ALJR 737, 747 [58], 753 [97], 743 [26], 749 [69], 754 [104].

³⁸ In addition to a 'public hearing report' and 'prevention report'; the Review Report recommended that the following reports should be able to be prepared on a completed corruption investigation: 'report that an allegation is unfounded'; a 'report about an elected official'; a 'serious corrupt conduct report'; and a 'systemic corrupt conduct report'.

³⁹ *Sabet v Medical Practitioners Board (Vic)* [2008] VSC 346; (2008) 20 VR 414, 442 [188], per Hollingworth J in considering the test for whether there are any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve: "there is no obligation on a public authority to choose the least intrusive means possible. Rather, the court is required to consider whether the chosen measure falls within a range of reasonable alternatives". See also, *RJR McDonald Inc v Attorney-General (Canada)* [1995] 3 SCR 199 at [160].

⁴⁰ CC Act, section 177.

⁴¹ Review Report, p. 193.

of a corruption investigation report. Under the Bill, such an individual may only be identified where they:

- are found guilty of a corruption offence, are the subject of a finding by the Queensland Civil and Administrative Tribunal (QCAT) that corrupt conduct is proved, or serious disciplinary action is taken against them based on the conduct investigated, and the CCC is satisfied that the person's conduct is serious corrupt conduct ['serious corrupt conduct threshold']
- have requested to be identified
- are an elected official, or
- have already been identified in a public hearing.

Other than for persons who meet the serious corrupt conduct threshold (where the expectation of privacy and risk posed to reputation and other rights⁴² is reduced and the public interest in transparency and accountability is greatest), the Bill prevents the CCC from making adverse comments or opinions about a person or including advice or recommendations based on their conduct.

The Bill allows for greater latitude with respect to the identification of elected officials, who may be identified in the absence of a formal conviction and without their consent. As noted by the Review Report, privacy assumes less weight for politicians, given they lay themselves open to scrutiny⁴³ and transparency 'assumes greater weight because the information may have a bearing on electoral choice',⁴⁴ which promotes the right to take part in public life, and the right to vote. Allowing the subject of an investigation to request to be identified serves to protect the reputation of a person about whom allegations have been made but which are ultimately unfounded.

The Bill also makes it clear that where a corruption investigation report makes reference to the actions of other persons who are not the subject of the report, it must not, except to the extent reasonably necessary, identify these people, and it must contain no adverse comments or opinions about them, or advice or recommendations based on their conduct.

In line with the different focus of corruption prevention reports, such reports may include details of completed corruption investigations, but may not identify individuals unless they meet the serious corrupt conduct threshold described above or the CCC considers this reasonably necessary. Further, the limitation on adverse comment or opinions or advice or conduct-based recommendations applies where any individual is identified, unless this occurs in general terms.

In addition to the specific parameters for reporting provided for under the Bill, a number of general safeguards apply. As outlined above, the public interest test which requires specific consideration of relevant human rights for any identified person, whether they are the subject of the investigation or peripheral to it, serves to ensure that limitations on rights arising in particular instances are justifiable. For example, even where the subject of an investigation

⁴² Once a finding by a court or tribunal has occurred, the risk posed to a fair hearing and the presumption of innocence will also be much reduced.

⁴³ Review Report, p. 200 citing *Craxi v Italy [No 2]* (2004) 38 EHRR 47, 1021 [64]; *Butkevičius v Lithuania* [2022] ECHR 471, [97].

⁴⁴ Review Report, p. 200 citing *Castells v Spain* (1992) 14 EHRR 445, [43]; *Harper v Canada (Attorney-General)* [2004] 1 SCR 827, 839 [11].

report meets the serious corrupt conduct threshold, it may still not be in the public interest to report if there is a possibility that reporting will prejudice a potential appeal.

