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Commissions of Inquiry Act 1950

COMMISSIONS OF INQUIRY ORDER (NO. 1) 2022

Short title

1. This Order in Council may be cited as the *Commissions of Inquiry Order (No. 1) 2022*.

Commencement

2. This Order in Council commences on 7 February 2022.

Appointment of Commission

3. UNDER the provisions of the *Commissions of Inquiry Act 1950*, the Governor in Council hereby appoints the Honourable Gerald Edward (Tony) Fitzgerald AC QC as Chairperson and Commissioner and the Honourable Alan Wilson QC, as Commissioner, from 7 February 2022, to make careful inquiry, in a transparent and independent manner with respect to the following matters:
 - (a) noting the findings of Parliamentary Crime and Corruption Committee's (PCCC) Report No. 108, *'Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters'*, the adequacy and appropriateness of the structure of the Crime and Corruption Commission (CCC) in relation to use of seconded police officers, including having regard to:
 - i. the views and recommendations of Tony Fitzgerald QC, as expressed in the report of the 'Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct' (the Fitzgerald Inquiry Report) in respect of the establishment of a Criminal Justice Commission (CJC);
 - ii. the structure of other Australian State and Territory integrity bodies, with a particular emphasis on the use of seconded police officers, including the tenure, qualifications and training of such personnel;
 - (b) the adequacy and appropriateness of legislation, procedures, practices and processes relating to the charging and prosecution of criminal offences for serious crime and corruption in the context of CCC investigations, including having regard to:
 - i. relevant findings and recommendations of the PCCC Report No. 108, *'Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters'* and other previous relevant reports of the PCCC;
 - ii. the use and role of seconded police officers and the retention of their powers pursuant to sections 174 and 255 of the *Crime and Corruption Act 2001*;
 - iii. the extraordinary nature of the CCC's powers and functions under the *Crime and Corruption Act 2001* and differences from police powers in the investigation, charging and prosecution of criminal offences, including provisions of the *Police Powers and Responsibilities Act 2000*;
 - iv. the consequences arising from the laying of criminal charges as a result of a CCC investigation, including the provisions under section 175K of the *Local Government Act 2009* for a person to be automatically suspended as a councillor when the person is charged with a 'disqualifying offence';
 - (c) the adequacy and appropriateness of section 49 of the *Crime and Corruption Act 2001*, including consideration of:
 - i. relevant findings and recommendations of the Parliamentary Crime and Corruption Committee's (PCCC) Report No. 108, *'Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters'* and other previous relevant reports of the PCCC;

- ii. the evolution of section 49, including the nature and purpose of amendments made in the *Crime and Corruption and Other Legislation Amendment Act 2018*;
 - iii. current and proposed policy, procedure and practice relating to the obtaining of independent advice by the CCC on complex prosecutions;
 - iv. the approach to review by, and the obtaining of advice from, respective Directors of Public Prosecutions in other jurisdictions of charges arising out of investigations by serious crime and corruption integrity bodies;
 - v. the CCC's interaction with the Director of Public Prosecutions (DPP), including existing information sharing and other processes that facilitate interaction;
 - vi. whether there should be a requirement that the CCC obtain a recommendation from the DPP, or a senior independent legal advisor, before police officers use their discretion to charge serious criminal offences and implications for agencies associated with such a requirement;
4. AND the Commission may carry out its inquiry by calling on relevant agencies, including the CCC, Queensland Police Service and the DPP, academics and individuals and entities considered relevant; and reviewing any other relevant case law, literature, research and data.
 5. AND in receiving evidence or information pursuant to clauses 3 and 4 on a matter that is the subject of a covert investigation, or proceeding, or an investigation or intelligence operation of a law enforcement agency, or may expose a witness to risk of harm, the Commission will receive such evidence in camera and ensure anonymity of the relevant parties.
 6. AND the Commission will ensure that it does not publicly expose details of current or anticipated intelligence collection strategies and investigation methods where such detail is not already in the public domain.
 7. AND the Commission will ensure that it has regard to the need to protect and promote human rights protected under the *Human Rights Act 2019*.
 8. EXCEPT that, while the inquiry may consider processes and procedures in relation to current and past CCC investigations and judicial proceedings arising from CCC related investigations and charges, the inquiry is not to make any findings with respect to the allegations in relation to the conduct of persons the subject of those investigations, charges and judicial proceedings.

Commission to report

9. AND directs that the Commission make faithful report and recommendations on the aforesaid subject matter of inquiry, and transmit the same to the Honourable the Premier and Minister for the Olympics and the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence by 9 August 2022.

Commission to make recommendations

10. IN making recommendations the Commission should consider any recommended legislative, structural, procedural or organisational changes to promote the ability of the CCC to carry out its statutory functions in a way that is efficient, effective, objective, fair and impartial and meets the public interest in ensuring Queensland has an independent crime and corruption body that meets the highest standards of integrity and impartiality and the need to protect and promote human rights, including the rights protected under the *Human Rights Act 2019*.

Application of Act

11. Pursuant to section 4(2) of the *Commissions of Inquiry Act 1950*, it is declared that all of the provisions of the *Commissions of Inquiry Act 1950* shall be applicable for the purposes of this inquiry, except for section 19C – Authority to use listening devices.

Conduct of Inquiry

12. The Commission may receive submissions and hold public and private hearings in such a manner and in such locations as determined by the Commission as appropriate and convenient and in a way that protects and promotes the rights protected under the *Human Rights Act 2018*, subject to the considerations identified in clauses 5 and 6.
13. Whenever the Honourable Gerald Edward (Tony) Fitzgerald AC QC is absent from duty or unable for any other reason to perform the duties of Chairperson, the Chairperson of the inquiry shall be the Honourable Alan Wilson QC.

ENDNOTES

1. Made by the Governor in Council on 31 January 2022.
2. Notified in the Gazette on 31 January 2022.
3. Not required to be laid before the Legislative Assembly.
4. The administering agency is the Department of Justice and Attorney-General.