

## Review of the Crime and Corruption Commission's activities

**Submission No:** 28  
**Submitted by:** Australian Salaried Medical Officers' Federation Queensland  
**Publication:**  
**Attachments:**  
**Submitter Comments:**

# Parliamentary Crime and Corruption Committee

## Review of the Crime and Corruption Commission's (CCC) Activities

**Authorised by:**

Dr Hau Tan

ASMOFQ President

Australian Salaried Medical Officers' Federation Queensland (**ASMOFQ**)

Email: [asmofqld@asmof.org.au](mailto:asmofqld@asmof.org.au)

**Prepared by:**

Thrive Workplace Consulting & Legal & Shane Prince KC

Contact: Amanda Harvey [REDACTED]

Phone: [REDACTED]

# Review of the Crime and Corruption Commission's (CCC) Activities

Submissions on behalf of the Australian Salaried Medical Officers' Federation Queensland (ASMOFQ)

ASMOFQ also endorses and adopts the submissions made by the Queensland Council of Unions – submission 22, considered related and ancillary to the concerns expressed here.

## Executive Summary

1. These submissions are relevant to the review of the discharge of responsibilities by the Crime and Corruption Commission (CCC) in the areas of:
  - a. corruption function, including:
    - i. the handling of, and reporting on, complaints of corruption, including analysis of any resource issues that may impact assessment and outcome timeframes, and
    - ii. the application of the principles for performing this function, including the devolution principle;
  - b. oversight arrangements over the obligations of agencies to conduct competent investigations in accordance with its “guidelines, currently [“Corruption in focus: A guide to dealing with corrupt conduct in the Queensland public sector.”](#) (Guidelines).
2. ASMOFQ has evidence of and has previously raised concerns that the principles of devolution are not functioning correctly. It is apparent that the obligations of agency Chief Executives within the Queensland Health Service and potentially other agencies are not properly discharging their obligations. Specifically, the examples canvassed identify that agencies are not undertaking investigation processes

- properly and ignoring the Guidelines or the need to accord procedural fairness and apply statutory processes.
3. In each instance, the relevant Health Service has used the common law dismissal power to discipline and terminate the employment of an employee, without attending to the requisite standard of investigation or discharge of disciplinary processes in the public sector, thus bypassing the task devolved upon them by the CCC.
  4. It is apparent from communications with ASMOFQ by both the CCC and Public Sector Commission that there is a significant area of exposure in the intersection of matters that straddle the coverage of the CCC and PSC, and that neither is intervening or managing situations where an agency is failing to meet the standards of investigation required in a way that maintains public confidence in the agency and the public service.
  5. There is also a concern about the failure of the CCC to intervene when requested by ASMOFQ to do so in relation to identified failures of the referral agency.

## Concerns of ASMOFQ

6. ASMOFQ's concerns emerge from the handling of investigation processes and monitoring where complaints or concerns of corrupt conduct to the CCC have then been delegated back to the employing agency by the CCC (pursuant to the Guidelines) without the requirement for the employing agency to conduct an investigation in accordance with the Guidelines because the complaints:
  - a. Are not considered to be serious enough to require CCC resources and capable of local agency management;
  - b. Are referrals where insufficient assessment of complaints or concerns or incomplete details are the subject of referral, which inevitably includes circumstances where the referral is itself a form of targeting, victimisation or reprisal against an employee;
  - c. Are more likely to upon proper investigation be the product of maladministration or other systemic or operational failure or non-optimal discharge of public sector accountability;
  - d. Require investigation because of a limited potential for corrupt conduct, but also contain significant performance and conduct issues which otherwise would be investigated in accordance with prescriptive processes under the Public Sector Act 2022 (**PSA**).

