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**Crime and Corruption
Commission**

QUEENSLAND

19 May 2016

Dr Andréa Cullen
Secretary
Select Committee on an Independent Integrity Commission
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
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By email: committees@parliament.act.gov.au

Dear Dr Cullen

**RE: Legislative Assembly ACT Select Committee on an Independent
Integrity Commission**

I refer to the Committee's email of 5 April 2017 and thank you for opportunity to make a submission.

The Crime and Corruption Commission (CCC) provides the following publications, to supplement the comments that appear in this submission:

1. Submission to the Department of Justice and Attorney-General, 'Corrupt conduct' under the *Crime and Corruption Act 2001* (April 2016)
2. CCC Annual Report, 2015-16
3. Submission to the Parliamentary Crime and Corruption Committee review of the Crime and Corruption Commission (July 2015) and supplementary submission (October 2015)
4. Corruption in the public sector: the big issues (December 2014)
5. Corruption in focus: a guide to dealing with corrupt conduct in the Queensland public sector (October 2014)

Establishment of the Commission

The CCC is an independent statutory body established under the *Crime and Corruption Act 2001* (Qld) (CC Act) to:

- combat and reduce the incidence of major crime; and
- reduce the incidence of corruption in the public sector.

The CCC and its predecessors, the Crime and Misconduct Commission and the Criminal Justice Commission (CJC), have over 25 years' experience in the investigation of public sector corruption.

The CJC was originally established in 1989 to restore public confidence in Queensland's public institutions after the revelations of the Fitzgerald Inquiry from 1987 to 1989.¹

Other Australian states have also established similar oversight bodies in recognition of the effect corrupt conduct can have on government agencies and public confidence in those agencies.

Former Commonwealth Ombudsman, Professor John McMillan² described the debilitating effect of corrupt conduct in these terms:

Corruption can degrade every element of a system of government: it can undermine the operation of the democratic system, distort government policy priorities, bleed the efficiency of business, breed crime, result in unsafe buildings and products, skew the delivery of government services, and generally lessen the standard of living of the community. Once rooted in a system, corruption is immensely difficult to remove. Fraud and corruption are a continuing problem for every government around the globe.

Complaints about Public Sector Corruption

We anticipate that an agency such as the one proposed by the Committee would receive complaints about and investigate similar issues to those regularly considered by the CCC.

In 2015–16, the CCC received 2674 complaints, involving 6736 separate allegations of corruption (one complaint may consist of a number of allegations). Of these complaints, 64 per cent related to police, and 36 per cent related to public sector agencies (including local government). Overall, complaints increased by 12 per cent compared with last year. This increase may be attributed to factors such as increased media attention on the excessive use of force by police and the local government elections.³

Corruption can take many forms. An analysis of CCC investigation data from 2009-14 revealed that the most common categories of public sector corruption (excluding police) were favouritism; unauthorised disclosures of information; misappropriation of assets; and poor procurement processes.⁴ As well, one third of the CCC's corruption investigations in 2014-15 involved allegations of inappropriate associations; or unauthorised access to, and disclosure of, confidential information by police and other public officials.⁵ Similarly, the CCC's monitoring activities in 2012-15 found that public sector agencies are particularly vulnerable to corruption in the form of unauthorised disclosures of confidential information.⁶

In 2015-16 14 individuals, mainly public officials, were charged with 104 alleged offences. A more detailed breakdown of significant investigation outcomes can be found on page 45 of the CCC's *Annual Report* for 2015 to 2016.⁷

The following case examples demonstrate the types of criminal prosecutions arising from CCC corruption investigations in 2015-16.

¹ The Fitzgerald Inquiry is a commonly used reference to the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, presided over by Commissioner Tony Fitzgerald QC.

² Text of Keynote Address, opening the *AboveBoard Accountability Forum*, at The Australian National University, Canberra, 12 May 2007.

³ CCC's *Annual Report 2015-16*, p. 41

⁴ CCC's *Annual Report 2014-15*, p. 17

⁵ *Ibid*, p. 19

⁶ *Ibid*, p. 22-23

⁷ CCC's *Annual Report 2015-16*, p. 45

Case 1:

In July 2015 the Public Trustee of Queensland (PTQ) reported that a procurement officer had received free gifts of interstate travel and accommodation for awarding contracts to interstate contractors for PTQ works. These mostly related to maintenance of PTQ-owned properties, and not to management of PTQ clients' monies. It was also alleged that the staff member released significant amounts of corporate information, including budget estimates of a competitor, to two of the contractors in order to give them a commercial advantage, and provided confidential information about a property restrained by the CCC to an external party not related to PTQ or the onfiscation action. The staff member subsequently resigned from the PTQ.