As set out above, the Bill also provides for additional procedural safeguards for persons who are identified in a report and where a report contains adverse comment or opinion. By providing an opportunity to make submissions on information, including adverse content in a draft report, the impacts on the right to reputation are lessened, because a final report is required to include the person's submissions on the contents of the report.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales, there is the impact on the right to privacy and reputation and other relevant rights which may be significant and long-lasting. However, the impact on rights is mitigated by the careful limits placed on including identifying information about investigated and other individuals in a report, and the restrictions placed on the inclusion of adverse comment or opinion or recommendations based on the conduct of individuals. In addition, further extensive safeguards in the form of the public interest test and procedural safeguard requirements ensure that the infringement on rights brought about by power to issue public reports is proportionate.

On the other side of the scales, empowering the CCC to impart important information to the public sector and broader public about corruption, in circumstances where due regard must first be had to the human rights of affected individuals, is critically important to ensuring trust and confidence in the CCC and the State's public institutions and systems of government, as well as to ensuring that corruption and corruption risks are highlighted in order to help prevent corruption from occurring.

Accordingly, the limitations on human rights are proportionate and therefore justified. As the interference with privacy and reputation is not unlawful and, in the case of the right to privacy, is proportionate and therefore not arbitrary, the right to privacy and reputation is not limited.

(f) any other relevant factors

Nil.

Tabling and publishing reports

So far this statement of compatibility has considered the scope of the Bill's new reporting powers. This section focusses on human rights impacts arising from the mode of public dissemination.

The Bill replaces the current tabling requirements for commission reports under the CC Act with new provisions. These are as follows:

- New section 69A requires public hearing reports, research reports and reports that the Parliamentary Crime and Corruption Committee (PCCC) directs to be given to the Speaker to be tabled. This section reflects the status quo under current section 69 of the CC Act.
- New section 69B allows the CCC to table a corruption investigation report or corruption prevention report by giving the report directly to the Speaker. This removes the oversight required under current section 69 whereby the PCCC must first direct that a report (that is not a public hearing or research report) be given to the Speaker.

- New section 69D allows the CCC to publish (other than by tabling) all or part of a corruption investigation report or corruption prevention report. The CCC may exercise the discretion to publish a report in the absence of any external oversight.

The amendments limit the following rights under the HR Act:

- Taking part in public life (section 23)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Fair hearing (section 31), and
- Rights in criminal proceedings (section 32).

The absence of any external oversight of the CCC's decision to table or publish a report and to publish all or part of a report, other than by tabling, may increase the prospect of harm to the rights of individuals as identified above in the context of the power to prepare commission reports, including harm to the right to privacy and reputation, the right to a fair hearing and rights in criminal proceedings.

(a) the nature of the right

The nature of the human rights limited by the new powers for corruption investigation and corruption prevention reports were explored above and apply equally to the tabling and publishing provisions.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The limitations on rights arising from the powers to table and publish reports are designed to directly increase the independence and transparency of the CCC, which, in turn, enhances the CCC's ability to perform its statutory corruption and corruption prevention functions under the CC Act. Increasing the independence and transparency of the CCC is a purpose consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Allowing the CCC to make autonomous decisions about the tabling or publishing of reports ensures a report's public release in circumstances where the PCCC may be opposed to, or wish to delay, this. Removing PCCC oversight therefore enhances the independence of the CCC and the transparency of its work.⁴⁵ In addition, the PCCC will retain its power to direct that a report be tabled so that where disagreement arises as to the need for publication, it can be resolved in favour of transparency.⁴⁶

The ability to publish all or part of a report other than by tabling gives the CCC greater flexibility in how it disseminates important information about corruption,⁴⁷ for example, where publication to a limited audience may be appropriate prior to the ultimate tabling of a report.

⁴⁵ Review Report, p. 222.

⁴⁶ Review Report, p. 222.

⁴⁷ Review Report, p. 224.

This flexibility further enhances the CCC's independence in terms of making decisions about how and when to publish reports.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There are no other less restrictive ways to enhance the independence and transparency of the CCC in its tabling and publishing of reports.

