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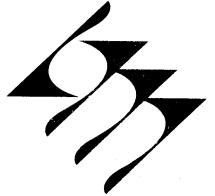
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Crime & Misconduct & OLAB 2014
Submission 030



QUEENSLAND

Our Reference: AD-14-0277 / KMC
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IN-CONFIDENCE

11 April 2014

Mr Ian Berry MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

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

Dear Mr Berry

**RE: CRIME AND MISCONDUCT AND OTHER LEGISLATION
AMENDMENT BILL 2014**

Introduction

The Commission welcomes this opportunity to provide a submission to the Legal Affairs and Community Safety Committee (LACSC) with respect to the Crime and Misconduct and Other Legislation Amendment Bill 2014 Bill and resolved to submit the following for your Committee's consideration.

In making this submission the Commission acknowledges that it has had the opportunity to have input to most of the proposed changes through its participation in the Implementation Panel appointed to consider and advise on the *Review of the Crime and Misconduct Act and Related Matters by the Independent Advisory Panel* (the Callinan and Aroney Report) delivered in April 2013. The Panel consists of the Director-General of the Department of Justice and Attorney-General (Chair), the Director-General of the Department of the Premier and Cabinet, the Public Service Commissioner and the Acting Chairperson of the Crime and Misconduct Commission.

The Commission does not consider it appropriate to comment on matters of policy and confines its comments to those issues where the CMC has specialised knowledge, with the aim of assisting the Committee with its deliberations.

Act's purposes - Clause 6 – Amendment of s 4

The 'Notes on provisions' as part of the Explanatory Notes¹ for the Bill state:

¹ Explanatory Notes to the *Crime and Misconduct and Other Legislation Amendment Bill 2014* at page 17.

Clause 6 amends section 4 to refocus the objectives of the commission by providing for a primary and secondary purpose of the CM Act. The primary purpose is to combat and reduce the incidence of major crime. The secondary purpose is to reduce the incidence of corruption in the public sector. The commission's role in relation to confiscation related investigations remains the same.

The Commission notes that:

- Serious crime is usually accompanied by serious corruption.
- Should there be budgetary issues, preference would have to be given to the primary function.
- If the Bill is left unchanged, while recognising the wider role of the CMC compared to most other similar statutory bodies in Australia, Queensland will be the only State that does not have a primary function to deal with serious corruption.

Commission's prevention function and how it is performed - Clauses 10 and 11 – Amendment of ss 23 and 24

The Bill amends sections 23 and 24 and makes consequential amendments to other provisions in the CM Act to remove the commission's function for the prevention of corruption in units of public administration.

For the purposes of clarification, the Commission presumes that the Bill as currently drafted would not prevent the CMC providing a report in relation to a specific investigation which includes comments on corruption prevention measures or educative outcomes, such as those included in the public reports on Queensland Health and the University of Queensland in 2013.

Making a complaint about corrupt conduct - Clause 16 – Amendment of s 36

The proposed additional subsections (3) and (4) to section 36 of the CM Act will require that complaints (but not "information" or "matter") to the Commission must be made by way of statutory declaration, unless the Commission decides that due to 'exceptional circumstances' (as amplified in the Bill by examples) such a declaration is not required.

The CMC currently views the following as broadly constituting examples of "information" that may be received by it and upon which it may found an investigation (and would *not* require a statutory declaration):

- i. the results of a routine departmental audit report; or
- ii. information from a human source or information from a witness at a CMC hearing; or
- iii. intelligence reports from other law enforcement agencies; or
- iv. information gained through CMC activities such as Crime hearings, telephone interception, misconduct investigations; or
- v. Crime Stoppers reports; or
- vi. A significant police event (eg death in custody or police shooting); or
- vii. A referral from the Coroner or any other court or public inquiry (eg Flood Inquiry, Racing Inquiry, the Bundaberg Hospital Commission of Inquiry, the Queensland Child Protection Commission of Inquiry, the Heiner Inquiry, the Forde Inquiry).