Initial investigations suggested that the staff member had fraudulently gained employment at PTQ (using false references and qualifications), and that he had a previous relationship with the interstate contractors. An investigation resulted in fraud charges being laid against the former public servant and a director of a Sydney-based construction company.⁸

Case 2:

In December 2015, following a CCC investigation, a former Director-General pleaded guilty in the Brisbane District Court to the criminal charge of Abuse of Office in relation to the employment of a family member in her department. Ms Julie Grantham, formerly Director-General of Education Queensland, was sentenced to six months imprisonment, wholly suspended, and ordered to repay \$17,000 to the Queensland Government. Another person is currently before the courts as a result of the investigation.⁹

The success of corruption investigations should not be measured by the number of prosecutions alone. A successful investigation can restore a person's reputation; restore public confidence in public institutions; and reduce an agency's vulnerability to corruption.¹⁰

Anti-corruption agencies are now an established, recognised part of modern democracies. We consider that independent, accountable and adequately resourced anti-corruption or integrity bodies are essential for investigating, preventing, and deterring corruption and dishonesty in our public institutions.

Commission Powers and Functions (with respect to the Public Sector)Scope

To prevent corruption anti-corruption agencies require wide terms of reference.

The CCC has primary responsibility for dealing with complaints about 'corrupt conduct' in all units of public administration including: the Legislative Assembly and Parliamentary service, the Executive Council, State courts and other tribunals, government departments, statutory bodies, police, correctional centres, local governments, universities and corporate entities established/maintained by an Act which collect revenue or raise funds under the authority of an Act, or non-corporate entities established/maintained under an Act which are funded or financially assisted by the State.¹¹

⁸ CCC Annual Report 2015-16, p. 46

⁹ Ibid.

¹⁰ Ibid, p. 17

¹¹ Section 20, CC Act

Certain entities which report to parliament or a parliamentary committee are not within jurisdiction.

Parliament has power to declare by an Act that an entity is or is not a unit of public administration within the CCC's jurisdiction.

The definition of corrupt conduct found in Chapter 1, Part 4 of the CC Act is quite complex. It is conduct by any person that could result in a lack of probity in, and could adversely affect, the performance of functions or exercise of powers by the public sector. The conduct must also be of a kind which, if established, would amount to either a criminal offence or, if the person worked (or had worked) in the public sector, a disciplinary breach providing reasonable grounds for dismissal.

The definition also captures the conduct of private individuals who seek to corrupt public officers (current or future). However, the definition does not capture criminal conduct by private entities which seriously and adversely affect the public sector but not in ways that would compromise the integrity of public officials.

The CCC considers the definition of corrupt conduct would be improved by including in certain categories of public administration, conduct of a person (whether or not a public official) that could impair public confidence in that administration.¹² Similarly, the CCC considers that the principles for performing anti-corruption functions should include the investigation of matters connected with perceived corruption and any matter referred to the anti-corruption agency by parliament.¹³

Effective investigations

Corruption investigations must be, and be seen to be, independent, impartial and fair and in the public interest.¹⁴ The CCC is also required to deal with corruption where it is likely to increase public confidence.

To promote public confidence, corruption investigations require the powers necessary to obtain all relevant information, documents and things that would not otherwise be expected to be provided voluntarily or in a timely way.

Like most law enforcement agencies, the CCC has power to:

- intercept telecommunications
- conduct physical and electronic surveillance
- enter, search and seize
- monitor financial transactions, and
- conduct controlled operations.

The CCC also relies upon powers contained in related law enforcement legislation such as the *Police Powers and Responsibilities Act 2000* (Q), the *Criminal Proceeds Confiscation Act 2002* (Q), the *Witness Protection Act 2000* (Q), the *Telecommunications Act 1997* (Cth) and the *Telecommunications (Interception and Access) Act 1979* (Cth). To remove any doubt, investigative powers found under related law enforcement legislation should expressly state that they apply to the anti-corruption agency.

