WHISTLEBLOWERS ACTION GROUP (QUEENSLAND)
Post Office Box 859 KENMORE QLD 4069
Phone: 07 3378 7232

PUBLIC SUBMISSION

TO

PARLIAMENTARY CRIME AND CORRUPTION COMMITTEE

ON

THE REVIEW OF SECTION 329 OF THE *CRIME AND CORRUPTION ACT 2001*

Queensland Whistleblowers Action Group (Inc) (QWAG) wishes to express its concern at the nebulous character of the key triggering words in section 329(4)(a) and (b) of the *Crime and Corruption Act 2001*, namely "*disgraceful*" and "*improper conduct*".

The vagueness of their meanings per se would seem to leave them open to uncertain subjective interpretation which might see inappropriate conduct within the Crime and Corruption Commission (CCC) improperly slip through the net of accountability, and, in doing so, demoralise whistleblowers from coming forward.

QWAG has a real concern that unless caution, commonsense and completeness of potential reach of the relevant law are exercised by a decision-maker, the vagueness of those terms might adversely impact on the application of the meaning of section 329(c). This section, on its plain understanding, also invokes the **full scope** of section 15(1) of the *Crime and Corruption Act 2001*, in particular sub-sections (b), (c), and (d), and (2)(a),(e) and (h) which involve conduct which may constitute abuse of public office, fraud and perverting the course of justice.

It is well settled in ***R v Rogerson and Ors*** *(1992) 66 ALJR 500* where Mason CJ at p.502 ruled: *"...it is enough that an act has a **tendency** to deflect or frustrate a prosecution or disciplinary proceedings before a judicial tribunal which the accused contemplates may **possibly** be implemented...*" (bold and underlining added) and, working in combination, in ***Lazarus Estate Ltd v Beasley*** CA [1956] 1 QB 702,[1956] 1 All ER 341 where Lord Denning ruled: "...*No court in this land will allow a person to keep an advantage he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. **Fraud unravels everything**.*"[1] (bold and underlining added)

The mischief which QWAG is seeking to address is that, if conduct based on credible evidence exists showing that a CCC official, particularly one of senior rank, knowingly deceives a whistleblower about the true state of things in the CCC official's own knowledge at the time, and this trick, by its deceptive nature and breach of trust, improperly causes or tends to cause the whistleblower to accept or aid an

[1] Cited as a principle recognised in Australian jurisprudence by French CJ in ***Minister for Immigration and Multicultural Affairs v SZFDE*** (2006) 154 FCR 365 at [121]

investigative process which he/she would not have otherwise agreed to had the true state of things been made known to him/her, then a term such as "*disgraceful*" ought not to be applied. This is because the vagueness of meaning does not properly describe or capture (and perhaps not trigger) a disciplinary act, where it should describe a disciplinary act, due to the potential seriousness of the deceit by being, at the very least, a tendency to have interfered with the due administration/course of justice.

Plainly, in QWAG's opinion, for any public official to engage in abuse of power, fraud and perverting the course of justice at any time and place, these would be acts that can easily be described as "*disgraceful*". The law however, does to limit such acts to such an 'open' and 'soft' descriptor, where it can really mean anything by the inappropriate exercise of a decision-maker's discretion. This is because the law specifically proscribes that any such conduct, if proven, would not just equate to official misconduct but would also be criminal in kind.

Therefore, QWAG calls on the PCCC to recommend to Parliament that Schedule 2 of the *Crime and Corruption Act 2001* define what the word/term "*disgraceful*" and "*improper conduct*" shall mean under section 329(4)(a) and (b). This is recommended in order that whenever these terms are applied, Parliament, public, whistleblower or another (as may be directly affected) may judge as to whether or not either word/term accurately 'fits' the factual circumstances of the mandatory referral from the CCC to the PCCC. The breadth of the sister provision of section 329(4)(c), with its clear linkage to full scope of section 15(1) of the *Crime and Corruption Act 2001* is particularly relevant to this recommendation.

Left undefined, an inappropriate discretionary application against the facts has the real and potential capacity to cause consideration disharmony within the Act itself, let alone the *Criminal Code* and the related *Public Sector Ethics Act 1994*.

QWAG would be prepared to speak to this public submission at any public forum established by the PCCC.

Gregory McMahon

President

Queensland Whistleblowers Action Group (Inc)

16 October 2017