One alternative is to retain the existing tabling provisions under the CC Act. However, the views of the PCCC, as reflected in the Review Report, note that this would leave the PCCC as an intermediary in the tabling process, 'where it could exercise, and could be perceived as exercising, control over whether a report was tabled . . . [and, for a tabled report] could extend to the Committee being seen to be endorsing the report'.⁴⁸ It would also fail to give the CCC the flexibility to publish a report in other ways.

The Bill also contains a range of safeguards to ensure the compatibility of the new reporting and public statement powers with human rights. Specifically, the Bill subjects all tabling and publishing powers to the new procedural requirements contained in the Bill, such that a report cannot be validly tabled or published unless these requirements have first been met.

Otherwise directly relevant to the exercise of the discretion to table or publish a report is the restraint imposed by the public interest test. The CCC may only table or publish a report where it is satisfied that it is in the public interest to do so having regard to relevant human rights under the HR Act.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales, individual human rights, such as the right to privacy and reputation, fair hearing and rights in criminal proceedings are important, however, the impact on these rights are significantly reduced by the safeguards built into the provisions relating to the contents of reports and the exercise of the specific discretions to table or publish a report. On the other side of the scales, there is a high public interest in ensuring that the CCC can act independently, transparently, and flexibly in order to effectively discharge its corruption and corruption prevention functions under the CC Act.

The limitations on human rights are proportionate and therefore justified. As the interference with privacy and reputation is not unlawful and, in the case of the right to privacy, is proportionate and therefore not arbitrary, the right to privacy and reputation is not limited.

- (f) any other relevant factors

Nil.

Public statements

In light of the decision in *CCC v Carne*,⁴⁹ whether the CCC has the power to make public statements about corruption matters is unclear. The Review Report recommended that the CCC

⁴⁸ Review Report, p. 217, citing private hearing, 27 March 2024.

⁴⁹ (2023) 97 ALJR 737.

should have a separate power to make public statements in performing its corruption functions, and that similar to the power to report, the power to make public statements should not be unfettered.

The Bill provides for new powers to make public statements in connection with a corruption complaint or a corruption investigation.

New section 68B gives the CCC the power to make general public statements in connection with a corruption complaint or corruption investigation for specific purposes, which are broadly:

- to indicate that it would be inappropriate for the CCC to comment on the corruption matter
- or to refuse to confirm or deny anything in relation to a corruption matter
- to inform the public, with the consent of the person involved, that the CCC has decided not to investigate a matter or take no further action on a completed investigation
- to provide a factual summary of a report that has already been tabled, and
- to provide information about a charge for a corruption offence or disciplinary or other proceeding arising from the corruption matter and the outcome.

New section 68C gives the CCC the power to make public statements in connection with a corruption complaint or corruption investigation for the following specific purposes, provided that the CCC is also satisfied that exceptional circumstances exist to justify making the statement:

- to seek further evidence from the public or address public misconceptions about a corruption matter
- to prevent or minimise the risk of prejudice to the reputation of a person involved in a corruption matter, and
- to provide information about action taking by the CCC following an investigation, including to refer the matter for consideration for prosecution or disciplinary proceedings.

New section 68D prevents the CCC from identifying any individual in a public statement unless it is reasonably necessary. Where this does occur, the provision requires the CCC to afford the person procedural fairness under new section 68H.

The amendments limit the following rights under the HR Act:

- Taking part in public life (section 23)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Fair hearing (section 31), and
- Rights in criminal proceedings (section 32).

Making a public statement interferes with the same rights engaged by the new powers for the preparation of certain commission reports, namely the right to privacy and reputation and related rights, the right to a fair hearing and rights in criminal proceedings. As outlined in the analysis below, however, the extent of the interference is likely to be greater at the point a public statement is made and therefore it is appropriate to deal with public statements

separately in this statement of compatibility.

