

# **MEMORANDUM OF UNDERSTANDING**

Between

**CRIME AND CORRUPTION COMMISSION (CCC)**

And

**DIRECTOR OF PUBLIC PROSECUTIONS (DPP)**

Governing the provision of legal advice to the CCC by the DPP on the availability, suitability and prospects of charges arising from corruption investigations.



## 1. PARTIES

1.1. The Parties to this Memorandum of Understanding (**MOU**) are the:

- Crime and Corruption Commission (**CCC**); and
- Director of Public Prosecutions (**DPP**).

## 2. PURPOSE & SCOPE

2.1. The CCC and the DPP are committed to ensuring that they work collaboratively and co-operatively to create an efficient and effective process that:

- (a) facilitates the timely provision of advice from the DPP to the CCC on the availability and prospects of pursuing criminal charges arising from the CCC's corruption investigations (**Advice**); and
- (b) prevents unreasonable delays and mitigates risks that may undermine public confidence in the criminal justice system.

2.2. To achieve its purpose, this MOU sets out the requirements, expectations and understanding of the parties to ensure that:

- (a) briefs of evidence are provided, in an agreed form, by the CCC to the DPP in a timely manner;
- (b) the CCC identify any relevant statutory timeframes (including limitations statutory limitations for commencement of disciplinary proceedings) affecting the urgency of the Advice;
- (c) the DPP assigns an appropriately qualified and independent lawyer to consider briefs of evidence and furnish Advice in a timely manner;
- (d) Advice is provided as expeditiously as possible;
- (e) the DPP Lawyer assesses the need for requisitions in a timely and proactive manner, noting the relevant time constraints affecting the parties, including:
  - (i) if the requisition request may require the CCC to exercise its compulsory powers under the *Crime and Corruption Act 2001*; or
  - (ii) relevant statutory timeframes for commencement of proceedings and/or disciplinary processes;
- (f) the CCC responds to requisitions in a timely and comprehensive manner;
- (g) the Parties communicate and liaise promptly, effectively, and regularly with each other, including engaging early and cooperatively to identify any potential legal issues and/or resolve any contentious issues that may arise.

2.3. To avoid doubt, the scope of this MOU is limited to governing the process for the DPP providing legal advice to the CCC on the availability and prospects of laying criminal charges in the context of the CCC's corruption investigations, it does not apply to the CCC's crime functions or prosecutions.

### 3. DEFINITIONS

In this document, the following terms have the meaning given below:

Term	Meaning
Advice	The opinion of the DPP in relation to the availability and prospects of criminal charge(s), including appropriate charge(s) that would be supported by the available evidence, in the context of corruption matters referred by the CCC.
Case Officer	Means the lead investigator/arresting officer, or such other staff member, appointed or assigned by the CCC to act as the liaison with the DPP regarding the proposed prosecution.
CCC	The Crime and Corruption Commission as established under the <i>Crime and Corruption Act 2001</i> .
CC Act	<i>Crime and Corruption Act 2001</i> .
CCC Lawyer	Means the lawyer appointed or assigned by the CCC to request/facilitate the DPP providing the Advice.
Compelled Evidence	Means any evidence, document or thing, whether provided, given or received, orally or in writing by the CCC under compulsion, whether by exercise of the powers under the <i>Crime and Corruption Act 2001</i> or otherwise.
DPP	Director of Public Prosecutions means the Director of Public Prosecutions as appointed in accordance with the <i>Director of Public Prosecutions Act 1984</i> .
DPP Act	<i>Director of Public Prosecutions Act 1984</i> .
DPP Lawyer	Means the lawyer appointed or assigned (whether internal or external) by the DPP to give Advice to the CCC.
Key Point of Contact (KPOC)	Means the persons to act as Key Points of Contact (KPOC's) in the DPP and the CCC to facilitate the operation of this MOU (including the provision of Advice).
MOU	The agreement evidenced by this document (including any relevant annexures or schedules) as amended or varied from time to time.
Notice	Means any written communication required between the parties under this MOU.
ODPP	Office of the Director of Public Prosecutions for Queensland.
Parties	The CCC and the DPP.
Prosecutor	The Prosecutor assigned to prosecute the criminal charges (in the event that an alleged offender is charged following a CCC investigation and the receipt of the Advice).