7. It is considered there is conflation by agencies of the duty to notify the commission of corrupt conduct [under section 38 of the Crime and Corruption Act 2001 \(CCC Act\)](#) with the much lower threshold for suspicion and the responsibility of public officials, other than the commissioner of police, to deal with allegations under [section 43 of the CCC Act](#).
8. In relation to section 43, the CCC has issued advisory guidelines for the conduct of investigations by public officials into corrupt conduct and has a monitoring role under [section 48 Commission's monitoring role for corrupt conduct](#). The standard of investigation to draw conclusions regarding alleged corrupt conduct is necessarily high, and provided agencies follow and discharge the recommended processes (see In at least two issues advocated on behalf of members of ASMOFQ, there have been serious concerns about failures with the discharge and compliance with this provision by the CCC and the relevant public sector officials.
9. Further, there is a concern that serious risk is created for employees in circumstances where the exercise of the CCC's function under [section 46 of the CCC Act](#) to remit matters that are more likely to involve workforce performance and conduct issues properly covered by the Public Sector Commission (**PSC**) without clarification regarding the same.
10. This is because in the PS Act and its Directives, there is a broad carve out that excludes corrupt conduct matters from its processes, designed to ensure that handling by the CCC and management of corrupt conduct concerns is a paramount consideration and properly discharged. However, this becomes a problem because the exclusions in the PS Act and material carry the statement that "*This section applies to a workplace investigation related to a work performance matter, other than a corrupt conduct matter.*" Which the material defines as follows "*Corrupt conduct has the meaning provided for under [section 15 of the Crime and Corruption Act 2001](#).*" It is also assumed by agencies as confirmed in our examples that once referred, these are no longer disciplinary matters or workplace investigations.
11. The gap which is apparent to ASMOFQ from matters that have affected its members, occurs where the CCC assesses a complaint and it is either referred with no further advice or referred awaiting outcome advice back to the agency. In this circumstance, there is no requirement on the agency to conduct a proper investigation as set out in the Guidelines, AND the exclusions in the PS Act and Directives still apply because a finding is still required by the definitional use of corrupt conduct.

12. For ASMOFQ members, issues have on more than one occasion arisen where corruption concerns are referred to the CCC, it is believed to have made a decision to refer the matter back to the employing agency to investigate under the CCC guidelines, whereupon the employing agency simply terminates the employment without conducting the CCC referred investigation in accordance with the CCC guidelines. In the examples ASMOFQ can provide under confidentiality restrictions, no full investigation was completed in accordance with the CCC Guidelines, but because there had been a CCC referral of the concern, the agency relied on the CCC involvement to also exclude the PSC directives regarding workplace investigations and the common law right to dismiss to avoid the Discipline Directive. You will see in a number of places that the operation of the PS Act and directives that corrupt conduct matters are excluded.
13. The administrative catch-22 is completed by the employing agency also avoiding its own obligations to conduct an investigation to establish misconduct in accordance with its legislative framework (with similar guidelines about investigation in its Workplace Investigations Directive) by relying on the mere fact that CCC made a preliminary assessment that the matter requires investigation - but without anyone actually conducting that investigation in accordance the CCC guidelines or the PS Act and Directives.
14. This approach means that both of the robust Guidelines and PSC Workplace Investigations Directive which include requirements to discharge a thorough and proper investigation are bypassed.
15. In relation to CCC referred matters, this means public servants are exposed to the same results in relation to employment as if they had been found to have been corrupt, without any of the protections of an investigation or the rigor required of the CCC to reach such a devastating conclusion - and in the case of ASMOFQ highly dedicated public medical personnel who are highly trained and have devoted their careers to the care of the public.
16. The employing agency's approach impermissibly equates the serious consequences of a finding of corrupt conduct after a proper statutory process of investigation with the base functions of an employer in the private sector choosing to terminate the employment of an employee under a contract. These two processes are fundamentally different and should be not be elided, and to do so undermines the statutory scheme and proper public sector process.

17. The nature of these submissions highlight serious administrative deficiencies and gaps in the management and handling of employment related CCC referrals, and subsequent mishandling of investigation obligations including misuse of the common law dismissal power before any conclusions about conduct have been properly made.

