



Crime & Misconduct & OLAB 2014  
Submission 023

**Submission to Legal Affairs and Community Safety  
Committee on the *Crime and Misconduct and Other  
Legislation Amendment Bill 2014 (QLD)***

**11 April 2014**



## CONTENTS

Who we are .....	2
Introduction.....	3
Accessibility.....	3
Internal Structure.....	4
Accountability .....	5
Conclusion.....	6

## WHO WE ARE

The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA started in 1994 as the Australian Plaintiff Lawyers Association, when a small group of personal injury lawyers decided to pool their knowledge and resources to secure better outcomes for their clients – victims of negligence.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.<sup>1</sup>



## INTRODUCTION

The Australian Lawyers Alliance ('ALA') welcomes the opportunity to provide a submission to the Legal Affairs and Community Safety Committee on the *Crime and Misconduct and Other Legislation Amendment Bill 2014 (QLD)* ('the Bill').

We provide a short submission in this instance regarding the proposed changes to the Crime and Misconduct Commission and their impact on the Commission's accessibility, internal structure and accountability.

### Related Publications

The ALA commends the production of a cross-jurisdictional comparison of Integrity Commissions but cautions against easy comparisons between unicameral and bicameral systems particularly in relation to mechanisms of public accountability.<sup>2</sup>

We also note the thorough reviews of the Commission by the Honourable Ian Callinan AC and Professor Nicholas Aroney of the University of Queensland Centre for Public, International and Comparative Law (the Callinan Aroney Review); and Michael Keelty (the Keelty Review).<sup>3</sup>

## ACCESSIBILITY

The Callinan Aroney Review correctly noted that it would be a drain on the Commission's resources to investigate a large number of minor transgressions.<sup>4</sup> However, the ALA does not believe this criticism justifies several of the provisions that appear to be designed to limit complaints to the Crime and Corruption Commission.

The ALA concurs with the Bar Association's characterisation of the Bill's proposal of section 216A as a 'heavy handed' means of dealing with this issue.<sup>5</sup> This section criminalises complaints made: vexatiously; not in good faith; primarily for a mischievous purpose; recklessly; or maliciously. As noted in the Bar Association's submission, non-lawyers may be unnecessarily deterred from providing information to the Commission for fear of prosecution under this section.

### **The ALA contends that these measures will inhibit the accessibility of the Commission.**

The new section 36(3) requires a complaint to the Commission to take the form of statutory declaration unless the Commission determines this is unnecessary due to



exceptional circumstances. This section is a vast expansion on the Review's recommendation requiring a complainant to provide a statutory declaration that:<sup>6</sup>

- a) the complainant has read and understands the relevant sections (setting them out in the declaration) of the Crime and Misconduct Act;
- b) that the complaint is not a baseless one; and
- c) that the complainant will keep the matters the subject of the complaint (and its making) confidential for all purposes unless and until a decision is made upon it that results in a criminal prosecution or proceedings in respect of it in QCAT

Under section 36(3), the complaint itself now forms the content of the statutory declaration. This procedure is not required in any other Australian jurisdiction.<sup>7</sup>

Given that an individual faces criminal liability if they are found to have made a false statutory declaration, we are concerned about the impact of these changes.

**The ALA is concerned that s36(3) will discourage individuals from making complaints out of fear that they may face criminal charges if their complaint cannot be proven.**

Section 36(3) also increases the formality of the complaint which in turn, is likely to deter individuals who are unfamiliar with the justice system. In October 2012, the Honourable Wayne Martin AC, Chief Justice of Western Australia, cautioned that the "cost, complexity, delay, formality, inaccessibility and incomprehensibility of language, forms and procedures" of Australia's court system had distanced it from the community.<sup>8</sup> Similar factors were listed as major barriers to accessing justice in Australia by the Productivity Commission in September 2013.<sup>9</sup> His Honour stated that "a court which is not accessible to the community which it serves is not performing the vital role of administering the rule of law."<sup>10</sup>

The Commission, now given the "overriding responsibility" under s34(d) to "promote public confidence in the way corruption within a unit of public administration is dealt with", will not be performing this function if it is inaccessible to the public.

## INTERNAL STRUCTURE

The authoritarian character of the internal structure proposed by the Bill has been noted in the Bar Association's submission to this Committee. The ALA is similarly concerned with these changes and their impact on the rights of Queenslanders.



Proposed amendments to section 269 will centralize the Commission's power in the roles of the Chairman and chief executive officer. The chief executive officer is also granted extensive internal disciplinary measures under the new Division 9 of Chapter 6, part 1.

A close reading of the proposed amendments to sections 35-46 reveal the extent to which the Commission's activities are influenced by its higher ranks. Section 35(3) stipulates that the Commission must focus on 'more serious cases of corrupt conduct or a case of systemic corrupt conduct within a unit of public administration.' Whether a complaint fulfils this criterion and is thus within the mandate of the Commission can be determined by the chief executive officer, subject to the Chairman's approval, under the new section 35A of the Act. To remove any doubt, 35(A)(3) confirms that a commission officer must comply with a direction of this kind. As section 46(2)(g)(ii) stipulates that the Commission is not required to investigate complaints if their subject matter is not within the Commission's functions, these provisions, in effect, allow the chief executive officer to ignore or dismiss complaints in accordance with their interpretation of s35(3). As noted by the Bar Association, directions such as the above do not appear to fall within the matters requiring publication listed in s35B.

