

12 April 2017

Our ref: Criminal Law Committee/BDS

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: lacsc@parliament.qld.gov.au

Dear Research Director

Crime and Corruption and Other Legislation Amendment Bill 2017

Thank you for the opportunity to provide a submission on the Crime and Corruption and Other Legislation Amendment Bill 2017 (the Bill) which seeks to amend *Crime and Corruption Act 2001* (the Act). The Society commends the government for undertaking public consultation on the Bill.

As there has been only a very brief opportunity to review the amendment to the Bill, an in-depth analysis has not been conducted. It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified. We request that the government extend the period by which to provide feedback and also extend the reporting date of the Committee, so that the Committee has a reasonable opportunity to consider the draft legislation and provide more useful and in-depth feedback which will hopefully assist in improving the quality of the legislation being passed. The members of the Society are in a unique position to provide informed feedback based on their extensive experience in practice.

With respect to the proposed amendments, we make the following comments on specific clauses in the Bill.

1. Clause 5 – amendment of s 15 (meaning of *corrupt conduct*)

Clause 5 of the Bill seeks to amend section 15 of the Act, which defines corrupt conduct. This expanded definition of corrupt conduct is a significant departure from the current model. Currently, the Crime and Corruption Commission's (the Commission) investigations are limited to the conduct of public officials. The expanded definition in clause 5 of the Bill proposes an expansion of the Commission's jurisdiction by enabling it to investigate the conduct of private

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citizens. The Society is supportive of the inclusion of collusive tendering in the definition of corrupt conduct (proposed section 15(2)(b)(i) of the Act).

We understand the need for the Commission to have access to extensive powers in order to effect its functions. However, we do not consider that these powers should be open-ended and limitless. The definition as drafted is exceptionally broad and may be open to being construed too broadly. As such, it is our view that the jurisdiction of the Commission should be restricted to corruption that:

- involves or affects a Queensland public official or public authority
- is deliberate or intentional (as opposed to negligence or mistake)
- is a criminal offence, or a disciplinary offence, or constitute reasonable grounds for dismissing or otherwise terminating the services of a public official, or in the case of a member of the Queensland Parliament or local government councillor, a substantial breach of an applicable code of conduct.

2. Clause 9 - insertion of new s 40A (record of alleged corrupt conduct not notified)

Clause 9 seeks to insert a new provision – proposed section 40A (record of alleged corrupt conduct not notified). We understand the policy rationale for this provision and consider that these requirements should be undertaken as a matter of best practice. We note that in order to comply with this legislative requirement, the Commission will need to be appropriately resourced and trained in how to maintain these records.

3. Clause 13 - amendment of s 50 (commission may prosecute corrupt conduct)

The Society considers that the amendment to section 50 of the Act should include an obligation on the Commission to provide the person who is the subject of criminal charges with full and proper disclosure. This full and proper disclosure should also apply to any prosecuting agency to which the Commission provides material.

4. Clause 16 - omission of s 62 (restriction on access)

The Society supports the removal of section 62 of the Act, which mandates that documents or things in the Commission's possession must not be given to or made available for inspection by any person without the commission's express written authorisation.

By way of numbering, section 60(4) of the Act should be removed because section 62 is being removed.

5. Clause 17 - insertion of new s 71A

Section 71A deals with a report containing an adverse comment. Clause 17 of the Bill requires that the Commission refrain from including adverse information about a person in a report which is to be tabled in the Legislative Assembly or published to the public under the Act, unless (prior to the report's preparation) the Commission gives the person an opportunity to make submissions about the information. The Society supports this provision.

Crime and Corruption and Other Legislation Amendment Bill 2017**6. Clause 18 - amendment of s 197 (restriction on use of privileged answers, documents, things or statements disclosed or produced under compulsion)**

Clause 18 of the Bill seeks to amend section 197 of the Act to provide express authorisation for the derivative use of compelled evidence obtained under the Act. We understand that this would allow information to be used in other proceedings such as disciplinary proceedings.

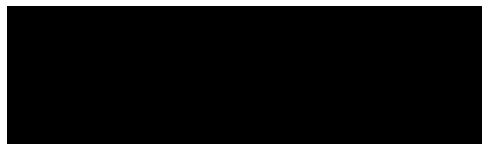
The Society notes that the law relating to derivative use can be exceptionally complicated. As such, we consider that the proposed amendment may have unintended and adverse consequences. For example, the provision might enable the Commission to provide information and bypass the protections offered by section 197 of the Act. Section 197 places restrictions on use of privileged answers, documents, things or statements disclosed or produced under compulsion. As such, clause 18 would allow other agencies to explore the same matters with a witness and bypass the protections of section 197, to their detriment. The Society is exceptionally concerned about this proposal.

7. Clause 21 - amendment of s 219G (proceedings relating to reviewable decisions)

The Society supports clause 21 and notes that this regularises the appeal periods from 14 days to 28 days.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Acting Advocacy Manager, [REDACTED] on [REDACTED] or [REDACTED]

Yours faithfully



Christine Smyth
President