## Recommended Interventions

18. A definitive statement is required from the CCC and in guideline materials that:
  - a. Where complaints and referrals are assessed by the CCC as being:
    - i. Referred with no further advice (RNFA); or
    - ii. Referred, awaiting outcome advice (AOA)and the matter proceeds as an employee conduct issue, that the PS Act and PSC Directives apply to any further steps absent a corruption determination approved by the CCC or supervision by the CCC requiring compliance with its Guidelines.
  - b. Where there is referral back to the agency for monitoring and/or auditing under section 48 of the CC Act, that investigations must be completed in accordance with the Guidelines before any conclusion about employee conduct can be made, and thereafter the Disciplinary Directive and PS Act will apply under the CCC makes a determination.
  - c. That the mere referral of concerns or a complaint back to the agency for investigation is not conclusive and not a basis to trigger use of a common law right to dismiss, this is only the notification of a reasonable suspicion to the CCC, and confirmation that the issue requires investigation. It is in no way confirmation that there has been any corrupt conduct and cannot be relied upon as such;
  - d. Any disciplinary decision regarding employment, that relies on a section 48 of the CC Act referral must either:
    - i. apply the Discipline Directive, noting the Guidelines report standards satisfy the Workplace investigations Directive; or
    - ii. where the agency is considering use of the common law power to dismiss, it must seek advice from the Crown Solicitor.

- e. Consider clearly delineating where the exclusion in PS Act and PSC directives for matters involving “corrupt conduct” apply.
- f. Consideration of a prohibition on any termination of employment in the absence of a full and proper investigation in accordance with either the Guidelines or the Workplace Investigations Directive, along with completion of the processes required by the Discipline Directive.

## Relevant Public Sector legislative framework and legal principles

19. These matters have been informed by advice from Senior Counsel, Mr Shane Prince SC and ASMOFQ would seek the opportunity to provide an opinion from Mr Prince SC to the Solicitor General via the Crown Solicitor in respect of any consideration of these matters by the Solicitor General as recommended in these submissions.
20. However relevantly and in summary, we highlight that in any circumstance where the CCC decides to take no action or otherwise allows and identified issue to rest with the agency for management and control, it will as a product of statute, be either a process covered by the CCC Act, or the Public Sector Act 2022 (**PSA**) or both. ASMOFQ’s understanding of the relevant statutory obligations is set out below for convenience.
21. The PSA provides for the administration of the public sector and the employment arrangements of public sector employees, amongst other things<sup>1</sup>. In addition to identifying the public sector, public sector entities, and public sector employees, the Act identifies several instruments that govern the conditions of employment for public sector employees<sup>2</sup>.
22. Division 3 of Part 8 of Chapter 3 of the PSA makes provision for disciplinary action in relation to public sector employees and defines disciplinary action as including termination of employment<sup>3</sup>.
23. Section 91 of the PSA establishes the grounds for discipline of a public sector employee by a Chief Executive. The relevant standard that is to be met is that the Chief Executive is reasonably satisfied that the employee has engaged in an act or omission specified in section 91(1) of the PSA. Disciplinary action refers to any action

---

<sup>1</sup> PSA, long title.

<sup>2</sup> PSA, s 15

<sup>3</sup> PSA, s 92(1)(a)

related to employment, including termination of employment, reduction of remuneration, or monetary penalty.

24. Section 98 of the PSA requires compliance by the Chief Executive with the Act and any applicable directives under the Act in disciplining a public sector employee, and the Public Sector Commissioner (**PS Commissioner**) is required to make a directive about managing disciplinary action and the procedures for investigations relating to a public sector employee's work performance or personal conduct<sup>4</sup>.
25. This statutory scheme is guided by the public sector principles<sup>5</sup> including the management of the public sector, ensuring independence, transparency and impartiality in giving advice and making decisions and in the employment of public sector employees, ensuring fairness and impartiality in making decisions.
26. The main function of the PS Commissioner is to ensure the effective and efficient administration and operation of the commission and the performance of its functions.<sup>6</sup>
27. The Commissioner has made the following under section 100(1) of the PSA:
  - a. Workplace investigations (Directive 01/24) (**Investigations Directive**).
  - b. Discipline (Directive 05/23) (**Discipline Directive**),

#### Investigations Directive

28. The Investigations Directive applies to public sector employees and does not modify obligations arising in relation to types of complaints, including complaints of corruption, with the very limited exceptions identified below. The directive states that it is binding and is for the purpose of investigating the substance of a grievance or complaint.
29. Relevantly, the PSA provides that an investigation is not a disciplinary step. It is a separate procedure from any disciplinary process provided for under the Act.
30. The investigative direction covers the process to be undertaken to determine in response to a grievance or complaint. It ensures procedural fairness and the identification of facts that might enliven powers to take disciplinary action in relation to one or more public sector employees.
31. The compliance with the Investigations Directive is mandatory for Chief Executives of public sector agencies in relation to taking disciplinary action (including the termination of employees).

