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9 December 2015

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

Dear Sir/Madam

***Crime and Corruption Amendment Bill 2015***

I refer to the letter of 3 December 2015 from the Chair of the Legal Affairs and Community Safety Committee inviting input for the Committee's consideration of the *Crime and Corruption Amendment Bill 2015* (the Bill). I note that a number of changes under the Bill involve restoring provisions to how they were prior to the previous Government's amendments which were made under the *Crime and Misconduct and Other Legislation Amendment Act 2014* and the *Criminal Law Amendment Act 2014*.<sup>1</sup> In response to the Chair's letter, I wish to provide the following comments for the Committee's consideration during its inquiry into the Bill.

Gender neutral CCC position designations

The Bill proposes to amend the *Crime and Corruption Act 2001* (CC Act) to restore the previous gender neutral language used to refer to the position of Crime and Corruption Commission (CCC) chairperson. On this point the Attorney-General told Parliament:

*The bill also restores gender neutral language to the position of the CCC chair by replacing references in the act and other legislation to the 'chairman' with CCC 'chairperson'. It was a regressive, petty, simply unnecessary move by the former government to amend the act to make this change given that for many years gender neutral language has been well accepted and used across the Queensland statute book.*<sup>2</sup>

I note that in 2014 a number of submitters raised concerns about the removal of gender neutral references to the chairperson and deputy chairperson which were proposed under the *Crime and Misconduct and Other Legislation Amendment Bill 2014*. While the majority of the parliamentary committee which was tasked with examining the 2014 Bill did not agree with such concerns,<sup>3</sup> the former Government did subsequently validate them to some extent by including new sections 34A and 34B in the *Acts Interpretation Act 1954* (AIA) to allow chairs and deputy chairs of Government tribunals and boards to choose their own preferred position title "*irrespective of what title is used in an Act.*"<sup>4</sup> However, it would have been more effective (and less awkward) if gender neutral position designations had simply been retained in legislation such as the CC Act rather than incorporating

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<sup>1</sup> Explanatory Notes to the *Crime and Corruption Amendment Bill 2015*, p. 1

<sup>2</sup> Queensland Parliamentary Hansard, 1 December 2015, p. 2969

<sup>3</sup> Legal Affairs and Community Safety Committee, April 2014, *Crime and Misconduct and Other Legislation Amendment Bill 2014*, Report No. 62, pp. 79-80

<sup>4</sup> Queensland Parliamentary Hansard, 7 May 2014, Statement by the Attorney-General, p. 1342; Queensland Parliamentary Hansard, 8 May 2014, *Criminal Law Amendment Bill*, Introduction, p. 1468; Explanatory Notes to the *Criminal Law Amendment Bill 2014*, p. 1

gender specific titles such as chairman which position holders could then adopt or adapt in line with new sections 34A and 34B of the AIA to suit their own particular circumstances.

New sections 34A and 34B of the AIA also raise a potential problem for the Bill's proposal to restore gender neutral position titles under the CC Act. In this regard an appointee to the role of CCC Chairperson or Deputy Chairperson could subsequently rely on the new AIA provisions to refer to herself or himself as Chairman or Deputy Chairman or by some other gender specific position designation rather than the one which was intended under the Bill. I note there is no proposal under the Bill to consequentially amend sections 34A and 34B of the AIA but raise the question whether doing so may be necessary so that the Bill's policy intent for gender neutral CCC position designations can be ensured.

As well, in the introduction speech for the Bill the Attorney-General specifically mentioned the intent to restore gender neutral language in relation to the CCC chairperson. However, the deputy chairperson was not mentioned. I note that this may be implicit given that clause 45 of the Bill seeks to amend all references in the CC Act to "chairman" and replace them with "chairperson". While this clause is likely also inclusive of all CC Act references to "deputy chairman", it would be helpful for readers of the Bill if this could be confirmed.