**Under the proposed legislation, the chief executive officer will be able to direct the Commission's activities without facing public scrutiny.**

The reduced importance of promoting integrity and preventing misconduct, as signalled by the amendments to the Commission's objectives as well as its preventative and misconduct functions, has been noted in the Bar Association's submission.<sup>11</sup> The ALA agrees with this assessment and notes the downgraded role of the Commission as an advisory body, outlined in section 35(1), as an additional example of deprioritizing these principles.

## ACCOUNTABILITY

The removal of provisions which act as safeguards against partisan Commission appointments has already been discussed at length in the Bar Association's submission. The ALA is similarly concerned by the changes to sections 223-225 particularly the removal of the provision stipulating that one part-time commissioner must have a demonstrated interest in civil liberties.<sup>12</sup> This deletion is further confirmation that a passion for rights is seen as a radical quality.

The most controversial and concerning change, characterised by Tony Fitzgerald

AC QC 'outrageous',<sup>13</sup> is the proposed amendment to section 228.

The current legislation stipulates that the Minister must consult with the parliamentary committee or, if there was no parliamentary committee, the Leader of the Opposition and the Leader of all parties represented in the Assembly by at least 5 members, in relation to any appointments. The amended s228 removes the latter provision so that the Minister is only required to consult with the parliamentary committee.

The removal of this procedural safeguard is concerning particularly given the government's majority on the current parliamentary committee. The current majority was achieved through the sacking of the previous committee under allegations that opposition and independent members demonstrated bias and partisanship. At the time the Chair, Dr Levy, faced allegations of misleading the Committee and is currently facing an investigation by the Ethics Committee on the same matter. Dr Levy remains the acting Chair of the Commission and will continue in this position under the new section 397. The ALA agrees with the Bar Association in its assessment of Dr Levy's appointment as inappropriate.

In this context, the extension of a Commissioner's maximum period of service from five to ten years is particularly concerning.<sup>14</sup> The ALA notes that this change is contrary to the findings of the Callinan Aroney Review and the Keelty Review. The authors noted that long appointments negatively impact a public authority's integrity and efficiency respectively.<sup>15</sup>

A thorough consideration of the history discussed in Mr Fitzgerald AC QC's submission confirms that it is impossible to separate attacks on the Commission's independence from the important role it plays in holding public officials to public account.

In attempting to diminish the CMC's independence, the government is demonstrating the overreaching conduct that the Commission was designed to keep in check.

## CONCLUSION

We are happy to elaborate upon any of the issues that we have raised within this submission in the course of the Inquiry.

We thank the Committee for its service to the Australian public.

## REFERENCES

<sup>1</sup> Australian Lawyers Alliance (2014) <[www.lawyersalliance.com.au](http://www.lawyersalliance.com.au)>

<sup>2</sup> For a cross-jurisdictional comparison of integrity commissions see <<https://www.parliament.qld.gov.au/documents/committees/LACSC/2014/CMOLAB2014/cor-26Mar2014-attachment1.pdf>>

<sup>3</sup> The Keelty Review can be found here

<<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T4088.pdf>>

<sup>4</sup> The review by the Honourable Ian Callinan AC and Professor Nicholas Aroney can be found here with trivial complaints discussed pp114-128

<<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T2447.pdf>>

<sup>5</sup> The Bar Association's report can be found here with s216 discussed on p2

<<http://www.parliament.qld.gov.au/documents/committees/LACSC/2014/CMOLAB2014/submissions/012.pdf>>

<sup>6</sup> The recommendations of Callinan Aroney Review can be found in the Executive Summary here

<[http://www.justice.qld.gov.au/\\_\\_data/assets/pdf\\_file/0003/178518/CMA\\_Review\\_Summary\\_Recommendations.pdf](http://www.justice.qld.gov.au/__data/assets/pdf_file/0003/178518/CMA_Review_Summary_Recommendations.pdf)>

<sup>7</sup> The requirements relating to the format of complaints can be seen in the cross jurisdictional comparison here -

<<https://www.parliament.qld.gov.au/documents/committees/LACSC/2014/CMOLAB2014/cor-26Mar2014-attachment1.pdf>>

<sup>8</sup> Chief Justice Wayne Martin, 'Creating a Just Future by Improving Access to Justice'

(Speech delivered at Community Legal Centres Association, Perth, 24 October 2012)

<[http://www.supremecourt.wa.gov.au/\\_files/Creating%20a%20Just%20Future%20by%20Improving%20Access%20to%20Justice%20Martin%20CJ%2024%20Oct%202012%20v.2.pdf](http://www.supremecourt.wa.gov.au/_files/Creating%20a%20Just%20Future%20by%20Improving%20Access%20to%20Justice%20Martin%20CJ%2024%20Oct%202012%20v.2.pdf)>

<sup>9</sup> The Productivity Commission's Issue Paper on Access to Justice Arrangements can be found here <[http://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0006/128085/access-justice-issues.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0006/128085/access-justice-issues.pdf)>

<sup>10</sup> See above note 4

<sup>11</sup> Specifically the amendments to sections 4, 23 and 24 as outlined in clauses 6,10 and 11 of the Bill and discussed on p2 of the Bar Association's Report.

<sup>12</sup> For the original provisions see s225 of the Act, the deletion is referred to in Cl 36 of the Bill

<sup>13</sup> The report by Tony Fitzgerald AC QC can be found here

<<http://www.parliament.qld.gov.au/documents/committees/LACSC/2014/CMOLAB2014/submissions/004.pdf>>

<sup>14</sup> See the insertion of section 231 in clause 39 of the Bill

<sup>15</sup> For a discussion of these concerns see p22 of the Callinan Aroney Review and p3 of the Keelty Review