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13 August 2015

Mr Peter Russo MP
Acting Chair
Parliamentary Crime and Corruption Commission
Parliament House
Brisbane 4000

Dear Mr Russo

**Re: Review of the Crime and Corruption Commission ("the Commission")**

Thank you for your letter of 9 June 2015 advising of the Committee's call for submissions. The Bar Association of Queensland (the Association) comments as follows:

**Context**

1. The letter of 9 June 2015 inviting our submission referred to the fact that several inquiries and reviews have occurred during 2013 and that these were followed by legislative changes of which the majority were enacted by the *Crime and Misconduct and Other Legislation Amendment Act,* number 21 of 2014 ("the Amending Act").

2. A press release also dated 9 June 2015 noted that the Amending Act commenced on 1 July 2014.

3. The Association made a submission to the Parliament's Legal Affairs and Community Safety Committee's inquiry into the Bill for the Amending Act.[1] That submission was critical of many of the changes which were nevertheless ultimately made to the principal legislation when the Bill was passed (with only limited changes) and the Amending Act commenced.

4. Generally speaking, however, the matters that concerned the Association at the time of the submission to the Legal Affairs and Community Safety Committee remain matters of concern. This submission will, generally, set out those same concerns, noting changed circumstances where relevant changes have occurred.

5. The letter of 9 June 2015 suggested a number of subject areas on which your Committee invites comment. The Association has addressed those subject areas and found them helpful. Although addressing many of those areas, this

[1] Submission 12 available at https://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/past-inquiries/CMOLAB2014 (accessed 5 August 2015)

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submission will follow the structure of the Association's earlier document which was, in turn, shaped by the proposed changes in the Bill for the Amending Act.

6. Hopefully, the submission will be no less useful for following that structure.

**A Downgraded Importance for Corruption**

7. The Amendment Act downgraded the emphasis placed on the importance of attacking corruption by making crucial changes to the Act as it previously stood.

8. The Association urges that the active prevention of corruption be restored to its previous place of importance.

9. The changes included the following:

    a. Section 4 was amended to change "continuous improvement of integrity and reduction of misconduct" as one of the two main purposes of the Act to simply "to reduce the incidence of corruption in the public sector";
    b. Section 23 was amended to remove any reference to corruption or misconduct as part of the Commission's prevention function;
    c. Section 34, which sets out "principles for performing the Commission's corruption functions" was amended to take out any reference to a "capacity building" principle and to downgrade the principles relating to cooperation and public interest.

**The Complaints Process: Making it more difficult**

10. The Amending Act had the effect of deterring people from making complaints. This was done by requiring that, other than in exceptional circumstances, complaints had to be by statutory declaration. It also expanded the circumstances in which people could face criminal penalties for making incorrect complaints.

11. Section 36 was amended to require that a complaint about corruption 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.

12. Previously, s.36 was not restrictive about how complaints could be made.

13. Prior to the amending Act, s. 216 contained a mechanism by which the Commission could advise a person who had made a compliant that it would not be investigated because it appeared to concern frivolous matters or appeared to have been made vexatiously.

14. The section contained a provision that the making of a second complaint that was substantially the same would amount to an offence. The Commission was required to warn of that when advising that it would not be investigated.

15. The amending Act retained s. 216 but restricted its operation to complaints that appeared to contain frivolous matter.

16. The amending Act inserted a new s.216A which creates a criminal offence (without warning or repetition by the complainant) of making a complaint vexatiously, not in good faith, primarily for a mischievous purpose, recklessly or maliciously. The offence carries a large fine or a maximum of a imprisonment for a year.

17. These new offences are in addition to those which previously existed (and are retained) for providing information that is knowingly false in ss. 217 and 218.

18. The Association is of the view (broadly held in the community) that corruption agencies succeed best when the public is encouraged to provide information. Some of that information may be unconfirmed and some may turn out to be unreliable. It is the role of the agency to sift through the information and, sometimes, it is the pattern that emerges from a number of leads, each one unconfirmed, that leads to an important and effective investigation.

19. The amendments to ss. 36 and 216 (and the insertion of s. 216A) send a message to the public that, if you complain about suspected corruption and do not get your facts exactly right, it will be you who is in big trouble.

20. This may have a significant deterrent effect.

21. These changes should be reversed.

**Non-gender Specific Language**

22. The use of the terms "chairman" and "deputy chairman" are outdated terms. More significantly the amendment to instate their use is an unnecessary provocation to the very many in the community who think so and an unfortunate use in turn of legislation given that could be its only purpose.

