

Honourable Gerald Edward (Tony) Fitzgerald AC QC  
Chairperson and Commissioner  
Commission of Inquiry relating to the Crime and Corruption Commission  
GPO Box 149  
Brisbane QLD 4001

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**28 March 2022**

Dear Commissioner Fitzgerald,

**Re: Written Submission, *Commissions of Inquiry Order (No.1) 2022***

This submission is made under the Terms of Reference – *Commissions of Inquiry Order (No.1) 2022* (“the Inquiry”).

It is undeniable to any reasonable person that Queensland is again besieged by an integrity crisis that is harming innocent Queenslanders. It is my position that a lack of effective oversight has allowed this crisis to develop unchecked and permeate deeply into numerous units of public administration within the Queensland government.

Like the Sicilian proverb, ‘*Where there’s smoke, there’s fire*’.

I submit that Queensland’s integrity crisis can be directly attributed to the definition of corrupt conduct within the *Crime and Corruption Act 2001* (“the Act”). The current definition under s15 of the Act is almost impossibly narrow, making the Crime and Corruption Commission (“CCC”) an ineffective deterrence to corruption and maladministration (“integrity matters”).

As a result of the limitations of the current definition, allegations of integrity matters within the public sector are often not assessed and determined by the CCC. Rather they are frequently left to be assessed and determined by the very unit of public administration itself. These in-house investigations are usually undertaken by a department labelled as an Integrity Unit. The Act even allows the CCC to refer integrity matters directly back to the alleged offending unit of public administration under s34 (c), of the Act. Both are akin to *marking one’s own homework*.

Following an Inquiry into the Culture, Practices and Ethics of the Press in the United Kingdom, The Right Honourable Lord Justice Leveson released his Report<sup>1</sup>, warning against *marking one’s own homework*.

When describing the role of Integrity Units, the Centre for Privacy, Transparency and Accountability states:

*“One of the flawed components of the Queensland integrity system is the use of integrity units...”*

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/270943/0780\\_iv.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270943/0780_iv.pdf)

*...The problem is that integrity units often end up reporting to senior executives who have an interest in avoiding public problems rather than dealing with matters objectively.*

*The result is that many integrity units are nothing more than shells for senior management”<sup>2</sup>*

I am the owner of a newly built home in [REDACTED] (“Lot 98”); the exact address is known to the Queensland Building and Construction Commission (“QBCC”). Lot 98 has many serious defects, including grossly elevated levels of hazardous mould. As a result, I have ongoing matters before the Queensland Civil and Administrative Tribunal (“QCAT”) where the QBCC is the first respondent, and our builder is the second respondent.

It is my belief that the QBCC and its staff have become very skilful in managing the *Crime and Corruption Act 2001*, especially s15 of the Act. It therefore only needs to manage its own maladministration.

After evading s15 of the Act, the QBCC’s Integrity and Complaints Branch (“ICB”), have also become very skilful in conducting perfunctory investigations with Outcome Advice letters that are at best, specious. Omissions by design and subtle deflections are carefully penned.

Such matters are then finalised by the QBCC. When seeking clarification on the omissions and deflections, the below represents a typical reply:

*“The outcome advice issued to you on 18 November 2021 is the final outcome advice that the Queensland Building and Construction Commission will be providing you in relation to your most recent complaints. The Integrity and Complaints Branch (ICB) consider your complaints finalised.*

*If you remain dissatisfied with the response to your complaints, including the information contained therein, it remains open to you to contact the Office of the Queensland Ombudsman on (07) 3005 7000 or <https://www.ombudsman.qld.gov.au/make-a-complaint/makecomplaint>, as outlined to you previously.”*

Given the unsatisfactory response, I followed the above advice and contacted the office of the Queensland Ombudsman (“QO”). After its investigation I received an Outcome Letter with carefully penned omissions by design and subtle deflections.

The QBCC now also appears to me to have developed a process to effectively immunise itself against action from the office of the Queensland Ombudsman (“QO”).

I am aware of at least one occurrence where a victim of the QBCC, [REDACTED], sought assistance from the QO and found strong support in the [REDACTED].<sup>3</sup> This is referred to by the QBCC as [REDACTED].

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<sup>2</sup> <https://www.cpta.com.au/post/the-role-of-integrity-units>

[REDACTED]

With the support of the QO, the QBCC was therefore facing the very real risk of having to right its wrongs. As a result of the inaction of the QBCC, the financial consequences for the QBCC in relation to the [REDACTED] appeared to be immense.

Unfortunately for [REDACTED], the [REDACTED] when [REDACTED] [REDACTED] to a [REDACTED] position within [REDACTED]. The [REDACTED] and [REDACTED], directly appointed [REDACTED] to [REDACTED] [REDACTED]

*“Keep your friends close; keep your enemies closer.” Sun Tzu.*

As this audacious appointment was considered highly inappropriate and likely to offend at least the *Ombudsman Act 2001*, (for example, s92 of that Act), further details were sought related to this process.

When the information was not forthcoming from the QBCC directly, the Office of the Information Commissioner (“OIC”) conducted an external review. The OIC then investigated if records exist that demonstrate that the appointment complied with the *Public Service Act 2008* or *Commission Chief Executive Directive: Recruitment and Selection 15/13*.<sup>4</sup> In its Decision<sup>5</sup>, the OIC determined that the QBCC holds no such records that demonstrate such compliance.