(a) the nature of the right

The nature of the human rights limited by the new powers for corruption investigation and corruption prevention reports were explored above and apply equally to the making of public statements.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of allowing a power to make public statements which interfere with the identified rights is as for the purposes identified above in relation to the power to prepare commission reports. That is, to inspire public confidence in the CCC's ability to deal with corruption appropriately and effectively and, relatedly, to have a deterrent or educative impact on the public sector and broader community so as to prevent future corruption. This is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The recommended powers for making public statements are directly linked to the stated purpose. Without the ability to make a public statement in relation to a corruption complaint or investigation, the CCC would not be able to ensure that important information about these matters could be made public at appropriate times.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are two main alternative approaches available. The first would give the CCC unfettered ability to issue public statements at any point from the receipt of a complaint about corruption and before a corruption investigation is finalised. This the most restrictive option. The Review Report observed that the public interest in transparency is of less weight than the rights to privacy and reputation in the stages before an investigation has been finalised, compared to the situation after a person has been charged or convicted.⁵⁰ A public statement that named an individual the subject of an ongoing corruption investigation could result in irreparable harm to that individual's privacy and reputation in circumstances where the investigation may ultimately reveal that the allegations are unfounded.

The second main alternative is to prevent the CCC from issuing any kind of public statement at all. While this is generally the least restrictive option, it would give the CCC no power to publicly release important information about corruption matters at appropriate junctures. For example, the inability to issue a public statement to notify the public when a report is released may limit the public's right to receive this information. Given the reality today is for many people to rely on the media in all its various forms to receive important public information, without this option, a report may never come to the attention of large cross-sections of the public.⁵¹

⁵⁰ Review Report, p. 228.

⁵¹ Review Report, p. 230-231 citing Crime and Corruption Commission statement, dated 12 March 2024, 17.

In addition, in some cases, not being able to issue a public statement may in fact not be the least restrictive option available. For example, erroneous reporting that a person has been referred to the CCC for investigation, if not able to be rectified, has the potential to cause significant harm to a person's privacy and reputation. The Review Report gave the example of a pending election where a failure to correct the record at an early stage could cause significant harm to a person's electoral prospects.⁵²

The proposed powers for making public statements in the Bill are designed to balance key competing public interest and human rights factors. In particular, the Bill has regard to the fact that, in order to strike the appropriate balance, the weight that should be afforded to each factor will vary depending on the circumstances and timing in which the power to make a public statement is exercised. By limiting the power to make a public statement for specific purposes only, the Bill seeks to achieve this balance, to the greatest extent possible, on the face of the provision.

The Bill provides for the CCC to make a range of general or uncontroversial public statements in the public interest for specific purposes where the balance is likely to lie in favour of making a public statement. For example, a limited statement that it would be inappropriate to comment on a matter or refuse to confirm or deny anything in relation to a matter or provide information about a charge for a corruption offence. The overlay of the public interest test also continues to ensure a proper assessment of the public interest and the individual's human rights prior to the making of a particular public statement.

The Bill also provides for another category of public statements to be made in exceptional circumstances. Here the balance shifts further towards the rights of the individual and so making the public statement for the specific purposes enumerated is subject to a high additional threshold. For example, where it is necessary to elicit information from the public in relation to assist in an ongoing investigation. Once again, the public interest test acts as a further safeguard to ensure that the impact on relevant human rights is properly considered.