¹² Specific matters are: collusive tendering; fraud in or in relation to applications for licences, permits, approvals or clearances under statutes designed to protect health and safety or designed to facilitate the management and commercial exploitation of natural resources; dishonestly obtaining or assisting or benefiting from the payment or application of public funds or the disposition of public assets for private advantage; defrauding the revenue; and fraudulently obtaining or retaining employment as a public official. See CCC submission to Department of Justice and Attorney-General, 'Corrupt conduct' under the *Crime and Corruption Act 2001* (April 2016), p 3. These suggestions have been adopted in the Crime and Corruption and Other Legislation Amendment Bill 2017.

¹³ See above footnote, pp 3 and 17

¹⁴ Section 57, CC Act

The CCC can conduct an investigation despite any proceeding that may be in or before a court or tribunal or other person exercising judicial or quasi-judicial powers, in ways that do not compromise those proceedings, including criminal trials.¹⁵

One of the things which sets the CCC apart from standing law enforcement agencies is the power to compel individuals and organisations to produce information, documents and things under notice and to compel individuals to attend hearings and give evidence¹⁶ despite claims of privilege against self-incrimination. These strong powers, which are rightly restricted to independent bodies such as the CCC, are essential to the effective investigation of alleged corrupt conduct.

It is recommended that governing legislation use express words limiting the grounds upon which persons may be excused from providing relevant information to the anti-corruption agency.

For corruption investigations under the CC Act, privilege against self-incrimination is abrogated subject to an immunity use protection against admissibility in criminal, civil or administrative proceedings while allowing derivative use of the information. Although it is not the law in Queensland, the CCC considers that compelled information should be available to be used in disciplinary proceedings.

Claims of public interest immunity are resolved by the courts deciding whether on balance the public interest is better served by requiring disclosure or not.¹⁷

Legal professional privilege is not abrogated with respect to corruption investigations but persons may be required to disclose the identity of the person holding the privilege (the client) in order to ascertain whether legal privilege may be waived.

Plainly, Parliamentary privilege is not abrogated; however, different views have been expressed about the presence of privilege in the investigation of criminal offences related to parliamentary proceedings.¹⁸ Corruption investigations would be more effective if the governing legislation provided a procedure to allow access to protected Parliamentary information and documents in defined circumstances.¹⁹

Having regard to the principles expressed in *Johns v Australian Securities Commission* (1993) 178 CLR 408, it is also recommended that compulsory powers be available for the purpose of performing all functions and not merely for the investigation and prosecution of criminal offences. For example, compulsory powers can be used to obtain information in the performance of the agency's corruption prevention function.

In investigating corruption complaints, the CCC has expertise not generally available to other standing law enforcement bodies. The CCC has a mix of civilian investigators and police officers, as well as other officers skilled in intelligence, financial analysis, forensic computing, research and covert investigative techniques.

CCC's corruption monitoring role

The CCC has express powers to monitor how public agencies deal with corrupt conduct²⁰ which, while they include powers of direction, ultimately depend on the voluntary cooperation of public officials.

The CCC undertakes its monitoring role by overseeing or reviewing agency investigations; or auditing the outcomes of agency investigations. The actual monitoring mechanism is decided on a case-by-case

¹⁵ Section 331, CC Act

¹⁶ Chapters 3 and 4, CC Act

¹⁷ Section 196, CC Act

¹⁸ CMC Report, *Allegations concerning the Honourable Gordon Nuttall MP* (Appendix 5):

<http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2005/5105T5391.pdf>

¹⁹ Crime and Corruption Submission to Parliamentary Crime and Corruption Committee Review of the Crime and Corruption Commission, July 2015, page 75

²⁰ Sections 35, 47 and 48, CC Act

or case-type basis, having regard to the agency's integrity framework. The monitoring role includes the power to assume responsibility for an investigation undertaken by the agency and to complete the investigation to ensure the matter is dealt with appropriately in all the circumstances.

Whatever monitoring mechanism is used, agency investigations are assessed according to established anti-corruption standards found in the CCC publication *Corruption in focus*.²¹ Agencies are encouraged to continuously improve their investigative capacity and we provide advice to assist agencies in this regard.

The CCC recommends that effective monitoring include access to enforceable powers to compel the provision of relevant information in a timely way.