#### Chief executive officer not to be a commissioner

The Bill seeks to amend the current arrangements under the CC Act by providing that the chief executive officer (CEO) of the CCC is not to be a CCC commissioner.<sup>5</sup> In introducing the Bill the Attorney-General stated that the proposed change "... is consistent with best practice corporate governance and helps ensure that the CEO is answerable to the commission."<sup>6</sup> In practical terms it would be very challenging for the CEO to be a CCC commissioner while simultaneously being responsible to the same body for the organisational and administrative decisions s/he might take. Consequently, the proposal to separate the CEO from CCC membership would seem reasonable in order to avoid any potential conflict of interest issues or perceptions.

#### Chief executive officer having bipartisan Parliamentary Crime and Corruption Committee support

The Bill seeks to amend the current arrangements under the CC Act to require that the appointment of a person to the CEO position is to have the bipartisan support of the Parliamentary Crime and Corruption Committee (PCCC). Currently under the CC Act (s. 228) the PCCC may veto the Minister's nominee for appointment as CEO. While having a right of veto sounds fine in theory, in practice it would be difficult to envisage the majority members of the PCCC, who are also members of the Government of the day (CC Act, s. 300), disagreeing with the Minister's proposed CEO nominee. As PCCC decisions are made along majoritarian lines (CC Act, s. 302), the views of non-government members about the suitability or otherwise of the Minister's proposed CEO nominee would not likely prevail against those of the majority government members. The Bill addresses this situation by requiring that the appointment of the CEO is to have bipartisan PCCC support. As the Attorney-General told Parliament, the advantage of this approach is that:

*... This will support transparency and accountability in that appointment. Currently the PCCC has a right of veto in relation to the nomination of the CEO. A right of veto is not the same as having bipartisan support of the PCCC. Bipartisan support ensures that the voices of non-government*

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<sup>5</sup> The current arrangements under the CC Act whereby the CEO could also be a CCC commissioner were introduced under the *Crime and Misconduct and Other Legislation Amendment Act 2014* (Explanatory Notes to the *Crime and Misconduct and Other Legislation Amendment Bill 2014*, p. 3)

<sup>6</sup> Queensland Parliamentary Hansard, 1 December 2015, p. 2969

*members also count and a nomination cannot just proceed with the support of government members.*<sup>7</sup>

Similarly, the Explanatory Notes to the Bill point out that while the PCCC is currently provided with a right of veto for the CEO appointment nomination:

*... A right of veto means a veto by a majority of the PCCC members; while bipartisan support under the CC Act means support of the members of the PCCC unanimously, or support of a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Legislative Assembly.*<sup>8</sup>

In mandating the bipartisan approach for the CEO appointment the Bill is consistent with the intent of the original *Criminal Justice Act 1989* (no. 111) which also required the bipartisan support of the relevant parliamentary committee for the appointment of a person as chairperson. At that time, and continuing until the *Crime and Misconduct and Other Legislation Amendment Act 2014*, the chairperson concomitantly filled the role of CEO.<sup>9</sup> So, in providing bipartisan support for the appointment of a person as chairperson the relevant parliamentary committee was also effectively giving bipartisan support for that person to undertake the role of CEO.

It should be noted that the requirement for bipartisan support for the appointment of a person as chairperson/CEO was originally included under the *Criminal Justice Act 1989* by the then National Party Government. The Liberal Party of the time gave its support to this approach by evoking the Fitzgerald reforms and the importance of “... *all-party decision-making as opposed to the adoption of a partisan approach.*”<sup>10</sup> In particular, the then Liberal Party leader stated that, “*It is an affront to the Fitzgerald approach not to institutionalise and entrench an obligation on the part of the Government to seek support of all parties.*”<sup>11</sup> Thus, the Bill’s requirement for the appointment of the CCC CEO to have the bipartisan support of the PCCC would appear to align with these original arrangements.

I trust the above comments and observations will assist the Committee during its deliberations on the Bill.

Yours faithfully

Don Willis

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<sup>7</sup> Ibid

<sup>8</sup> Explanatory Notes to the *Crime and Corruption Amendment Bill 2015*, p. 1

<sup>9</sup> Explanatory Notes to the *Crime and Misconduct and Other Legislation Amendment Bill 2014*, pp. 2, 3

<sup>10</sup> Queensland Parliamentary Hansard, 18 October 1989, p. 1661

<sup>11</sup> Ibid