23. The use of gender stereotyping language in legislation should be avoided to reduce the prospect of gender stereotyping in the community.

24. The language should be back to non-gender specific forms.

**Structural Changes**

25. Prior to the amending Act, the legislation, in ss. 223-225 provided for a chairperson and four part-time commissioners "who were community representatives".

26. Sections 225 and 230 provided for commissioners to have one or more qualifications from a range of specified backgrounds including sociology, criminology, crime and crime prevention research, community service and the standards expected of public service and public sector administration.

27. A particular position required the appointment of an experienced lawyer with a demonstrated interest in civil liberties.

28. Subsection 230(4) required that at least one commissioner must be a woman.

29. The community positions were an important part of the governance structure of the Commission. The role of the Commission was, predominantly, to investigate alleged wrongdoing. Because of its specialist role, the Commission has extensive coercive powers.

30. It is important that the governance of the Board includes people who bring a wide spread of expertise, an understanding of community expectations and an ability to challenge and question the priorities and ethos that builds up over time among the Commission's professionals.

31. The community qualifications, including the requirement that one commissioner be a woman, were removed by the amending act. The qualification requirements should be restored.

32. It may be appropriate to update the language and an even broader set of skill and experience sets might be specified from which appointments may be made.

33. The principle of governance through community representatives should remain paramount.

34. Another set of changes removed authority from the Commission as a body and bestowed it upon either the full-time chairman or the new position of full-time chief executive.

35. The position of the Commission as a body should be restored so that it can provide the governance for which it was originally designed. The idea that a Chair of a private corporation or community organisation should have roles which are not ultimately subject to the governance of the board of directors is quite alarming. It is even more so in the case of a public sector organisation with the special coercive powers enjoyed by the Commission.

36. The Association, in its submission to the Legal Affairs and Community Safety Committee, supported the creation of a full-time CEO position. It was expected that the position would be filled by a person with skills in management and/or financial management.

37. However, the CEO should not be a voting member of the Commission. And the CEO should not carry out statutory roles which are not subject to the governance of the Commission.

38. The last set of changes were directed at reducing the independence of staff in fearlessly carrying out their investigative roles. An example is s. 35A which authorises the CEO (under direction, in turn, from the chairman) to issue

directions to the staff about how one identifies cases of serious corrupt conduct and systemic conduct. These are not just guidelines to assist staff. Section 35A creates an obligation to comply with the directions.

39. Another incursion upon the independence of the Commission was the requirement now contained in s. 52 of the Act that the Commission's research priorities must be set out annually in a plan which is subject to the approval of the Minister.

40. The Association is of the view that the legislation should be reviewed thoroughly with the objective of restoring the independence of the Commission so that it can play its role as a key component of the system by which accountability is provided to government and the public sector. The governance of the body by a body that is reflective of community values and equipped with broad and appropriate expertise is an important part of ensuring that the organisation's independent exercise of coercive powers is, itself, accountable over time.

**Performance: Investigating Political Donations**

41. Over the last several years, the press has reported significant donations to political parties which have been followed by government decision-making which has benefitted the donor.

42. The Association acknowledges that a correlation between two events does not, of itself, establish a causal relationship.

43. However, where the benefit is significant, a body charged with investigating corruption should be alert to the possibility that political decisions have been influenced by the donations that preceded them.

44. The Association suggests that, as a systemic issue going to the effective performance of the Commission in investigating corruption, the Committee should consider the way in which the Commission has responded to reports (and, in some cases) complaints about these matters.

45. Two of the Association's members, Stephen Keim and Alex Mckean, published an article on 20 August 2014 collating a number of the reported donations and the favourable political decisions associated with them.[2] This article may be a useful resource for an examination of the effectiveness of the Commission's performance in this area.

**Conclusion**

46. It is acknowledged that there are many other matters which have not been touched upon which are worthy of the Commission's attention. It is acknowledged that, even in terms of the Amending Act, there are other changes which are worthy of consideration.

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[2] See https://www.academia.edu/8093620/Political_Donations_in_Queensland_Move_on_theres_nothing_to_see_here (accessed 5 August 2015)

47. There are also matters that have arisen over time which may require attention and consideration.

48. The Association would point out that there were 37 other submissions from individuals and organisations to the Legal Affairs and Community Safety Committee.[3] Many of the authors have great experience and knowledge. The Association would recommend those submissions as a source of valuable information.

Thank you for your consideration of the submission. The Association appreciates the extension of time it was provided for making this submission.

Yours faithfully

**Geoffrey Diehm QC**
Vice President

[3] https://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/past-inquiries/CMOLAB2014