

RESEARCH REPORT NO 9

Queensland's New Crime and Corruption Commission: A Model Public Sector Integrity Agency?

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In 2014 the *Crime and Misconduct and Other Legislation Amendment Act* was passed by the Queensland Parliament following its development by the Legal Affairs and Community Safety Committee. The current *Crime and Corruption Act* represents a further weakening of the original 1989 Fitzgerald Inquiry recommendation regarding an integrity agency for Queensland. A new Crime and Corruption Commission (CCC) replaced the Crime and Misconduct Commission (CMC), established in 2001, which replaced the original Criminal Justice Commission, established in 1989/90. The CMC had also absorbed the Queensland Crime Commission, established in 1997.

Unfortunately, the CCC represents a serious backward step for public sector integrity management in Queensland. The CMC had been far from optimal. However, the restructured Commission is even more deficient. The best one can say about the deeply flawed planning process is that the parliamentary committee was naïve about the misconduct risks in public sector organisations (especially the police) and the natural tendency of organisations to cover up misconduct, and also extremely ill-informed about public opinion and international experience. Another explanation is that the restructure represents a quite deliberate and unashamed attempt to reduce the exposure of politicians and public servants to independent scrutiny and accountability.

One way of understanding the new Commission's deficiencies is by reviewing the features of a model public sector integrity agency, supported by evidence from around the world of what works in managing complaints and preventing misconduct (e.g., Graycar & Prenzler, 2013; Prenzler & Faulkner, 2010; Prenzler, Mihinjac & Porter, 2013):

1. A model commission should directly and independently investigate all complaints and integrity matters that come to its attention. This means training and employing specialist

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‘civilian’ investigators. A compromise model entails direct investigation of all intermediate and serious matters, with the treatment of lower level (‘disciplinary’) matters subject to negotiation with complainants. Many complainants have no faith in internal investigations and this has to be respected, no matter how minor the allegations.

2. There also needs to be efficiency in investigations and adjudication. An effective commission will prioritise an administrative and inquisitorial approach to matters, with criminal prosecutions (on a higher standard of evidence) only taken after administrative processes are complete. The commission also needs to be able to direct or over-ride disciplinary decisions by government departments. This is essential to counter the tendency towards weak disciplinary responses when matters are dealt with in-house. There also needs to be a disciplinary matrix, on the public record, so citizens can see how offences align with sanctions.
3. At the same time, a mix of strategies needs to include the option of independent mediation of complaints and various forms of informal resolution. Mediation provides the best outcomes for complainants and persons subject to complaints.
4. In order to action these points above, a commission must decentralise its operations by setting up accessible offices in regional centres.
5. Bringing individual offenders to justice is a key function, but ensuring confidence in public institutions and long-range prevention of misconduct are even more important. Consequently, a commission must have a strong independent research and prevention function; complaints and surveys need to serve as key performance measures and key sources of information directed at behaviour management; and there needs to be extensive reporting of integrity indicators and trends.
6. An integrity commission should only engage with serious and organised crime where there is an overlap with public sector integrity matters. Combining crime fighting and corruption fighting distracts from the core task of public sector misconduct management and generates a substantial intrinsic corruption risk from organised crime.

To enlarge slightly, a model commission should integrate the best features of the most successful police oversight agency in the world – the Police Ombudsman for Northern Ireland – and the most successful anti-corruption agency – the Hong Kong Independent Commission Against Corruption (ICAC). This means that both misconduct (e.g., neglect of duty and excessive force) and classic corruption (eg, graft) would be covered. The Northern Ireland Ombudsman investigates and resolves all complaints against police; and it has been extraordinarily successful in reconciling the

interests of the public, police officers and complainants, and contributing to the peace process and democratic transformation of the police service. The Hong Kong ICAC has also been remarkable in its commitment to rigorous and independent investigations of all alleged and suspected corruption, and to extensive and sustained public education and outreach. The ICAC attracts extremely high levels of public confidence and has contributed to consistent high ratings in perceptions of integrity in government and business.

Post-Fitzgerald Queensland was never in the ranks of high performing jurisdictions. The number one problem with the CMC was the policy of devolution that put 98% of complaints back to government departments where they disappeared, leaving complainants and whistleblowers disillusioned and angry. The CJC was not much better. The reliance of both the CMC and CJC on seconded police investigators also undermined their independence. The unfortunate irony was that public opinion surveys in Queensland, from 1995 to 2010, showed on average 89% support for the statement 'complaints against the police should be investigated by an oversight body, not the police themselves' (CCC publications webpage). In 2010, the same question was asked about public servants and local government: 90% supported the statement 'complaints about public service employees should be investigated by an oversight body, not by the government', with 90% agreeing in relation to local government.

The structure and functions of the new CCC further undermine the capacity of the state's chief watchdog to identify and prevent misconduct. There is a rough 50/50 divide between crime and corruption. This means that Queensland has at least three agencies fighting serious and organised crime – the CCC, Queensland Police and the Australian Crime Commission (along with a plethora of other federal bodies) – and half an agency fighting corruption. The CCC will also be more narrowly focused on serious corruption at the expense of the broader field of misconduct. The very large majority of complaints will continue to be dealt with in-house, free from specialist independent scrutiny and public reporting. The commission's monitoring of in-house processes is discretionary, with no power to direct system improvements. In addition, the Commission's research and prevention functions have been decimated. What remains of research is almost completely undermined through direct ministerial control. There are also strong disincentives for complainants and whistleblowers to come forward. There a cumbersome bureaucratic process for lodging complaints; and there is an emphasis on prosecutions if complaints are considered frivolous, vexatious or misleading. There is no apparent capacity for mediation or informal resolution, there is no disciplinary matrix, and the system lacks a clear focus on inquisitorial processes. The new Commission will remain bunkered down in the Brisbane CBD.

The CCC is a pale shadow of a world standard mature public sector integrity commission. Queenslanders have again been treated with contempt by politicians who acted in defiance of public opinion, expert opinion and scientific evidence.

References

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