Parliamentary Crime and Corruption Committee

Review of the Crime and Corruption Commission

Submission of the Accountability Round Table

The submission addresses five parts or sections of the Act.

1. Part 3 Corruption

The legislation gives effect to the Callinan/Aroney recommendation that the Act should be amended to "raise the threshold of what constitutes "official misconduct". It does so by abolishing the concept and replacing it with the definition in s. 15 of "corrupt conduct". The extended definition appears to incorporate all the elements of what was formerly known as official misconduct. The notion of misconduct, as an offence that might be investigated, has been dropped.

Nevertheless, it seems most allegations of corrupt conduct will not be investigated by the CCC. The CCC must only investigate the "more serious cases of corrupt conduct and cases of systemic corrupt conduct" - s. 35(3). Other serious cases of corruption will fall to be investigated by the units of public administration where they are alleged to have occurred. Those units of public administration do not have the resources or powers possessed by the CCC, so most investigations into corrupt conduct will not be as thorough as they would be if they were conducted by the CCC.

In our view the principles stated in s. 34 and the guidelines in s.35 go too far in adopting the Callinan/Aroney recommendation 3, that "There be a large reduction in the matters going to, and being dealt with (even for the purposes of devolution) by the CMC." What is crucial is the matter raised in the last dot point in s. 34(c), that in the public interest the Commission should exercise its powers to deal with particular cases of corruption with regard to "any likely increase in public confidence in having the corruption dealt with by the commission directly."

2. Section 23 – Prevention function

This is limited to 'helping to prevent major crime'. That relates to only one of the two major functions of the CCC. The other is, as stated in s. 4 (1) -

> (b) to reduce the incidence of corruption in the public sector.

Callinan /Aroney proposed that the CMC's preventative function should cease "except for such advice and education as may be appropriate and incidental to matters uncovered or found by the CMC in the course of an investigation". Essentially they considered this function should be the responsibility of the Public Service Commission (PSC) and chief executives. No doubt that should be part of the functions of the PSC and chief executives, and particular public service departments and units will have special concerns about preventing corruption linked with their individual functions. However in our submission, prevention messages that emanate from the CCC carry additional weight, reflecting the CCC's experience in investigating and combatting corruption. For that reason we consider it should continue to be the function of the Commission, and s.23 should be amended to include helping to reduce corruption in the public sector.

3. Section 36 - Complaining about corruption

The crucial provision is sub-section 3.

> (3) A complaint about corruption under subsection (1) must be made by way of statutory declaration unless the commission decides, because of exceptional circumstances, that it need not be made by statutory declaration.

ART made a submission to a previous committee about the perhaps unintended but undoubtedly negative consequences of the implementation of the Calinan/Aroney recommendations that were given effect to in this and related provisions in the Act. I quote here extracts from ART's submission.

> The aim of the [Callinan/Aroney]recommendations is to significantly reduce the number of what are described as "trivial" and "vexatious" complaints. If implemented they clearly will significantly discourage and so reduce the number of complaints made, although the impact on the vexatious is difficult to predict.
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> But there are serious consequences that would flow from such changes.
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> 1. S***ignificantly discourage complaints of value.*** As the Panel acknowledged (p116, the Panel Report); it can be "the occasional seemingly insignificant allegation which leads to the uncovering of serious corruption". A classic example is discussed in the attached Paper – the investigation into the Obeid family in New South Wales (Paper, p 13 – 14). At the outset all that was available was suspicions. After many months of investigations, it was still unclear, as counsel conceded in the opening of the public proceedings, that the minister's decisions could be explained on the basis of bad governing. The reality is that the person making the complaint will not be in

possession of all the facts and will be aware of that. In those circumstances, under the proposed changes, few people will be prepared to take the risks that would be involved in making a complaint to the CMC – particularly those who should be encouraged, especially the honest and careful. ln addition, anonymous complaints will no longer be possible.

2. ***Significantly weaken the anti-corruption system***. Adoption of the proposed changes will significantly change Queensland's anti-corruption system. At present it reflects generally accepted best practice by providing a peak body, a one-stop-shop to which people can take their concerns. It thereby receives "information of current and emerging misconduct issues" (Paper p 9). The proposed changes would end the one-stop-shop system and, by discouraging all complaints, sound and poor, seriously weaken the anti-corruption system. That will also, rightly or wrongly, send a message to the community and to all public officials, that the government no longer wishes to take crime, misconduct, abuse of office and corruption seriously. Public officials will be left with the impression that minor corruption may be tolerated and the deterrent presence of the CMC will be severely limited.

Such fundamental changes require a clear and strong case to be made out before they are accepted. The attached Paper [not reproduced here] examines the case put by the Panel. It raises several concerns.

- ***Argument based on numbers.*** The Panel relied heavily on numbers, arguing that the numbers spoke for themselves (Report, p 12). We submit that numbers are rarely able to speak for themselves and that to assess the significance of numbers, and to make comparisons between institutions and their performance, a thorough contextual analysis and evaluation of the systems in question is required. The panel acknowledged that that was not available (Paper pp 4-5).
- When the numbers are investigated, and more recent numbers considered, what one finds is that the 42% increase in complaints, relied upon by the Panel, occurred over a four-year period, that the rate of increase had been declining significantly in 2010/2012, and that in 2012/13 the number of complaints had turned and was 15% less than the previous year (Paper pp 5 and 6).