---

<sup>4</sup> PSA, s 100(1)

<sup>5</sup> PSA, s 39(2)

<sup>6</sup> PSA, s 217(1)

32. Part 11 of Chapter 3 of the PSA provides that the Chief Executive of a public sector entity may end the employment of a public sector employee under the common law in particular circumstances<sup>7</sup>. Section 145 facilitates the retention of the common law for those purposes. The employing agencies appear to take a broader view of the effect of the reference to common law rights to terminate employment than arise on the correct approach which is discussed in more detail below.

#### Discipline Directive

33. The Discipline Directive applies to all public sector employees in relation to all disciplinary processes under Chapter 3 of the PSA and provides that the requirements of the directions are binding and must be followed.

34. The process established under the Discipline Directive involves steps:

- i. a show cause process setting out the allegations,
- ii. a finding in relation to the allegations,
- iii. a show cause process in relation to proposed disciplinary action, and
- iv. a decision in relation to the disciplinary action.

35. The principles applicable to the Discipline Directive refer to the responsibility of the Chief Executives in making decisions under Chapter 3, Part 8, Division 3 of the Act, and to ensure that Chief Executives are required to act in a way that is compatible with the main purpose of the PSA.

#### Preservation of common law

36. Sections 144 and 145 of the PSA preserve the powers, without limitation, in relation to common law dealing with the ending of employment.

37. Section 145 of the PSA provides examples of the types of common law rights that are preserved. It is important to note that the power to terminate under the contract first requires a conclusion by the Chief Executive that there has been serious misconduct of the nature that would allow dismissal under the contract of employment. The *process* by which that conclusion is reached by the Chief Executive, necessarily engages the requirement to comply with s 98 of the PS Act which conditions the power of the Chief Executive to be reasonably satisfied that an employee has engaged in conduct which is described in s 91 of the PS Act which, relevantly, will be the gateway to any decision under the contract of employment to terminate the employment in cases of this nature.

---

<sup>7</sup> PSA, s 144

38. Crown Law published materials relating to the PSA provide the following explanation of the relationship between the legislative scheme under the PSA and the common law as preserved by Part 11 of Chapter 3 of the PSA<sup>8</sup>. The preservation is described in the following terms:

*Chapter 3, Part 11 of the Public Sector Act recognises the State's rights as an employer, at common law. It recognises the power of a chief executive of a public sector entity, at common law, to terminate a public sector employee's employment, including summarily, and for a public sector employee's employment contract to end by operation of law, including by frustration. The State has always had such powers at common law, however they were not referenced in the previous PS Act.*

39. In any event, at common law, the standard for determining whether or not the facts relied upon are a satisfactory basis for the termination of employment is determined by reference to the balance of probabilities. But before reaching this threshold it must be demonstrated that the power to exercise the common law jurisdiction to terminate the employment of a person has been enlivened, and then the Chief Executive would be empowered to determine whether the conduct was conduct for which the employment of the individual should be terminated. This conflict is readily apparent in the context of a statutory scheme to ensure fairness, appropriateness of disciplinary action and the processes to be followed when considering or taking disciplinary action.

40. The civil standard of proof is the balance of probabilities requiring actual persuasion of the facts relied upon to reasonable satisfaction of the tribunal of fact. This standard underpins the exercise of a power. Further, per *Briginshaw*, when considering the question of the existence of a fact *"The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal"*<sup>9</sup>.

41. In so far as the common law is preserved by the PSA in relation to the end of employment of an individual, the gravity of the consequences arising from the determination of the existence of a fact, and the seriousness of the allegation should be carefully considered.

---

<sup>8</sup> [Public Sector Act 2022 - Crown Law](#)

<sup>9</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336.