Finally, the Bill ensures that information that identifies or could lead to the identification of an individual cannot be included in a public statement unless the CCC consider that this is reasonably necessary. Where the CCC does propose to include identifying information, it must first afford the person procedural fairness by providing them with the proposed statements for the purpose of allowing the person a reasonable opportunity to make submissions.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales, as with the power to issue a public report, individual human rights, such as the right to privacy and reputation, fair hearing and rights in criminal proceedings are important, but the impact on these rights is mitigated by the limited purposes for which a public statement may be made. These purposes have been carefully framed to account for the fact that the impact on rights may be greater depending on the subject matter and timing of a public

⁵² Review Report, p. 229 citing e.g., the Crime and Misconduct Commission released an exonerating media release on 16 March 2012, shortly before the State Government election on 28 April 2012: Crime and Misconduct Commission, 'CMC concludes no official misconduct by Newman in assessment of three BCC-related matters' (Media release, 16 March 2012) <<https://www.ccc.qld.gov.au/news/cmc-concludes-no-officialmisconduct-newman-assessment-three-bcc-related-matters>>.

statement. The overarching public interest test and procedural fairness requirements also apply to reduce the extent of any imposition. On the other side of the scales, there is a high public interest in ensuring that the CCC can act independently, transparently, and flexibly in order to effectively discharge its corruption functions under the CC Act.

This approach represents a fair balance as it does not favour the release of information to the public at all costs. Rather, it balances the public's right to receive information about corruption matters against the rights of individuals not to have their rights arbitrarily interfered with and does so in a way that acknowledges that the balance in favour of the need to protect these rights is greatest in the early stages of an investigation.

The limitations on human rights are proportionate and therefore justified. As the interference with privacy and reputation is not unlawful and, in the case of the right to privacy, is proportionate and therefore not arbitrary, the right to privacy and reputation is not limited.

(f) any other relevant factors

Nil.

Offences for unauthorised publication of commission reports and draft reports or statements

The Bill creates new and revised offence provisions under the CC Act for the unauthorised publication of commission reports and draft reports and proposed public statements. This includes:

- Amendments to existing section 214, which prohibit the unauthorised publication of commission reports, to encompass the new commission reports, and
- New sections 214A and 214B which make it an offence for a person, without reasonable excuse, to give a draft report or statement to any person unless it is for the purpose of seeking legal advice or commencing a legal proceeding in relation to the report or statement.

The amendments limit the following rights under the HR Act:

- Freedom of expression (section 21)
- Right to liberty and security of person (section 29), and
- Rights in criminal proceedings (section 32).

These offence provisions limit the right to freedom of expression insofar as a person's ability to give a report or draft report or statement to somebody else or the world at large is limited. To the extent that a prosecution for an offence may result in a person's imprisonment, the amendments also limit the right to liberty.

Under the new offences in sections 214A and 214B, a person will not be liable where they give the draft report or statement to another person if it is for the purpose of seeking legal advice or commencing legal proceedings about the report or statement against the CCC or, otherwise, if they have a reasonable excuse. This engages rights in criminal proceedings as the onus in establishing the existence of these matters will fall to the individual charged with the offence,⁵³

⁵³ Office of the Queensland Parliamentary Counsel (*Principles of good legislation: Reversal of onus of proof*, Version 1, 19 June 2013) p. 8.

thereby encroaching on the right to be presumed innocent.

(a) the nature of the right

The right to liberty (section 29(1))

The right to liberty is about ‘protect[ing] people from unlawful and arbitrary interference with their physical liberty, that is, deprivation of liberty in the classic sense’.⁵⁴ The right is relevant whenever a person is placed at risk of imprisonment.

The right to freedom of expression (section 21)

The scope of the right to freedom of expression was explored above as a right that is promoted by public reporting on corruption matters. The right to freedom of expression has a wide scope and protects almost all forms or means of expression and includes the freedom to seek, receive and impart information and ideas of all kinds.

Rights in criminal proceedings (section 32)

As outlined above, section 32(1) explicitly protects the right to be presumed innocent until proven guilty. This imposes on the prosecution the onus of proving the offence, guarantees that guilt cannot be determined until the offence is proved beyond reasonable doubt, gives the accused the benefit of doubt, and requires that accused persons be treated in accordance with this principle.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The existing offence provision, which is amended by the Bill to include the new corruption investigation and corruption prevention reports, is designed to ensure that publication of commission reports does not occur unless the report is validly tabled or otherwise published under the CC Act. The new offence provisions are aimed at preventing draft reports or statements from being published. However, they are also intended to ensure that a person who is given a draft report or statement is not liable for giving the report or statement to somebody else where there is a valid reason to do so, such as seeking legal advice or in order to commence proceedings.