Prevention and education

The CCC is of the view that anti-corruption agencies play an important role in corruption prevention which requires access to reliable systems data for the purpose of making recommendations for systemic corruption prevention reform. Accordingly, it is important that appropriate legislative power be available to obtain information and intelligence from public sector agencies.

Research and intelligence functions supporting effective investigations

The most effective response to allegations of corrupt conduct includes research and intelligence units supporting the proper performance of corruption investigations and corruption prevention activity. These functions enable strategic targeting of corruption risks, and analysis and measurement of the effectiveness of corruption investigations, corruption monitoring and corruption prevention strategies.

Information exchange and secrecy provisions

Essential to the proper and effective performance of anti-corruption functions are legislative protections to prevent prejudice to corruption investigations, and maintain the confidentiality of information gathered during an investigation.

Information disclosed for purposes of the CC Act is protected²² and exempted from disclosure under the *Right to Information Act 2009* (Qld).²³ The CCC also has legislative powers and obligations to share intelligence and other law enforcement information with relevant Federal, State and Territory agencies.²⁴

Prosecution powers

The CCC is not expressly vested with authority to commence prosecution proceedings under the CC Act. However, any person may commence proceedings for an offence.²⁵

The CCC has express authority to report to the Director of Public Prosecutions or any other appropriate prosecuting authority when for the purposes of any prosecution proceedings considered warranted.²⁶ The CCC has adopted this course as a matter of practice.

There are competing public interest arguments about whether anti-corruption agencies should be vested with authority to commence prosecutions arising from corruption investigations. Prosecution proceedings arising out of investigations in which evidence was not compelled from the alleged offender might properly be commenced by the integrity agency in the public interest on grounds of timeliness, efficiency, effectiveness and accountability. However, where evidence was compelled from

²¹ <http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus>

²² Sections 212, 213 and 343, CC Act

²³ Schedule 1, item 3; Schedule 3, item 1, *Right to Information Act 2009* (Qld)

²⁴ Sections 55, 59, 60, 62 CC Act

²⁵ Sections 41 – 46 *Acts Interpretation Act 1954* (Qld)

²⁶ Section 49, CC Act

the alleged offender, the public interest may be better served by an independent authority, such as the Director of Public Prosecutions, having responsibility for commencing the prosecution.

The CCC has express authority to commence disciplinary proceedings for corrupt conduct in certain circumstances²⁷ and may report on its investigation to appropriate public officials if it decides that disciplinary action should be considered.²⁸

Accountability

The CCC exercises its corruption functions and powers within a strict legal framework. Reasonable grounds must exist before any power is exercised. Some powers can only be exercised with prior judicial approval, and all corrupt conduct investigations are subject to judicial review.²⁹ For example, an immediate attendance notice can only be issued with the prior approval of a Supreme Court judge.³⁰ Similarly, some functions are reserved to the Supreme Court. For example, disputed claims for privilege over seized property or a refusal to give evidence at a corruption hearing are decided in the Supreme Court.³¹ Additionally, proceedings for contempt at hearings can only be dealt with in the Supreme Court.³²

As well as judicial scrutiny, the Parliamentary Crime and Corruption Committee, a Parliamentary Commissioner and the responsible Minister all scrutinise the performance of the CCC's corruption functions and powers.³³ By dealing with complaints about the CCC's activities and officers' conduct, the Parliamentary Committee ensures that the CCC is accountable to Parliament. The Parliamentary Commissioner regularly audits the CCC's use of its powers and assists the Parliamentary Committee to ensure that the CCC and its officers are accountable. As the responsible Minister of State, the Attorney-General ensures that the CCC is financially and administratively accountable.³⁴

Relevant communications between the CCC and its parliamentary oversight bodies are subject to secrecy.³⁵

The CCC can produce public reports in a number of ways depending on the subject matter.

Conclusion

Broadly-based anti-corruption or integrity bodies are an integral part of functional, representative democracies, and the CCC supports the creation of an agency with a similar remit to that of the CCC.

Yours sincerely

Forbes Smith
Chief Executive Officer

Encls.

²⁷ Section 50, CC Act

²⁸ Section 49, CC Act

²⁹ Section 332, CC Act

³⁰ Section 85, CC Act

³¹ Sections 111 & 196, CC Act

³² Sections 198-200, CC Act

³³ *Crime and Corruption Commission Annual Report 2014-15*, p. 40

³⁴ *Ibid*, p. 40

³⁵ Sections 212 and 213, CC Act