42. More fundamentally, any common law employment contract entered into by an employing agency simply cannot be inconsistent or at variance with legislative requirements that apply to the employment: [Director-General of Education v Suttling](#) (1987) 162 CLR 427; [1987] HCA 3 at [433]. Any statutory preservation of the common law right to dismiss an employee does not change this position. That is so because the substance of any such contractual right cannot be at variance with other applicable statutory obligations governing the parties relations- in this case the PS Act.
43. To meet the standards of public sector administration, there is prescribed process and recognition of the importance of proper, complete investigation in a procedurally fair way. It is noted that even the CCC Guidelines contain confirmation of this and the fact that PSA obligations may also need to be met.
44. Both the Investigations and the Disciplinary Investigations Directives deal with CCC matters as follows:
- a. Clause 4.2 of the Workplace Directive and Clause 5.2 of the Discipline respectively provide: “This directive does not replace, modify, or revoke any legislative requirements that apply to the management of particular types of complaints. For example, corrupt conduct under the Crime and Corruption Act 2001, public interest disclosures under the Public Interest Disclosure Act 2010, or complaints under the Human Rights Act 2019 (HR Act)”.
  - b. Clauses 11 and 12; and 14 and 15 respectively of the Investigation Directive and Discipline Directive exclude Public Sector Commission review of disciplinary process under the Directives by the use of the terms “other than corrupt conduct matters” in those clauses. This appears to be consistent with s 124 (2) of the Public Sector Act.
45. The above provisions of the Investigations and Discipline Directives do not operate to exclude those Directives from application to disciplinary investigations into misconduct, which may also involve allegations of corrupt conduct -- even if those allegations are simultaneously being investigated under the CCC Guidelines. There is statement in the CCC Guidelines that the investigation and disciplinary directives under the Public Sector Act do not apply; and there is no inconsistency between the concurrent operation of those instruments such that there would be any replacement, modification or revocation of any *legislative* requirements of the CCC Act. All of the measures in the Investigation and Discipline Directives and the CCC Guidelines are

required to be applied, to the extent that they apply on their face, to the conduct of the Chief Executives of employing agencies conducting investigations.

46. The only exclusion from the normal processes applicable to the discipline of a public servant is the restriction on the ability of that public servant to seek a review by the Public Service Commissioner of the process taken under the Investigation or Disciplinary Directives. There appears to be no good reason for this exclusion in public policy; and it can only have the effect of forcing public servants to directly approach the Courts to seek to enforce their rights to procedural fairness, as required by the Directives and the PS Act, where there is some failure by the Chief Executive to follow that those processes. This can only increase the legal costs to all parties and the State and avoid the very useful process for correction of error that exists in the Public Service Commissioner review process.
47. This lacuna is particularly important in circumstances where it is clear that the employee will not have the benefit of the rigor of an investigation into allegations of corrupt conduct by the specialist corruption Commission. The employee is instead dependent on their employer who may have issues, other than concerns about corruption risks, and who is not truly independent of the employment relationship dynamic.
48. Further, it is entirely unclear as to why the Public Service Commissioner's role would be precluded in circumstances where the CCC has already made a determination that the allegations are of such little significance or weight that they can be referred back to the employing agency, without the requirement of that agency to take any further action at all, or to report back to the CCC about the outcome of the referral.
49. Of far greater concern is that the practice of employing agencies is to completely disregard and treat as inapplicable the requirements of the Investigation and Discipline Directives (as well as the disciplinary requirements of the Public Sector Act) in circumstances where any allegation involving a referral to CCC has arisen (even if that referral has not resulted in any adverse conclusion by the CCC and may have simply involved a re-referral back to the employing agency under s 46 (2)(b) of the CC Act particularly where that referred investigation has not been conducted or concluded).
50. An example of this occurred in relation to one of our members where the following assertion was made by the firm of solicitors (not Crown Law) retained by the Chief Executive of the employing agency:

[The CEO] formed a preliminary view that he should exercise his common law power, to terminate [The Employee's] employment summarily on the grounds outlined in paragraph 17 of the Show Cause Letter. Importantly, our client did **not** commence a disciplinary process to which Chapter 3, Part 8, Division 3 of the PS Act, the Public Sector Commission Discipline (Directive 05/23) (**Directive**),<sup>1</sup> or the Queensland Health Discipline HR Policy E10 (QH-POL-124) (**Policy**)

51. The solicitors for the Chief Executive of the employing agency went on to say:

For completeness, our client's position is that:

(a) there is no requirement either under the public sector law or at common law to first undertake an investigation in accordance with the *Workplace Investigations (Directive 01/24)* prior to commencing a common law process (or indeed a discipline [*sic*] process); and

(b) the common law principles of natural justice and procedural fairness do not require an initial '*opportunity to respond to allegations before a disciplinary penalty is considered*'.

