



**Submission by Together Queensland to
The Crime and Parliamentary Corruption Commission
Review of the Crime and Corruption Commission**

Background

1. The *Crime and Misconduct and Other Legislation Amendment Bill 2014* significantly changed the remit of the then Crime and Misconduct Commission (CMC). The changes saw a changing focus of the Commission's work to more serious instances of corruption as opposed to misconduct, a role it had traditionally undertaken. In addition, the process by which complaints were to be made was altered through the addition of a requirement to make complaints by way of a Statutory Declaration.
2. The effect of both of these measures was that the CMC, a body born of the Fitzgerald Inquiry and designed to hold government to account, was rebadged the Crime and Corruption Commission (CCC) with its oversight reach dramatically reduced through constraints on its function and limitations on the capacity for complaints to be made.
3. Together calls upon the review to address these changes and restore the CCC to its role as a check on official misconduct within the Public Sector. Further, we would seek to minimise the barriers to public servants raising concerns of corruption and misconduct through changes to the *Crime and Corruption Act 2001* and its interaction with the *Public Interest Disclosure Act 2011* as well as the *Code of Conduct for the Queensland Public Service*.

Removing the Barriers to Making a Compliant

4. The ability for complaints to the CCC was significantly fettered in 2014 through the insertion of s36 (3). Section 36 (3) provided as follows:

(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.

Examples of exceptional circumstances —

the person making the complaint—

- *fears retaliation for making the complaint in relation to the person's employment, property, personal safety or well being*
- *is illiterate, or not literate in English*
- *has a disability or impairment that affects the person's ability to make the complaint by statutory declaration*

5. These changes were in response to recommendation 3D made by the Callinan/Aroney Report which sought penalties for the making of "baseless complaints". In making the

changes the response of the Parliamentary Crime and Misconduct Committee's (PCMC) in its submission to the Attorney-General regarding the recommendation was ignored. That (unanimous) response provided:

“The Committee considers that this recommendation, if it proceeds with the definition as set out in recommendation 3D, could lead to the CMC not accepting anonymous complaints. The Committee considers that a complainant should not be required to submit a statutory declaration with a complaint to the CMC.

The Committee does not consider that the requirements for a complaint to be accompanied by a statutory declaration will reduce vexatious or intractable complaints. In the experience of this Committee, some who feel that they have a genuine complaint to make to the CMC, despite that complaint being baseless, will not be deterred by the requirement of providing a Statutory Declaration. Nor will it deter those persons who through a range of reasons do not have the requisite understanding of the requirements.

*Conversely, the Committee considers that **this requirement may deter a person who holds a genuine complaint which could expose corruption** could feel vulnerable in making that complaint due to the requirement to sign a Statutory Declaration and disclose their name.”* (emphasis added)

6. This is our experience of the results of the change. More than one member has reported confidentially concerns they have held during the last three years, including concerns of nepotism and cronyism, but were not prepared to lodge a complaint accompanied by a Statutory Declaration.

7. The downside of retaining this barrier to raising complaints anonymously was highlighted by the CMC itself. Dr Levy, the then head of the Commission, in submissions to the Committee stated:

“The CCC also receives anonymous complaints. For example, in 2012/13 seven percent of the complaints received were from anonymous sources. Examples of important investigations resulting from an anonymous complaint have included the \$16 million dollar 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 considers 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.”

8. It is Together's belief that the Queensland public would be best served by removing the requirements set down by s36(3).

Returning to a Focus on Misconduct

9. The other significant change to s36 was the change of the section heading from “Complaining about Misconduct” to “Complaining about Corruption”. This was emblematic of changes throughout the Bill that modified the longstanding CMC requirement to not only help prevent major crime but also prevent misconduct as well.

10. This was accompanied by a significant lifting of the threshold at which matters were to be referred by public sector agencies to the CMC. Previously, matters were referred to the CMC if there was a 'suspicion' of corruption. This threshold was raised to a 'reasonable suspicion'. Matters that would have previously been referred to the CMC and, even if referred back to Agencies, would have been monitored by the CMC were now wholly made the responsibility of the various Ethical Standards Units or equivalent at Agency level.

11. This has proved problematic in two ways. Firstly, the cuts to the Public Service over the Newman years have meant that the Ethical Standards Units have been significantly reduced or even abolished, and the skills to manage the matters have been lost. Secondly, it has meant a loss of sector wide consistency and guidance.

12. These two have combined to mean that the quality of the investigation and management of misconduct has suffered, often to the detriment of Public Servants who were blameless.

13. Together submits that the role of the CCC should be expanded to once again have oversight of misconduct across the public sector, a responsibility to has historically held.

Interaction with other instruments

14. The ability to report misconduct and corruption to the CCC intertwines with the responsibility of our public sector members to report such conduct pursuant to standards 1.1 and 1.5 of the *Code of Conduct for the Queensland Public Service*. Whereas previously this responsibility could have been discharged through reporting the matter anonymously to the CMC, the responsibility can arguably now only be discharged through a Public Interest Disclosure under the *Public Interest Disclosure Act 2011* (PID Act).

15. However, legal advice would indicate that path diminishes our members' ability to seek advice and support from their union in raising these issues.

16. Informing the union at first instance will not itself attract the protection of the PID Act and may be in breach of confidentiality obligations. In order to attract the protection of the PID Act, our members need to make public interest disclosures according to the relevant policy and procedures of the entity against which the disclosure is made.

17. As the Committee would appreciate, reporting such an issue can be a difficult and traumatic event. Despite the provisions of the PID Act, there remains at least a perceived risk of retaliation for raising such issues. For that reason, members often seek the advice and support of their union before making such a report and throughout the subsequent processes. Unfortunately, the interaction of the CCC Act, the PID Act and the Code of Conduct means that members could be putting themselves at risk by the mere act of seeking that support from their union. Together submits that the review should seek to rectify this concern.

18. Together believes that the Committee, in reviewing the CCC, needs to do so holistically, considering the wider interactions of the CCC Act with other instruments in the sector.

Conclusion

Together believes this review presents an opportunity to address some of the damage done to the CCC and its functions over the past three years. We urge the Committee to revitalise the role of the Commission in dealing with and overseeing misconduct, reinstate the ability to make anonymous complaints and, in conducting the review, consider the interaction of the CCC with other public sector agencies and legislative instruments.