However, if there is a lack of clarity as to whether a complaint requires the support of a statutory declaration, the CCC may take a risk averse approach to commencing an investigation.

The CCC also receives anonymous complaints. For example, in 2012-13 seven percent of complaints received were from anonymous sources.

Examples of important investigations resulting from an anonymous complaint have included the \$16 million Health fraud matter, the investigation into the alleged misuse of public monies and a former ministerial adviser, and the investigation and prosecution of Gordon Nuttall.

Based on its experience, the Commission believes that the strict wording of this clause may inhibit the CCC's ability to effectively investigate some complaints of serious corruption and that it would be prudent for it to retain some flexibility in this area. In addition to the clause set out in the Bill, the following might be considered:

1. Complaints by or about elected officials should require a statutory declaration.
2. In other cases, a discretion for the Commission would be desirable as follows:
 - a. It could demand a statutory declaration for a non-political complaint, or
 - b. Consideration might be given to requesting that a complainant provide all relevant information to the CCC with the potential for the application of the CCC's special powers should they not comply.

Functions of parliamentary commissioner - Clause 81 – Insertion of new chapter 8, p 11, div 6

The proposed amendment would allow the Parliamentary Commissioner to undertake 'own motion' investigations into complaints of misconduct against CMC staff. The proposed amendments also permit own motion investigations by the Parliamentary Commissioner into allegations of possible unauthorised disclosure of confidential information.

The Commission notes the experience of the Western Australian Corruption and Crime Commission², when an impasse developed between the Commission and the Western Australian Parliamentary Inspector (the equivalent of the Parliamentary Commissioner). The process of engagement between the two offices over a disagreement about findings of the Commission resulted in the Commission devoting 992 hours in responding to issues directly arising out of the Parliamentary Inspector's inquiries in a period of just over two months, including almost 90 hours of the Chair's time.

Such a situation could be avoided if the current provisions, by which the Parliamentary Commissioner requires a referral from the Parliamentary Committee, are retained.

Crime and Corruption Commission – Clause 31 Amendment of ch 6, pt 1, div 1 hgd (Establishment of Crime and Misconduct Commission)

The Commission notes the proposed new name of the Commission (the Crime and Corruption Commission) is similar to that of the Corruption and Crime Commission in Western Australia. Such similar branding may create potential confusion with the Western Australian body, causing concern to both bodies in terms of requests for information, correct attribution of information sources, and more general national recognition issues.

Such confusion could be avoided by the Commission adopting the name the *Queensland* Crime and Corruption Commission, to be known as the "Q-Triple-C" rather than the "Triple C" — which is already established within our peer agency community as referring to our Western Australian counterpart.

² Corruption and Crime Commission, "Report on an Administrative Matter relating to the functions of the Commission", available at: http://www.ccc.wa.gov.au/Publications/Reports/Documents/Published%20Reports/2008/CCC_Report_on_Administrative_Matters.pdf.

Structural Review of the Commission – Clause 67 Amendment of section 292 (g) PCMC functions

The CMC has been the subject of 19 reviews in the past 10 years and 9 in the past four years, which includes the three reviews of 2013 (PCMC Report no.90, the Callinan and Aroney Review and the Keelty Review).

While these reviews have achieved desirable outcomes, by their nature they require investment of significant time and other resources.

The Commission notes that as a law enforcement agency it has a legal focus, and so may require, in particular, additional external managerial or administrative, rather than legislative, review.

We note that any or all of the following may be called upon to review the Commission as required and the Commission supports these mechanisms:

- The Parliamentary Committee has scope to comment on the Commission's structure within its current statutory functions.
- The Auditor General is empowered to undertake performance audits.
- The Minister has the required statutory power under section 260 to receive reports on efficiency, effectiveness, economy and timeliness of the Commission's systems and processes.

Yours sincerely



Dr Ken Levy BFD
Acting Chairperson