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Queensland Police Union Submission
to the
Review of the *Crime and Corruption Act* 2001

It is time for a comprehensive review of the CCC and its functions. Perhaps unsurprisingly, the Queensland Police Union ("QPU") believes the role of the Crime and Corruption Commission ("CCC") as a standing Royal Commission, has reached its use-by date. That is not to say that its corruption functions should be abolished, rather, that the CCC itself should be restructured to perform a proper public sector anti-corruption role. It is the QPU's position there is no place within what should be the State's premier anti-corruption body for a crime commission, witness protection or research function.

Queensland has come a long way since the dark days of the late 1980's and the Fitzgerald Inquiry. There can be no serious contention that systemic or widespread corruption infects any department, let alone the Queensland Police Service ("QPS").

The QPU believes the CCC should be restructured to remove both the witness protection and crime functions from the CCC. Instead those functions should be properly placed within the State Crime Command of the QPS.

The Crime Function

In respect to the Crime function, it would be appropriate for an independent Crime Commissioner to be vested with the existing powers held by the CCC in respect to its current crime function. Those powers could then be exercised as need arose. Under current arrangements, the CCC's crime function is largely discharged by sworn police officers on secondment to the CCC. This leads to a duplication of roles, investigations and expenditure. In reality, the CCC crime function is performed by police officers.

The QPU is also concerned that key learnings from the Fitzgerald Inquiry seem to have been overlooked in the establishment of the CCC. Whilst there may have been valid reasons at the time, it is the QPU's position that times have now changed. It seems reprehensible for the same body to hold extensive compulsive powers for the investigation of serious crime to also be responsible for the investigation of misconduct. The ability for extended and covert powers to be abused is self-evident. An appropriate and independent watchdog is required to ensure that does not occur.

Appropriate legislation could be promulgated which establishes a crime commissioner within the QPS' State Crime Command. The crime commissioner could be independent of the QPS Commissioner and convene investigative hearings as warranted, subject to the same approval process as currently exists for the CCC hearings. This would allow clear access to extended investigative powers for serious crimes such as murder, paedophilia and targeting organised crime gangs. It would remove the current duplication which exists between the CCC and QPS.

The Corruption Function

The various Directors-General (including the Police Commissioner) are appointed by the Government. In making those appointments it should be presumed the Government has selected the best person for the respective position and that that person holds the Government's confidence in their ability to discharge their duties. In the case of the Police Commissioner, not only does he/she have to hold the Government's confidence, but also must hold that of the Chair of the CCC. The *Police Service Administration Act* 1990, requires the Chair to sign off on the appointment of the Commissioner.

The QPS itself has established an independent and well-funded and resourced internal investigation arm in the form of the Ethical Standards Command ("ESC"). Those officers are specially selected and vetted detectives who are trusted to investigate police misconduct allegations, not only on behalf of the Commissioner, but also on behalf of the Office of the State Coroner.

The QPU believes it is a waste of Government resources for the CCC to involve itself in minor disciplinary matters, or matters of corruption which are investigated properly by units of public administration.

The Directors-General are responsible for the proper and efficient administration of their respective Departments. This includes the discipline of their Department. In the case of the Commissioner of Police, she is required to report to the CCC on all matters of misconduct and the CCC is also able to (and does) overview misconduct investigations. There can be no suggestion, particularly in the case of the QPS, that matters are not investigated properly, or that "cover ups" exist from "Caesar investigating Caesar". The CCC has ample power to direct further or additional investigations be undertaken.

Instead, the QPU submits that the CCC's role should be limited to overseeing matters within the principle of devolution. The CCC should only intervene in the Directors-Generals' investigation of matters and disciplining of their staff where the corruption is of a nature to warrant dismissal and the Director-General has not undertaken dismissal action, or the corrupt conduct is of such a serious or systemic nature as to warrant independent investigation and action by the CCC. In the latter case this would only occur when the conduct involved executive officers (necessitating a public perception of unbiased investigation), or widespread corruption within a Department (suggesting a failure by the Director-General to discharge his or her responsibilities to maintain discipline within the Department), or because the Department's own capacity for the type of investigation is simply insufficient to properly undertake it.

Surely any failure by a Director-General to maintain appropriate standards would impact on that Director-General's tenure and potentially, in and of itself, constitute the type of corruption investigation warranted by the CCC. Otherwise, Directors-General should be trusted to run their own Departments; after all it is what the public expects of them and what the Treasury pays them for.

The Research Function

It is the QPU's position that the CCC is not the best placed organisation to investigate impartially the methods of operation of the QPS or the powers (and their use) by police. The CCC has a corruption investigative function which, in the QPU's view, has potential to sway such research and undermines its independence.