#### 4. PRINCIPLES

The parties acknowledge and accept they will each ensure their relevant staff:

- (a) are familiar with the objectives, expectations and responsibilities set out in this MOU; and
- (b) engage in accordance with the following paramount principles:
  - (i) **Cooperation and collaboration**– the Parties will use their best endeavours to work co-operatively and collaboratively with one another to meet the purposes of this MOU, including the resolution of any issues that may arise.
  - (ii) **Timeliness and efficiency** - the Parties will use their best efforts to carry out their respective responsibilities or duties expeditiously and efficiently under this MOU.
  - (iii) **Early and regular engagement** – the Parties will use their best efforts to engage with one another at the earliest practical opportunity, including proactively during an investigation to identify potential risks and legal issues early in an investigation, and will engage early to mitigate risks that may cause delays or impede the other party from effectively fulfilling their functions and responsibilities under this MOU.

#### 5. REQUESTING ADVICE: BRIEF OF EVIDENCE FROM CCC TO DPP

- 5.1. This section details the procedure, standards and expectations for requests for Advice and early engagement.

##### **When the DPP's Advice is to be sought by the CCC**

- 5.2. Other than in exceptional circumstances, the CCC will seek the DPP's Advice before any charges are laid.
- 5.3. Examples or categories of exceptional circumstances where charges may be laid before the Advice of the DPP is obtained, include, but are not limited to:
- Emergent situations where an immediate arrest is essential, such as where a person of interest is attempting to flee the jurisdiction;
  - Charges that are incidental or ancillary to the primary suspected offences, for example, for breach of bail, obstructing police during execution of warrants;

- Other situations that could warrant laying charges urgently, including where arrest and bail consideration is necessary to ensure the preservation or protection of public safety (including the safety and wellbeing of victims) and/or to prevent the continuation of an offence.
- 5.4. If, in urgent or exceptional circumstances, proceedings are commenced without the DPP having first provided Advice on the matter, the CCC will, as soon as reasonably practicable, report to the DPP in relation to the charge laid and obtain Advice. The DPP will provide Advice at the earliest possible opportunity about the appropriateness of the charges and the continuation of the proceedings.
- 5.5. The parties acknowledge and agree that Advice is not a decision, and nothing in this MOU is intended to interfere with the prosecutorial discretion vested in police officers.

### **Early Engagement protocol**

- 5.6. This Early Engagement protocol will apply whether the matters involve summary and/or indictable offences.
- 5.7. The parties acknowledge and agree that Advice may be sought at relevant stages during an investigation, particularly where the CCC has formed a preliminary view that criminal charges are likely to arise.
- 5.8. As soon as practicable after the CCC has determined that potential criminal charges are likely to arise from a corruption investigation, the CCC will notify the DPP of the following:
- (a) That a decision has been made to request Advice;
  - (b) Providing a detailed outline of the background to the matter, including:
    - (i) the current status of the investigation;
    - (ii) investigative steps undertaken;
    - (iii) identified evidence supporting potential criminal conduct,
  - (c) Proposed summary and/or indictable offences under consideration;
  - (d) Any preliminary evidentiary or legal issues requiring preliminary Advice;
  - (e) An estimated date when the full brief of evidence is expected to be referred for Advice.
- 5.9. Within 7 days of being notified of the request, or forthcoming request, for Advice, the DPP will allocate the matter to an appropriately qualified lawyer and will advise the Case Officer of the same.
- 5.10. The Parties will endeavour to keep the other party informed as soon as practicable of any material changes or developments that may affect the provision of the Advice in a timely manner.

### **Timeframes for referral of briefs of evidence**

- 5.11. Other than in urgent or exceptional circumstances, where potential criminal charges are proposed, the CCC will refer the matter and provide the brief of evidence as soon as practicable, and in any event, no less than three months before any relevant statutory time period for instituting proceedings.

