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

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Dear Sir/Madam

### **Submission on Crime and Misconduct and Other Legislation Amendment Bill 2014**

I refer to the Chair's letter of 20 March 2014 inviting my submission on the Crime and Misconduct and Other Legislation Amendment Bill 2014 (the Bill) and thank the Committee for the opportunity to make a submission.

As the Committee will no doubt recall, I made submissions to the Attorney-General, the Honourable Jarrod Bleijie MP, at the time of release of the *Review of the Crime and Misconduct Act and Related Matters – Report of the Independent Advisory Panel* (the CMA Review Report) (transcripts of the Committee's oversight meeting with me in April 2013, Estimates hearing in July 2013 and correspondence with the Committee refer). My submissions at that time largely related to the potential impacts on my Office of the recommendations contained in the CMA Review Report. I also commented on a number of recommendations which, in my view, would, if adopted, adversely impact on the functionality and effectiveness of complaints management across government.

I would like to make comment on three areas of the Bill.

#### **Clause 9 – New s.15 (Meaning of corrupt conduct)**

The requirement that the Commission focus on corrupt conduct, rather than misconduct, will lead, with limited exception, to a significant transfer of matters from the Commission's jurisdiction to the Ombudsman's jurisdiction. The administrative actions of state agencies, including complaints management, are within the Ombudsman's jurisdiction, whereas, the actions of the Commission are specifically excluded from the Ombudsman's jurisdiction.

Under the current legislative regime, a complaint made to the Ombudsman, which concerns allegations of official misconduct, is referred to the Commission. Generally, the Commission's subsequent handling of the matter is not within the Ombudsman's jurisdiction. In practical terms, the changes will mean that many matters which were previously excluded from the Ombudsman's jurisdiction (namely allegations of official misconduct that fall short of corrupt conduct) will now be included. Complainants who remain dissatisfied after having their complaint considered by an agency will have recourse to the Ombudsman to review, and potentially investigate, the matter. This may include a large number, relative to the current situation, of public interest disclosures made to the Commission. It is impossible at this time to calculate the exact impact of the change of jurisdiction or its timing, but it is potentially considerable and may occur quickly as a result of the transition provisions for complaints management contained in the Bill.

**Clause 16 – Amendment of s.36 (Complaints about misconduct)**

Clause 16 provides that complaints about corrupt conduct must be made by way of statutory declaration, other than in certain exceptional circumstances, decided by the Commission. I believe that this is a retrograde proposal as it will have the effect of deterring all citizens, not just those with inappropriate motives, from making complaints about alleged corrupt behaviour to the Commission. I note the capacity of the Commission to establish circumstances when a statutory declaration will not be required. However, I do not believe that this is sufficient to overcome the negative impact of the proposal.

I note that the clause, in defining examples of exceptional circumstances, includes that a person '*fears retaliation for making the complaint in relation to the person's employment, property, personal safety or wellbeing*'. This appears to relate, at least in part, to the potential conflict between this new provision and the *Public Interest Disclosure Act 2010* (PID Act) which provides that public interest disclosures may be made in any form, including anonymously and verbally. Given that the majority of public interest disclosures in 2012-13 were related to official misconduct, any inconsistency between the amended Act and the PID Act is a concern. In this regard, the Commission will remain a proper authority to receive public interest disclosures about corrupt conduct under the amended Act.

Finally on this clause, the requirement to complete a statutory declaration applies only to persons complaining to the Commission and does not include complaints referred to the Commission by other agencies under the amended s.38. It would appear that a complaint made to another body can, and indeed in certain circumstances must, be referred to the Commission without the requirement for a statutory declaration. I submit that such a distinction may encourage persons wishing to make an allegation about corrupt conduct to the Commission to utilise this alternative route.

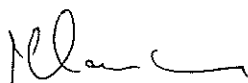
**Clause 88 – New s.219A (Departments to have complaints management system for customer complaints)**

The addition of a requirement for departments to have a complaints management system for customer complaints, which replaces the previous Public Service Commission Directive 13/06, is a welcome measure.

However, the new s.219A(4)(a) appears to unreasonably exclude public service employees of a department from complaining about the services they receive from that department. For example, it is not unreasonable that an employee of a hospital be able to complain about service delivery if that person was a patient of the hospital. There are many other examples where this situation is likely to arise across government. Additional clarification in the Bill is desirable to ensure that any citizen is able to make a customer complaint regardless of their employer.

It is also desirable that, in situations where persons are not able to complain personally, a complaint is able to be made by a duly authorised third person, including family members or guardians, on their behalf.

Yours sincerely



Phil Clarke  
Queensland Ombudsman