

  
30 March 2014

Mr Ian Berry MP  
Chair  
Legislative Affairs and Community Safety Committee  
Parliament House  
George St  
Brisbane Qld. 4000

Dear Mr Berry

**Crime and Misconduct and Other Legislation Amendment Bill 2014**

Thank you for your invitation to make a submission to your Committee on the Bill.

Briefly, I am in full support of parts of the Bill and vehemently opposed to other parts.

For brevity, I will refer to both the present CMC and the proposed Crime and Corruption Commission as the Commission.

**Change to emphasis on corruption**

I support the change of name and role of the Commission to concentrate its efforts on corruption. This change will conclude and formalize what had been occurring at the CMC for many years of “devolving” responsibility for dealing with the less serious allegations of official misconduct to the Police Service and departments. This devolution was certainly an aim I held during my period as Chairman of the Commission, though I did not feel the time had yet arrived to seek the necessary legislative change to formalize it

A proper culture of integrity can only be established and maintained within a unit of public administration by the managers of that unit taking responsibility for its culture. That this occurs is properly overseen by

the Public Service Commission, though I am heartened to see that it is proposed that the Crime and Corruption Commission will retain an important overall role by being able to assess the appropriateness of the complaints handling systems within a unit of public administration and to provide advice and recommendations thereon (see s.35(i) and (j) proposed to be inserted by clause 14 of the Bill). This is important as systemic corruption within a unit of public administration is usually preceded by a slippage in the culture of integrity within the unit.

### **Removal of requirement for bipartisan approval by the Parliamentary Committee for appointment of the Chairman and part-time Commissioners**

In my opinion, this is a most retrograde proposal which should not be implemented.

The Commission can only operate effectively as a corruption fighting body if it enjoys public confidence that it is an impartial body free of any political interference. This public confidence must extend to the Commission as a body and to its Chairman and Commissioners.

This public confidence will only exist if these senior appointments are seen by all sides of politics, by the media, by the staff of the Commission and by the public to have been made without any suggestion of political favour. The proposal to do away with the requirement for bipartisan approval of the Parliamentary Committee for these appointments will destroy public confidence in the Commission.

In his Introductory Speech when presenting the Bill to Parliament the Hon. the Attorney-General noted the removal in the Bill of this need for bipartisan approval of appointments but did not give any rationale for its removal.

The only attempt at a rationale that I have heard was in a statement by Mr Bleijie in a television interview where he stated words to the effect that the removal would “take politics out” of the appointment process. This statement is either naïve or disingenuous.

Rather than taking politics out of the appointment process, the removal of the requirement for bipartisan political approval will ensure that the appointment is seen as political.

If the intention of the government was to appoint a person accepted across the political divide and generally in the community as both of integrity and politically impartial, then why remove the need for the Parliamentary Committee's bipartisan approval? It is, unfortunately, difficult to avoid the conclusion that the government intends to appoint a person/s to these senior roles who would not be seen as politically impartial.

### **Ministerial control over the Commission's research function**

Clause 21 of the Bill replaces s.58 of the Crime and Misconduct Act (the section describing the research function of the Commission) with an entirely new provision which will have the effect of removing entirely the independence of the Commission in its research area.

The Commission will only be able to carry out research which is approved by the Minister, ie, the Attorney-General. In addition the range of research which it can carry out will be considerably narrowed.

The effect of this can perhaps be best described by an example. At present, if the Commission was concerned from its own observations and perhaps from public and media disquiet at some possible misuse of police powers, eg. Tasers, it could conduct a research project into their use by the QPS. This would be under the present s.52(2) which gives a wide research function to the CMC with respect to police use of powers.

S.52(2) is proposed to be removed so very arguably the Commission would then have no research function at all with respect to police use of powers. Even if it could be argued that this function still came within the catch-all phrase of "research to support the proper performance of its functions" (proposed amended S.52(1) ), which I doubt, the Commission still could not carry it out without the approval of the Attorney-General.

If the government of the day saw such research as contrary to its interests or potentially politically damaging, such approval would not be forthcoming.

Any provision requiring the Commission to obtain governmental approval before it carries out any of its functions should be rejected. The decision as to what research should be carried out by the Commission should be made by the Chairman and Commissioners. If it is thought that some further external oversight is required, then that oversight should be through the Parliamentary Committee, not the Executive, whose political interests might conflict with the proper carrying out of the Commission function.

### **Investigations and Hearings power at the discretion of the Parliamentary Commissioner.**

The oversight role over the Commission was properly given by the Criminal Justice Act to the Parliamentary Committee and maintained ever since. It was found that some practical difficulties, confidentiality, etc, necessitated the appointment of a person to act as the agent of the Committee to look more closely into matters within the Commission and report to the Committee. This included any necessary investigations of allegations of misconduct involving the Commission or its officers.

Originally, the Parliamentary Commissioner was given the power to hold hearings at his/her own discretion. With the enactment of the Crime and Misconduct Act 2000, this own discretion in the Commissioner was removed and the approval of the Parliamentary Committee was required for a hearing. Additionally the Parliamentary Commissioner could only investigate matters as referred by the Committee.

In 2002 I was appointed as the Parliamentary Commissioner and served as such for three years. I agreed with the requirement for Committee approval of investigations and hearings. In fact I never felt the need to hold a hearing, even though I investigated many matters, but I always felt that if I had a good reason to need to investigate a matter or to hold a hearing, Committee approval would have been forthcoming.

However, the oversight role was the Committee's; I was its agent. It is appropriate that the Committee should determine when and how its investigations are to be carried out.

It is the Committee that is responsible for the carrying out of its functions to the Parliament and ultimately, through Parliament, to the people..

The role of the Parliamentary Commissioner is not amenable to judicial review by the courts, as being covered by parliamentary privilege.

The proposed amendment would mean that the Parliamentary Commissioner could carry out investigations and hold hearings and merely advise the Committee of what he is doing. The Committee would be unable to control or direct the Commissioner in these matters.

In effect, the unelected Parliamentary Commissioner in this role would be above any form of control, parliamentary or judicial. This would be a situation totally contrary to all the usual standards of public administration and should not be allowed.

**In summary:**

**I support the change in name and role of the Commission to concentrate its efforts on corruption.**

**I do not support:**

- **the removal of the requirement for bipartisan approval by the Parliamentary Committee for appointments of Chairman and part-time Commissioners**
- **Ministerial control over the Commission's research function**
- **an investigation and hearing power at the discretion of the Parliamentary Commissioner.**



Yours sincerely



**Robert Needham**

Chairman of the Crime and Misconduct Commission 2005 – 2009

Parliamentary Crime and Misconduct Commissioner 2002 – 2004

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