### **Content and format of briefs of evidence**

- 5.12. Requests for Advice will, other than early engagement and to the extent permissible at law, include (in an agreed and indexed form), the brief of evidence and all other relevant documents/material in the possession of the CCC, together with a covering letter outlining or indicating:
- (a) a summary of the background to the investigation, including a summary of the evidence obtained during the CCC investigation;
  - (b) identified offences alleged to be supported by the evidence, including a table outlining each of the elements for the identified charge(s) and the relevant supporting evidence;
  - (c) whether the identified offences are summary or indictable offences, and in the case of the latter the statutory expiry date for the commencement of proceedings;
  - (d) preliminary legal observations of the CCC lawyer, including but not limited to any relevant legal and evidentiary issues identified;
  - (e) details of whether or not relevant witnesses have given a statement, information, or testimony under coercion, and whether or not they are willing to give evidence;
  - (f) in the event that no statement is available or forthcoming from a witness, a summary of the evidence proposed to be called from such persons;
  - (g) The name/s, telephone number/s and email address/es of the CCC case officer/s responsible for the matter.
- 5.13. The brief of evidence, will include all admissible material proposed to be relied upon in a proceeding or has a duty to adduce as part of the prosecution's case.
- 5.14. Any other documents or materials in the possession of the CCC, including coerced materials and other documents which may be subject to claims of privilege or other disclosure obligations, will be provided to the DPP solely for the purposes of providing the Advice.
- 5.15. The DPP will assess the brief of evidence and any other materials disclosed to ensure any documents or materials requiring quarantine from the prosecution (i.e., coerced materials etc) are identified and managed within the ODPP to ensure they are not disclosed to the Prosecutor.

### **Delivery of briefs of evidence**

- 5.16. Briefs of evidence may be furnished in hard copy or electronic format as agreed between the parties.
- 5.17. Requests for additional copies of a brief of evidence or other materials may be made in writing to the CCC.

## **6. PROVISION OF ADVICE**

- 6.1. The Parties will work cooperatively to facilitate the provision of Advice according to the applicable timetable of steps outlined below.

### **Requisitions process**

- 6.2. The DPP Lawyer will use their best endeavours to identify and raise requisitions at the earliest available opportunity, having regard to the statutory timeframes for the commencement of proceedings and/or any likely burden imposed on the CCC to gather the information (including exercising any coercive powers under the CC Act).
- 6.3. All requisition requests must be in writing, addressed to the CCC case officer, specifically identifying the additional evidence or other material required to be obtained by the CCC. Where possible, brief advice should be provided concerning the necessity of the material to the provision of complete Advice.
- 6.4. The CCC will use its best endeavours to obtain any additional evidence or materials as requested in a timely manner.

## **7. TIMETABLE FOR PROVISION OF ADVICE**

- 7.1. The DPP will provide Advice to the CCC as soon as reasonably practicable after receiving the brief of evidence and other materials, and in any event within the timeframes identified for urgent advice, or otherwise **within 10 weeks** after the brief of evidence is received.

### **Urgent Advice**

- 7.2. The parties acknowledge and agree that where the need for Urgent Advice arises, the Parties will endeavour to work cooperatively to identify a mutually suitable timetable to facilitate the provision of the Advice.
- 7.3. The request for Urgent Advice must state the reasons for the urgency and propose a timeframe for the advice to be provided within.

### **Timeframes for very exceptional circumstances**

- 7.4. Any inability to comply with the above timetable must be identified and communicated to the CCC at the earliest opportunity with an explanation as to the cause/s and likely timeframe of the delay.



- 7.5. Where provision of Advice extends beyond the above timetable, the DPP will provide fortnightly progress reports as to the expected date of completion of the Advice.