Instead the QPU recommends the Government establish a Government Research Centre at an appropriate academic institution such as a university. Such a Centre could be responsible for conducting research on behalf of the Government on a wide range of issues, not just limited to policing. For example, it could also research environmental issues, planning matters and alcohol management strategies to name a few. By establishing a truly independent Centre for Research, Government would be provided with a series of options to deal with a wide range of public policy matters, supported by independent and peer reviewed data.

False Complaints

The members of the QPU are often subject to false and malicious complaints. These occur in a multitude of circumstances, from attempts to undermine prosecutions, through to malicious complaints arising out of a marriage breakdown and child access disputes. It is particularly concerning for the QPU that such complaints can be made anonymously. Police officers' careers are often held in abeyance for extended periods (sometimes years) while complaints are investigated, only to be finalised with no disciplinary action being taken. It is the QPU's position that the existing false complaint offence should be prosecuted for instances of malicious complaints. Unfortunately, it appears the CCC is reluctant to do this on the basis that prosecuting malicious complainants may lead to cases of corruption going unreported. However, the QPU believes prosecuting such complainants will have no impact on the genuine reporting of corruption, as right-minded members of the community know the difference between reporting a genuine concern, as opposed to submitting a pack of lies.

The Witness Protection Function

It is the QPU's position that this function should also return to the QPS. It could be appropriately placed within the Intelligence Command area. It is currently staffed by police officers on secondment to the CCC. There is no reason which justifies the CCC performing this function where appropriate safeguards and confidentiality provisions can be imposed regardless of which agency is responsible for witness protection.

The Crime and Corruption Act 2001

The QPU has a number of concerns with the *Crime and Corruption Act 2001* ("CC Act"). In particular, the extended definition of corrupt conduct in section 15 and the retrospective and unlimited operation of section 16.

Section 15 was amended to remove a requirement for the CCC to prove that an act which is alleged to be corrupt conduct was done dishonestly with intent to cause a detriment or a benefit. It beggars belief that a discipline offence alleging corrupt conduct does not necessarily require an element of dishonesty.

The QPU believe the repealed requirement of dishonest intention should be re-inserted into the definition of corrupt conduct as an element. This could be done by requiring proof of a dishonest intent to benefit or cause detriment, or if the section was to be left wider, by amending the current s15(1)(c)(i) and 15(2)(c)(i) from the current term "criminal offence" (which can extend to any offence on the statute books) to an indictable offence involving dishonesty.

Section 16 currently applies corrupt conduct to any conduct whenever it occurred. There is no statutory time limitation. Arguably an individual could be prosecuted for corrupt conduct which occurred at the beginning of a 40-year and otherwise stellar career.

The QPU believes the present section 16 should be amended to ensure that any corrupt conduct prosecution brought requires at least one act or omission which constitutes an element of corrupt conduct to have occurred within a maximum of three years before the commencement of a corrupt conduct proceeding. An extension of time could be allowed where the person was also subject to separate criminal prosecution.

Such an amendment would recognise the seriousness of the corrupt conduct disciplinary offence and allow a sufficient time for the CCC to investigate. However, it would also balance the bringing of such proceedings with basic human rights to have allegations dealt with in a timely manner and would properly reflect community expectations in not having a public servant stood down from duty for years whilst the CCC investigates. (The QPU is able to provide confidential examples of such delays should the Committee require it).

Section 60

The QPU believes the current section 60 also requires restriction on its use. At present, any information obtained by the CCC can be used by it in the performance of any of its functions, regardless of how it was obtained. For example, evidence obtained under a criminal search warrant can be used in disciplinary proceedings. This is despite recent court rulings to the effect that evidence gathered under a compulsive power for a specific purpose can only be used for that purpose. Further, the section allows the CCC to release that information to other entities.

The QPU believes the current section 60 should be limited to allowing the CCC and any other entities to use such information for the purpose it was acquired under a compulsive power, or for the performance of the CCC's current research and intelligence functions only.

Conclusion

The QPU believes the time has come for the CCC to be restructured as a stand-alone anti-corruption agency with no additional responsibilities. Its role should be limited to supporting Departments by providing education, training and investigatory assistance in circumstances where a Department lacks its own capacity, or the misconduct alleged is systemic or involves high-level employees at the SES level.

The QPU supports the CCC having the power to review disciplinary decisions under the *Police Service Administration Act*, the *Public Service Act* and the various other departmental Acts to the Queensland Civil and Administrative Tribunal. However, such power to review should be limited to circumstances where the CCC believes a sanction of actual dismissal should have been imposed at Departmental level, and was not.

Expanding review powers will ensure the CCC is appropriately placed to act as the State's anti-corruption watchdog. However, it will also ensure only appropriately serious cases are subject to reviews.



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