Together these provisions are directed towards the purpose of avoiding the potential risk of harm, including to individual rights such as privacy and reputation, that may arise if a report is released before it is formally tabled or published or a draft report or statement is published. For example, a draft report may contain personal information in relation to other people where those other people have yet to be afforded procedural fairness. In this way, the early release of a report would impede the CCC’s ability to amend the report and to properly consider the public interest in the decision to table or publish it. Ultimately, this may harm an individual’s right to privacy and reputation, and by extension, undermine public confidence in the CCC’s performance of its corruption and corruption prevention functions.

Without exceptions which allow a person to seek legal advice or commence proceedings, or otherwise raise a reasonable excuse, individuals would not be able to take reasonable steps in response to the procedural fairness afforded to them by other provisions in the Bill.

⁵⁴ *Re Kracke and Mental Health Review Board* (2009) 29 VAR 1, 140 [664]; *DPP (Vic) v Kaba* (2014) 44 VR 526, 558 [110].

Nevertheless, requiring the individual to establish the existence of a reasonable excuse is also necessary to ensure meaningful prosecution outcomes. This is because it would be extremely difficult for the prosecution to establish matters that are likely to be peculiarly within the knowledge of the defendant, such as whether, for example, the information was copied, published or given for the purpose of seeking legal advice. An unworkable offence may ultimately encourage non-compliance and similarly undermine public confidence in the CCC's performance of its corruption and corruption prevention functions.

Promoting the human rights of individuals and ensuring that a report is only publicly released where procedural fairness requirements have been properly applied, and its release is in the public interest, are proper purposes consistent with a free and democratic society based on human dignity, equality, and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Clearly specifying this conduct as criminal serves to ensure that persons who receive reports or draft reports or statements are aware that publication in contravention of these provisions is prohibited. Ensuring that an offence provision is workable by requiring the individual to establish the existence of any excuse, further ensures that persons can be held to account for their actions and appropriately punished. This may act as a future deterrent.

The limit on the identified rights is therefore clearly linked to the purpose of protecting the human rights of other persons and ensuring that reports are only released in a form, and at a time, that is appropriate and where the CCC determines it is in the public interest.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

Not attaching criminal liability to unauthorised publication would fail to signify to people the importance of complying with the provisions.

Further, if an individual charged with an offence relating to a draft report or statement was not required to establish the existence of any excuse, it would be extremely difficult for the Crown to successfully prosecute individuals, which would ultimately reduce the effectiveness of the offence provisions.

There are no other less restrictive and reasonably available ways to achieve the purpose of guarding against unauthorised publication other than via the imposition of criminal offences. The new offence provisions do not prevent a person from giving a draft report or statement to another person for the purpose of seeking legal advice or for the purpose of commencing a legal proceeding against the CCC in relation to the report or statement.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On one side of the scales, the liberty of the person, rights in criminal proceedings as well as their right to freedom of expression is important. However, the limitation on the rights to liberty and in criminal proceedings will only be restricted in the circumstances where the individual breaches an offence provision, is found guilty of the offence after due process in accordance with Queensland's judicial system, and, in the case of the right to liberty, a term of imprisonment is imposed by an independent member of the judiciary. The right to freedom of

expression is only limited until the report or draft report or statement is otherwise lawfully published and the right to seek legal advice is not impacted.

On the other side of the scales, it is important to clearly specify this kind of publication as an offence, particularly in circumstances where persons receiving draft reports or proposed statements may not appreciate the unlawful nature of the conduct, and to ensure that where an offence occurs, that prosecution of the offence is not beset by insurmountable barriers.