### **Preliminary Advice**

- 7.6. Before providing final Advice on a matter which does not support the proposed charges, the DPP lawyer will endeavour to provide a preliminary view that the prosecution/s should not be commenced.
- 7.7. In providing a preliminary view, the preliminary Advice should address:
- (a) The relevant strengths and weaknesses of the case in respect of the availability and sufficiency of evidence, including any potential legal or evidentiary issues bearing on the matter;
  - (b) An assessment of the public interest considerations favouring the commencement of prosecution, or otherwise;
  - (c) Whether any alternative charge/s to those initially proposed in the CCC's instructions may be available and what, if any, further investigations, or information may be required to support any proposed alternate charges; and
  - (d) Anything else the DPP lawyer considers relevant to the Advice.
- 7.8. The Parties acknowledge and agree to use their best efforts to work cooperatively and collaboratively to resolve any areas of contention or dispute.
- 7.9. The CCC will be at liberty to provide the DPP with further submissions and/or materials to address any issues or concerns identified in the preliminary Advice.
- 7.10. The DPP will have regard to any submissions and/or material provided in accordance with clause 7.9 prior to providing its final Advice.
- 7.11. The final Advice will be provided in writing and is to include an explanation of the reasons/basis for the Advice given and:
- (a) Advise on the availability and prospects of proposed and/or alternate charges;
  - (b) Advise what, if any, further investigations/evidence is required to be obtained prior to the commencement of charges.

## **8. LEGAL PROFESSIONAL PRIVILEGE**

- 8.1. The parties acknowledge and agree that a client legal relationship is established between the CCC and the DPP for the purposes of the CCC seeking and receiving Advice.

- 8.2. It is the parties intention that any request for Advice, and any Advice provided, is legal advice and subject, to the extent permissibly by law, to client legal privilege.

## **9. DISPUTE RESOLUTION**

### **Resolving disputes about operation or interpretation of this MOU**

- 9.1. The Parties agree to make a genuine attempt to resolve any issue(s) in dispute between the parties concerning the operation of this MOU as informally as practicable, otherwise the matter will be escalated as follows:
- (a) between the KPOC's in first instance;
  - (b) if the dispute cannot be resolved informally between the KPOC's, the matter will be escalated to a Deputy Director appointed by the DPP, and the Senior Executive Officer (Corruption) for the CCC; or
  - (c) if the dispute cannot be resolved between the Deputy Director and the Senior Executive Officer (Corruption), the matter will be escalated to the DPP and the Chairperson of the CCC.
- 9.2. The Parties acknowledge and agree that either party may seek to settle a dispute by an alternative dispute resolution process, such as mediation.

## **10. SUBPOENA OR OTHER COMPULSIVE PROCESS REQUIRING PRODUCTION OF DOCUMENTS**

- 10.1. If either party is served with a subpoena or other court process requiring production of any documents or material exchanged between the parties pursuant to this MOU, to the extent permissible at law:
- (a) the receiving party will, as soon as practicable (and, in any event, in a timely manner to allow the other party reasonable opportunity to respond), notify the other party and advise what actions the receiving party proposes to take;
  - (b) the other party is at liberty to identify any concerns it has about the production of any material subject of the subpoena or other court process to the receiving party.
  - (c) In the event that the receiving party decides not to object to production of the documents, and the other party has advised that it intends to object, the receiving party will produce the relevant material in a sealed envelope and notify the issuing authority that the other party objects to the disclosure of the material and places the issuing authority on notice the party will make an application to set aside the requirement for production or disclosure.

- (d) The party/parties opposing production or disclosure are responsible for arranging to file any relevant applications and/or appearances in relation to the objection.

## 11. GENERAL PROVISIONS

### No constraint on statutory powers

- 11.1. Nothing in this MOU is intended to limit the Parties' statutory powers.
- 11.2. Subject to any legal obligations, the Parties agree not to knowingly act to the detriment of each other or the performance of their statutory functions.

### Costs

- 11.3. The Parties agree to meet their own costs incurred in connection with the operation of this MOU.

### Variation of this MOU

- 11.4. This MOU can be amended at any time by agreement of both parties.

### Review of this MOU

- 11.5. This MOU will be reviewed by the parties each 12 months following the signing of this MOU.

### Commencement and termination of MOU

- 11.6. This MOU will operate from the date of execution of this MOU by both parties.
- 11.7. This MOU will continue to be in effect until any future agreement is signed by representatives of the Parliament and the Executive Government.
- 11.8. Either party to this MOU may revoke their agreement at any time. The other party to this MOU must be notified in writing of the revocation.

## Signed



**Mr Bruce Barbour**  
Chairperson  
Crime and Corruption Commission  
**Date: 25 July 2023**



**Mr Carl Heaton** <sup>KC</sup>  
Director of Public Prosecutions

**Date: 1 August 2023 .**

Schedule 1 - Key Points of Contact (KPOC's)	
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