CRIME AND MISCONDUCT COMMISSION

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Criminal Law - False Evidence Before Parliament Submission 002

QUEENSLAND

Our Reference: AD-12-0505 / RH
Contact Officer: Rob Hutchings

25 June 2012

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

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

Dear Sir

RE: CRIMINAL LAW (FALSE EVIDENCE BEFORE PARLIAMENT) BILL 2012

Thank you for the invitation to comment on this Bill.

The Crime and Misconduct Commission ("CMC") notes that the proposed bill re-enacts (with minor amendment) the previous s.57 of the *Criminal Code* repealed by the *Criminal Code Amendment Act* 2006. The CMC has no comments to make, from a policy perspective, about the merits of the proposed amendments to the *Code* or the associated amendments to s.36 of the *Parliament of Queensland Act 2001* ("POQ Act").

You will be aware, however, that there is no developed jurisprudence surrounding s57 of the *Criminal Code* in its previous incarnation. History indicates, however, that on the sole occasion on which an alleged breach of s.57 (as it previously existed) came to be investigated, it was investigated by the CMC.

That leads to certain practical consequences in managing the operation of s.57 should it be restored. As you are aware, highly politically charged matters inevitably bring with them the potential for the CMC to receive complaints about alleged breaches of proposed s.57. Members can and will be tempted to make those complaints to the CMC, because if proved, those criminal offences may amount to official misconduct within the meaning of s.15 of the *Crime and Misconduct Act 2001,* ("CM Act") thereby engaging the CMC's jurisdiction.

In those circumstances, the CMC may then find itself, by operation of the proposed law, in a difficult position. On the one hand, if it acts on the complaint pursuant to the CM Act, it may fall foul of the apparent intent of the proposed legislation (embodied in s.47 of the POQ Act) that the Legislative Assembly have the right to decide whether particular conduct should be dealt with as a contempt of the Parliament or prosecuted under the new offence. On the other hand, criticism could arise if, in recognition of Parliament's intention, the CMC chose to leave the matter to the Assembly, and was perceived to be "doing nothing".

It is also possible for there to be parallel action taken – by the Legislative Assembly and the CMC – for the same conduct, with each being ignorant of the other's actions. Further, absent any legislative statement on jurisdiction, there is also the possibility of

uncertainty and embarrassment if the bodies have different opinions about the prospect of a conviction.

Further potential problems emerge. They have been outlined in the CMC report on this topic tabled in Parliament on 7 December 2005.

To summarise, s.57 does not resolve the question of whether *any* investigation of an offence allegedly committed in breach of it is a breach of parliamentary privilege. In addition, if after any such investigation the CMC were to conclude an allegation of a breach of s.57 should proceed, should it be referred to the Director of Public Prosecutions in conformity with ordinary practice (and s.49 of the CM Act), or the Attorney-General for consideration by Parliament? These questions do not have clear answers.

Accordingly, I suggest that any legislation of the sort proposed be accompanied by machinery provisions that resolve what are essentially the priority questions identified above.

These comments represent the views reached in the limited time available to consider the proposed legislation. The CMC would be pleased to discuss these matters in more detail, if you desire. Thank you again for the opportunity to comment.

Yours sincerely

ROSS MARTIN SC
Chairperson