Accordingly, our client holds significant reservations about your client's ability to seek a review of any matters by the Public Sector Commission (particularly given the CCC's assessment), or obtain declaratory relief in the Supreme Court in respect of the proposed exercise of a common law power.

52. On this analysis by the solicitors, a situation arises which was not anticipated by the legislation and inconsistent with its purpose, namely:

- a. A person who is innocent of corrupt conduct will not have a procedurally fair process to avoid termination; or any opportunity to clear their name, when the CCC has referred the allegations to their employer;
- b. A matter improperly referred to the CCC or with very limited or minor elements capable of touching upon corrupt conduct concerns will enter the void between processes and proper, competent investigation avoided; and/or alternatively
- c. A person who has engaged in corrupt conduct will simply be terminated from employment by a contractual decision- with no public analysis or exposure of that corrupt conduct and with no oversight by the CCC. Hence, no lessons will be learnt for public administration; and public confidence will not be strengthened through transparent dealings.

53. The current approach taken by employing agencies, in ASMOFQ's experience, undermines rather than supports the legislation and reform to address this problem is urgently required.
54. Key reforms would be to:
- a. Remove the exclusion of Public Service Commissioner Review of disciplinary processes, where there are any allegations of corrupt conduct and where the CCC itself has not conducted the investigation and reached a conclusion.
  - b. The discretion in s 48 of the CC Act should be made mandatory for the CCC to obtain a report from the referral agency (where there has been a referral under s 46 (2)(b) of the CC Act), *prior* to the referral agency taking any action in relation to the referral; so that the CCC monitoring and oversight of the referred functions can be meaningfully discharged.
  - c. Make clear to employing agencies that a referral from the CCC does not dispense with the requirements of the agency to comply with the Investigation and Disciplinary Procedures applicable under the Public Sector Act- unless the CCC makes findings of corrupt conduct; or confirms such findings by a referral employing agency, following receipt of the report to the CCC from the employing agency following an investigation by it in accordance with the CCC Guidelines.
  - d. In the interim, the following issues should be referred to the Solicitor General for independent advice to be provided to employing Agencies and the CCC as to whether:
    - i. the contracts of employment between an employee to whom the Public Sector Act applies, upon a proper construction of those contracts, includes a power to dismiss an employee under those contracts in disregard of the requirements of Division 3 of Part 8 of the Public Sector Act applicable to reaching a level of satisfaction about misconduct;
    - ii. Chief Executives are free to disregard the Investigation or Disciplinary Directives and/or the requirements of procedural fairness when terminating an employee's contract of employment by operation of s 144 and 145 of the Public Sector Act, upon a proper construction of that employment contract – which we consider to be an impossibility;

- iii. Whether a mere reference from CCC under s 46 (2)(b) of the CC Act to an employing agency of a complaint of corrupt conduct is a proper basis for the termination of employment of a public sector employee, either at common law; or under the Public Sector Act, without a proper investigation and conclusion as to whether there was corrupt conduct as alleged in the referral. To do so will be a failure to discharge the principles of Briginshaw and fail to meet the objectives of both the PS Act and CC Act.

## **Confidential Examples and provision of additional information**

ASMOFQ would like the opportunity to confidentially provide individual matter details and correspondence in two schedules to these submissions, with an undertaking from the PCCC that these will be kept confidential as they contain personal and identifying information of its members and the conduct of public sector officials whose conduct is the subject of criticism in these submissions.

ASMOFQ would welcome the opportunity to make further submissions and provide additional information including its approach to the Crown Solicitor, including by participation in any public hearings in November 2025.

**Date:** 17 October 2025