The QBCC has demonstrated that it is willing and able to do whatever is required to maximise the retention of as much Home Warranty Insurance Scheme (“HWIS”) revenue as is possible. It has demonstrated that it will do this at any cost. The fact that the QBCC can do this demonstrates that there is no effective oversight from statutory bodies such as the CCC. I submit that the HWIS is like other 'junk insurance' schemes that recently went before the Hayne Royal Commission.<sup>6</sup>

The QBCC Annual Report for 2020-21 lists its financial performance revealing the statutory body returned a surplus of \$61.16 million during that period and that it has a strong net asset position of \$195.243 million.<sup>7</sup>

### **RTIs surrounding external counsel**

Without proper oversight, it is my experience that even information that should be readily available, is routinely blocked from being disclosed by the QBCC. For example, the QBCC routinely hide behind s110 of the *QBCC Act 1991*. The QBCC then advises stakeholders that they should use the Right to Information process (“RTI”).

Under RTI, I attempted to obtain copies of the invoices from the QBCC’s external counsel in relation to the proceedings related to Lot 98 in QCAT. Shortly after submitting this RTI, I also submitted another RTI into how the QBCC was handling the first application and who was involved.

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<sup>4</sup> [https://www.forgov.qld.gov.au/\\_data/assets/pdf\\_file/0030/187644/superseded-2013-15-recruitment-and-selection.pdf](https://www.forgov.qld.gov.au/_data/assets/pdf_file/0030/187644/superseded-2013-15-recruitment-and-selection.pdf)

<sup>5</sup> [https://www.oic.qld.gov.au/\\_data/assets/pdf\\_file/0019/50491/decision-315697-external-review-20211014.pdf](https://www.oic.qld.gov.au/_data/assets/pdf_file/0019/50491/decision-315697-external-review-20211014.pdf)

<sup>6</sup> <https://www.royalcommission.gov.au/banking/final-report>

<sup>7</sup> <https://www.qbcc.qld.gov.au/sites/default/files/21-qbcc-annual-report.pdf> p39

The responsive documents that were released contained (further) very disturbing internal QBCC emails. The content of some of these emails are considered to offend at least the *Right to Information Act 2009*.

On 16 July 2021, one such email<sup>8</sup> (“the email”) was referred to the Crime and Corruption Commission (“CCC”) by the shadow minister for Integrity in Government, Ms Fiona Simpson MP. On 1 September 2021, Ms Simpson MP then spoke in Parliament about the conduct demonstrated within the email.<sup>9</sup> However, the CCC would not investigate the matter as in the view of the CCC, the conduct did not satisfy s15 (1) (c) of the *Crime and Corruption Act 2001*.<sup>10</sup>

The email and associated documents were later tabled in the first session of the fifty-seventh (57<sup>th</sup>) Parliament.<sup>11</sup>

The Nine Network included the content of the email within a story during their Channel Nine 6:00pm evening news broadcast on 26 September 2021.<sup>12</sup> NewsCorp also featured the email as a story in the Courier Mail on 1 November 2021.<sup>13</sup>

As the CCC’s conclusion was that the conduct did not satisfy s15 (1) (c) of the Act, the QBCC’s ICB, was only required to then craft Outcome Advice with omissions by design and subtle deflections. While the CCC relied upon the narrow definition of s15 of the Act, the QBCC also took no action in relation to the conduct. This includes the admission of deliberately holding back RTI details.

I personally disagree with the CCC’s conclusion in relation to Ms Simpson MP’s referral.

I also personally disagree with the QBCC’s perfunctory investigation and Decision that followed when they subsequently took on the matter.

On information and belief, I still hold evidence of conduct that satisfies a breach of s15 of the Act. I do however have no confidence that the CCC is effective, independent, and impartial. I therefore remain hesitant to refer integrity matters to the CCC.

S19 of the Act states *Corrupt conduct not affected by time limitations*. Upon gaining confidence in the CCC, I will consider making this referral.

## Conclusion

It is my position that Queensland is again suffering from an integrity crisis that is largely pernicious, but on occasion even unashamedly overt; that justice is simply not available to ordinary Queenslanders when wronged by units of public administration.

Queenslanders need to trust that the CCC is effective, independent, and impartial. Without this, Queensland’s Integrity Crisis will perdure and ordinary Queenslanders will continue to suffer under a state sponsored culture that accepts a normalisation of deviance.

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<sup>8</sup> [5721T1312.pdf \(parliament.qld.gov.au\)](https://www.parliament.qld.gov.au/5721T1312.pdf)

<sup>9</sup> [1 September 2021: Appropriation Bill - RTI Corruption, QBCC Maladministration & State Archivists - YouTube](https://www.youtube.com/watch?v=1September2021:AppropriationBill-RTICorruption,QBCCMaladministration&StateArchivists)

<sup>10</sup> [Crime and Corruption Act 2001 \(legislation.qld.gov.au\)](https://www.legislation.qld.gov.au/act/2001/1/1/crime-and-corruption-act-2001)

<sup>11</sup> [5721T1313.pdf \(parliament.qld.gov.au\)](https://www.parliament.qld.gov.au/5721T1313.pdf)

<sup>12</sup> [QBCC Action Group - QBCC Integrity Investigates Itself whilst the Hall family is strung along | Facebook](https://www.facebook.com/QBCCActionGroup/posts/10158444444444444)

<sup>13</sup> <https://www.couriermail.com.au/news/opinion/peter-gleeson/qbcc-officer-admits-holding-back-right-to-information-details/news-story/2ec2b0908af959311f38e69ba8bf959e>

I submit that to achieve this, an urgent review of the Act is required. S15 of the Act must be broadened to truly encompass a modern definition of corrupt conduct. S34 (c), of the Act, that covers the Devolution Principal needs to be removed from the Act; no one should mark their own homework in this manner.

Queensland is also in urgent need a full Commission of Inquiry into the state's integrity crisis.

Yours faithfully,

[REDACTED]

Damian McDonald

[REDACTED] QLD

[REDACTED]

[REDACTED]