Ensuring that unauthorised publication in these circumstances is an offence, therefore strikes a fair balance between the limits on the right to liberty arising from the risk of imprisonment upon conviction for an offence and the small limitation on the right to freedom of expression and the purpose of the limitation to protect the human rights of others and ensuring that a report or statement is only publicly released where this is in the public interest.

(f) any other relevant factors

Nil.

Immunity for unauthorised past reports and statements

The Bill inserts a new provision into the CC Act to extinguish civil liability arising from past corruption reports prepared or published or past public statements made about corruption in the purported performance of one of the CCC's statutory functions.

New section 337A ensures that a person is not civilly liable in relation to past reports or public statements made or published prior to the High Court's decision, provided the action was taken in good faith and without gross negligence.

The provision limits the following rights under the HR Act:

- Property rights (section 24), and
- Privacy and reputation (section 25).

Extinguishing liability in these circumstances amounts to a deprivation of property (section 24 of the HR Act). In addition, to the extent that the proposed provision has the practical effect of allowing reports and public statements to remain in the public domain, there may be ongoing harm to a person's right to privacy and reputation and other related rights identified which arise in the context of public reporting and statements.

(a) the nature of the right

Property rights (section 24(2))

Section 24(2) of the HR Act provides '[a] person must not be arbitrarily deprived of the person's property'. The Review Report discusses this and outlines that property in this sense includes economic interests,⁵⁵ which is likely to include a chose in action⁵⁶ such as a legitimate right to damages.⁵⁷ Where an interference is proportionate, it will not be arbitrary and therefore the impact on this right is considered as part of the proportionality analysis below.

⁵⁵ Review Report, p. 153 citing *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [327].

⁵⁶ Review Report, p. 153 citing *Acts Interpretation Act 1954*, sch 1 (definition of "property").

⁵⁷ Review Report, p. 153 citing *Draon v France* (2006) 42 EHRR 40, 830–2 [65]–[70]; *Maurice v France* [2005] ECHR 683, [63].

The right to property in section 24 of the HR Act is not unfettered and includes the internal limitation that the deprivation of property cannot be arbitrary. Whether the deprivation of property is considered arbitrary will depend on whether it is capricious, unjust, unreasonable, or disproportionate to a legitimate aim sought.⁵⁸

The right to privacy and reputation (section 25) and related rights

The nature of the right to privacy and reputation and other related rights insofar as these are engaged by public reports and statements is explored above.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

There is no express power under the CC Act for the CCC to make public statements. While the *CCC v Carne* did not deal with the legal position in relation to public statements, its reasoning nevertheless casts doubt over the scope of the CCC's powers in this regard.⁵⁹ While the High Court decision leaves no doubt in relation to the legal position with respect to past public reports, the extent of the liability that may remain is unclear although arguably, it would be small having regard to the significant existing protections from liability, including section 335 of the CC Act, parliamentary privilege,⁶⁰ and the limitations periods under the *Limitation of Actions Act 1974*.

Section 337A is designed to address concerns in relation to the legal uncertainty that remains around the CCC's ability to make public statements following the High Court decision and, generally, to bring certainty to the scope of ongoing liability that remains in respect of past public corruption reports and statements. The extinguishment of liability protects the State's financial interests and resolves the risk of liability in favour of finality. These are legitimate aims.⁶¹

Extinguishing liability makes it clear that past reports and statements cannot attract liability relating to their preparation or publication or making. This is designed to ensure that the CCC and the State are in the same legal position they would have been if these actions had been clearly authorised by the CC Act at the time. This will assist in ensuring the public's ongoing access to information about corruption contained in these reports and statements and therefore promotes the right to freedom of expression under section 21 of the HR Act, which includes the right to seek and receive information.⁶²

These purposes are consistent with a free and democratic society based on human dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

By extinguishing the liability of the State and CCC, the Bill would help to protect the State's financial interests. By removing the prospect of litigation about these matters, the Bill assists

⁵⁸ Review Report, p. 153 citing *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [333] n 291.

