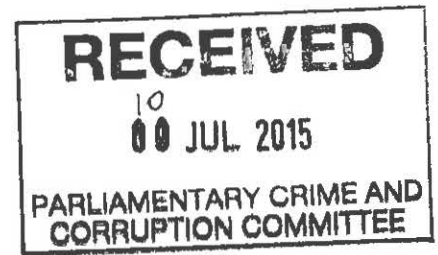




8 July 2015

Mr Peter Russo MP
 Acting Chair
 Parliamentary Crime and Corruption Committee
 Parliament House
 George Street
 BRISBANE QLD 4000



Dear Mr Russo

Review of Crime and Corruption Commission

Thank you for the invitation to make a submission to the Crime and Corruption Committee in relation to the functions, powers and operations of the Crime and Corruption Commission (CCC). Stanwell Corporation Limited (Stanwell) provides the following comments in response.

Revised definition and referral

Stanwell supports the amendments made to the *Crime and Corruption Act 2001* (CC Act) and the new statutory framework that came into effect on 1 July 2014. Stanwell considers the revised definition of 'corrupt conduct', together with the obligation to only report information or complaints to the CCC when there is a 'reasonable suspicion' that the conduct in question involves corrupt conduct, is more appropriate and efficient than the former statutory framework. While Stanwell does not historically receive many complaints or information of corrupt conduct, the new statutory framework enables Stanwell to ensure that the conduct or information it refers to the CCC appears to have some basis. This means also that the application of time, money and resources in investigating such conduct or information can be appropriately applied.

By contrast, the absence in the former statutory framework of any materiality or veracity threshold relevant to the referral of 'official misconduct' obliged Stanwell to immediately refer any allegations of official misconduct to the former Crime and Misconduct Commission (CMC). Once referred to the CMC, Stanwell was not able to undertake any investigatory activities until the CMC had decided whether Stanwell could investigate, resolve and report on the complaint or would be investigating the matter itself.

Application to Government Owned Corporations and Conflicts of Laws

Stanwell notes that the amendments made to the CC Act did not, however, address the specific issues of conflict of law for Government Owned Corporations (GOC). Stanwell has raised this issue several times with the CCC and the CMC (as it then was).

On 1 January 2010, GOCs came under the jurisdiction of the CCC as a result of the Queensland Government's *Integrity Act 2009*.

Stanwell is a company incorporated under the *Corporations Act 2001* (Cth) but is also governed by the *Queensland Government Owned Corporations Act 1993*. Its business activities involve complex legislative and regulatory frameworks spanning electricity, mining, gas and water, and include environmental protection, native title and cultural heritage.

Accordingly, Stanwell is subject to a wide variety of Commonwealth and Queensland legislation and regulation.

Mandatory Commonwealth legislation or a mandatory direction by a Commonwealth regulator or investigative / prosecutorial authority would, to the extent of any inconsistency with the CC Act, prevail due to the operation of s109 of the Commonwealth Constitution and a GOC such as Stanwell could be obliged, in appropriate cases, to not comply with its apparent obligations under the CC Act.

Examples of conflicts of law

Although hopefully rare in practice, there is the potential for conflicts to arise in many situations. Some examples are provided below:

- The Australian Securities and Investment Commission (ASIC) commences a covert investigation into insider trading involving Stanwell personnel and ASIC has directed Stanwell not to discuss the investigation with any third party. As insider trading would also likely constitute 'corrupt conduct', Stanwell would not be able to comply with its obligations under section 38 of the CC Act.
- Stanwell has a reasonable suspicion that an officer of Stanwell has committed a serious fraud. Information about this fraud has been provided by a Whistle-blower. This could result in dual investigations being undertaken by the CCC (as corrupt conduct) and ASIC (directors' and officers' duties).
- Further complicating the above scenarios are the whistle-blower provisions of the *Corporations Act* (section 1317 AE), which make it an offence for a person to disclose information (that qualifies for protection) or to otherwise identify the discloser without their consent. This obligation is in direct conflict with the duty to notify the CCC in accordance with section 38 of the CC Act.

While not specifically addressed in this letter, there are also potential conflict issues arising in the Australian Consumer Law area and with respect to the Australian Competition and Consumer Commission (ACCC).

Proposed action

All Queensland GOC's that are incorporated under the *Corporations Act* are likely to have similar conflict of law issues as Stanwell. From Stanwell's perspective, it would be useful for the impacted GOC's and Commonwealth and State agencies to have a clear, mutual understanding of how to manage circumstances where these conflicts arise (and where, as a result, there are competing compliance obligations and potential multiple investigations).

Yours sincerely



Shane Charles
Chairman