What then are the numbers saying? Might they be saying that, if there was a "culture of complaint" it was declining?

The reality is that numbers alone cannot supply the answers – particularly about the causes of the changes in them.

- ***Assessing complaints "on their face".*** The Panel considered a sample of complaints provided by the CMC and came to the conclusion that many were "on their face trivial" (Paper p7). Such an approach is likely to be inaccurate because it is in the investigation of such complaints that it is often found that they are connected to more significant matters – the O'Beid case being a classic example.(See paper p 13 -14).

  A relevant matter overlooked? As noted, the Panel described many of the sample of complaints as trivial. But there is nothing to indicate that, in assessing their seriousness, consideration was given to the long standing principle of law and

ethics that people holding public appointments are in positions of public trust. It is highly relevant. The law requires it to be considered when sentencing a public official charged with an offence as a result of a misconduct complaint, and convicted, in assessing the gravity of the offence (Paper p 8).

- ***The public interest***. As the Panel identified, the debate concerns competing public interests. It mentions, but dismisses, with little discussion, the public interest concerns that support the status quo (Paper p10).

The ART agrees with the Panel that its proposals will significantly discourage many complainants from communicating their concerns to the CCC. But, for the reasons given, we submit that this will be at great cost to the effectiveness of the CCC and Queensland's Government Integrity System.

The ART considers that requiring virtually all complaints to be made by statutory declaration will have the effect of preventing genuine complaints from being made unless the complainant can actually prove that a person has acted corruptly. It should be the CCC's task to investigate and discover the facts. Normally the complainant will be unable to do so. Of course a complaint must be made honestly and in good faith, and not maliciously. But the requirement for statutory declarations will inhibit genuine concerns from being brought to the CCC's attention, something that ART feels confident is not what the parliamentary committee or government would like to see happen.

4. Section 52 - Research function

52 (1) The commission has the function to undertake the following research in accordance with a research plan approved by the Minister under subsection (2)—

(a) research to support the proper performance of its functions;

(b) research required to be undertaken by the commission under another Act;

(c) research into any other matter referred to the commission by the Minister.

This provision implements Callinan/Aroney recommendation 12, which expressed an essentially hostile view of the CCC undertaking research, unless it was specifically approved by the Attorney-General. We submit that the requirement that all research by the CCC must be approved by the Attorney-General is inappropriate for an independent commission. The CCC may wish to conduct research into issues that the Government considers to be politically sensitive (and therefore might not authorise) but which in the CCC's considered view could lead to law reforms that would aid its prevention functions, for example, one of the CJC"s early reports, 'An investigation into Possible Misuse of Parliamentary Entitlements by Members of the 1986-1989Queensland Legislative Assembly" in December 1991. . And other reports in areas such as drugs, gambling and prostitution, or the way political parties are financed. ART submits that the requirement for ministerial approval of research projects should be removed, though the Attorney-General should be able to ask the CCC to conduct specific research areas.

5. Section 228 - Consultation before nominating persons for appointment

> SS (2) If the proposed appointment is of a commissioner other than the chief executive officer, the Minister may nominate a person for appointment only if the person's nomination is made with the bipartisan support of the parliamentary committee.

This is a long-standing requirement, that originated in the Fitzgerald report in 1989, and was applied to the appointment of the Chairmen of the Criminal Justice Commission (the CCC's ultimate predecessor) and the Electoral and Administrative Review Commission. It has had a mixed history, there having been times when both commissions were without chairmen for significant periods because the Opposition members of the relevant parliamentary committee either vetoed or refused to endorse the government's nominees for chairman.

The ART is attracted to the desirability of obtaining bipartisanship in appointments of this nature. However the interests of accountability are not served by allowing the Opposition to veto, for an indefinite period, the appointment of the Chairman and other commissioners of the CCC. Ultimately, the Government should be allowed to put its nominees in place, though perhaps after a delay during which it is required to detail the qualifications and other attributes of those nominees. Further, these are generally appointments for a relatively limited period of time, such as three or five years. They are not like appointing a judge, which of course a government does without consulting the Opposition.

We are aware of the requirements for the appointment of other officers of the Parliament who hold positions of a kind similar to that as commissioners, such as the Auditor-General, the Ombudsman, the Information Commissioner and the Integrity Commissioner. In those cases the relevant parliamentary committee has to be consulted during the appointment process and the chair of the committee is normally a member of the selection committee for the appointment. We consider and submit that a similar process should be followed with the appointment of commissioners (including the chairman) of the CCC.

Overall, the ART is concerned that the Callinan/Aroney review, and the legislative changes that followed, have moved too far from the original purposes of the CMC, and its predecessor, the CJC. The Commission should be able to investigate any allegations of corruption that it (the CCC) considers might reveal corruption. What may appear "trivial" on the surface may uncover a larger problem when/if it is investigated fully, as it has in such bodies around the world. Indeed, it is the raison d'etre for their existence, to follow leads that may start as a suspicion but go on to reveal a culture of corruption. Preventing the proven

evolution from misconduct, to serious misconduct and eventually corruption, is something that all democratically elected government must ensure, in the public interest, does not happen. One important way they do this is to use the public trust granted to them to establish an independent, anti-corruption body with the necessary powers and resources needed to do be effective.

Recent history also suggests that the Parliamentary Committee would function best if it is chaired by a cross-bench member of the Parliament.

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