⁵⁹ Review Report, p. 181, citing Crime and Corruption Commission, first submission, dated 12 March 2024, 28.

⁶⁰ Review Report, p. 255 – 256.

⁶¹ *Pressos Compania Naviera SA v Belgium* (1996) 21 EHRR 301, 335–6 [36], *Dracon v France* (2006) 42 EHRR 40, 833 [77].

⁶² Review Report, p. 258.

in establishing legal certainty in relation to the status of public statements and the scope of liability that remains in relation to both past reports and statements.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There are no less restrictive ways to achieve the intended purposes. A number of different options were considered.

First, there is the alternative proposed by the Review Report of validating only past reports and public statements that would have been authorised had the proposed reporting and statement-making powers applied at the time. This option is not as effective in ensuring legal certainty, as the assessment of whether reports and statements were validly made would be a complicated and resource intensive exercise. While the approach taken by the Bill in adopting a single corruption investigation report might streamline these considerations, this would not do so to any great extent.

Second, there is the option of validating all past reports and statements. This is undesirable as it involves endorsing the past actions of the CCC, which in some cases may have caused harm to individuals. Validating past reports and statements would similarly reduce the risk of liability with respect to past reports and statements, with the result that the impact on the right to property would be the same. This option is therefore not less restrictive of the right to property.

Third, there is the option of extinguishing all liability in respect of past reports and public statements, not merely liability arising primarily because of the issue identified in the *CCC v Carne*.⁶³ This is not a less restrictive option as it would impose a greater burden on the right to property.

Fourth, there is the option of transferring liability to the State rather than extinguishing it altogether. This would involve a provision similar to section 335 of the CC Act, under which the CCC is immunised against all civil liability for engaging in, or for the result of engaging in, conduct in an official capacity. Under section 335, liability attaches to the State, but the State may recover contribution from the CCC if the conduct in question was engaged in other than in good faith and with gross negligence. This option would not be as effective in achieving the legitimate aim of protecting the State's financial interests.

The proposed option is the only reasonably available option to achieve the intended purposes. It is also subject to a number of important limitations. The proposed provision will not affect any pending litigation, which is significant under international human rights law.⁶⁴ To the extent that a person's actions amount to criminal conduct or were undertaken in bad faith and with gross negligence, liability is not extinguished. In addition, were any reports or statements to be issued after the High Court decision, they would not be protected by the Bill.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

⁶³ (2023) 97 ALJR 737.

⁶⁴ *Stran Greek Refineries and Stratis Andreadis v Greece* (1995) 19 EHRR 293, [74].

On one side of the scales, there is the impact on property rights and the right to privacy and reputation and related rights. Extinguishment of a cause of action altogether is a large impact on property,⁶⁵ particularly where it is not offset by compensation or the transfer of liability to the State.⁶⁶ However, the impact on property is mitigated by the limited scope of section 337A and by the fact that the operation of existing immunity and statutory limitation provisions means that the scope of liability that is being extinguished is very small. Ultimately, this means that the impact on the right to property is also very small. Similarly, the impact on other rights, such as the right to privacy and reputation, is also much reduced given the prolonged period of time many of these reports and statements have been in the public domain.

On the other side of the scales is the importance of certainty following the decision in *CCC v Carne*⁶⁷ and the need to protect the State's financial interests, which outweigh the small impact on human rights by the extinguishment provision.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the Crime and Corruption (Reporting) Amendment Bill 2024 is compatible with human rights under the HR Act because the Bill limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

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Minister for the Prevention of Domestic and Family Violence

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⁶⁵ *Yasar v Romania* (2020) 71 EHRR 25, 850 [51].

⁶⁶ *Pressos Compania Naviera SA v Belgium* (1996) 21 EHRR 301, 336-7 [38]-[39].

⁶⁷ (2023) 97 ALJR 737.