

Commission of Inquiry into  
Specific Matters Relating to the  
Crime and Corruption  
Commission - Submissions by  
Together Queensland, Industrial  
Union of Employees.



Michael Thomas

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## Introduction

1. Together is one of the largest public sector unions in Queensland, representing over 28, 000 workers from across the public sector in health, education, public services, as well as workers in the private sector. Together has consistently advocated for a fairer industrial relations system in the state, and our members have been at the forefront of improving the conditions of Queensland public sector workers and the services they deliver.
2. Together Queensland:
  - a. is an Industrial Organisation of Employees under the *Industrial Relations Act 2016* (Qld).
  - b. is a counterpart of the Australian Municipal, Administrative, Clerical and Services Union, Queensland Together Branch (Queensland Together Branch of the ASU). The ASU is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth).
3. Together welcomes this review into the Commission's structure in regard to its investigatory and charging functions, and the role of seconded police officers at the Commission. Together is firmly of the view that the CCC has expanded its remit in investigating corruption in the Queensland Public Service well beyond the scope intended and now engages in matters that are properly the remit of performance management and discipline under the *Public Service Act 2008*.

## Background

4. The Crime and Corruption Commission has its origin in the 1987-1989 "Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct", known as the Fitzgerald Inquiry. That Inquiry exposed systemic issues with integrity and accountability in public office and saw four ministers jailed and numerous convictions of other police.
5. Throughout its history the CCC has had significant coercive powers to investigate suspected police misconduct and official misconduct in the public sector.
6. This includes the powers to:
  - require a person to furnish a statement of information to the Commission
  - compel the production of records and things relevant to an investigation
  - summons people to attend the Commission and give evidence
  - conduct hearings at which witnesses may be compelled to give evidence on oath and produce documents<sup>1</sup>
7. On 2 March 1998 the Queensland Crime Commission came into existence following the passage of the *Crime Commission Act 1997*. The entity had a role of investigating organised crime and paedophilia.

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<sup>1</sup> <https://www.ccc.qld.gov.au/about-us/our-history/criminal-justice-commission/year-1-1989-90-establishment-criminal-justice>

8. In 2000-2001, the State Government announced the amalgamation of the Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC) to form a single crime and misconduct-fighting body, the Crime and Misconduct Commission (CMC).<sup>2</sup>

9. The Crime and Corruption Commission (CCC) came into being on 1 July 2014 with the introduction of the *Crime and Corruption Act 2001*. In its first annual report, the Chairman, Ken Levy noted that, “jurisdiction in the area of public sector integrity moved from official misconduct and its prevention to a focus on serious and/or systemic corruption.”<sup>3</sup>

## Focus of Submissions

10. Together’s submissions focus on the Terms of Reference (See Appendix One) to the extent they relate to the CCC’s jurisdiction in the area of public sector integrity and the extent to which we believe the CCC has unreasonably expanded its activities into areas of public sector discipline and performance management.

### Corrupt Conduct and Misconduct

11. The *Crime and Corruption Commission Act 2001* sets out the main purposes of the Act and the means for achieving them as:

#### 4 Act’s purposes

- (1) The main purposes of this Act are—
  - (a) to combat and reduce the incidence of major crime; and
  - (b) to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector.
- (2) The Act also has as the purpose to facilitate the commission’s involvement in a confiscation related investigation.

#### 5 How Act’s purposes are to be achieved

- (1) The Act’s purposes are to be achieved primarily by establishing a permanent commission to be called the Crime and Corruption Commission.
- (2) The commission is to have investigative powers, not ordinarily available to the police service, that will enable the commission to effectively investigate major crime and criminal organisations and their participants.
- (3) Also, the commission is to—
  - (a) investigate cases of corrupt conduct, particularly more serious cases of corrupt conduct; and
  - (b) help units of public administration to deal effectively and appropriately with corruption by increasing their capacity to do so.
- (4) Further, the commission has particular powers for confiscation related investigations for supporting its role under the [Confiscation Act](#).

<sup>2</sup> <https://www.ccc.qld.gov.au/about-us/our-history/crime-and-misconduct-commission>

<sup>3</sup> Crime and Corruption Commission, Crime and Corruption Commission Annual Report 2015-15, page 2.

<https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/CCC-Annual-Report-2014-2015.pdf>

12. **Corrupt Conduct.** The meaning of Corrupt Conduct is set out in s15 of the Act:

**15 Meaning of corrupt conduct**

- (1) **Corrupt conduct** means conduct of a person, regardless of whether the person holds or held an appointment, that—
- (a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—
    - (i) a unit of public administration; or
    - (ii) a person holding an appointment; and
  - (b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that—
    - (i) is not honest or is not impartial; or
    - (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or
    - (iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and
  - (c) would, if proved, be—
    - (i) a criminal offence; or
    - (ii) a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.
- (2) **Corrupt conduct** also means conduct of a person, regardless of whether the person holds or held an appointment, that—
- (a) impairs, or could impair, public confidence in public administration; and
  - (b) involves, or could involve, any of the following—
    - (i) collusive tendering;
    - (ii) fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described)—
      - (A) protecting health or safety of persons;
      - (B) protecting the environment;
      - (C) protecting or managing the use of the State’s natural, cultural, mining or energy resources;
    - (iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;
    - (iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;
    - (v) fraudulently obtaining or retaining an appointment; and
  - (c) would, if proved, be—
    - (i) a criminal offence; or
    - (ii) a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.

13. **Misconduct.** The original CJC had, amongst its objectives, the objective of “*reducing the incidence of misconduct, official misconduct and corruption in the police service and other units of public administration.*”<sup>4</sup> The powers of the Commission, then and now, to deal with misconduct, official misconduct and corruption are significantly more coercive than those available to an employer in taking disciplinary action against an employee.

14. The concept of Misconduct was recently considered in detail *Coleman v State of Queensland (Department of Education) (Coleman)*<sup>5</sup>. Deputy President Merrell noted that Misconduct under

<sup>4</sup> <https://www.ccc.qld.gov.au/about-us/our-history/criminal-justice-commission/year-1-1989-90-establishment-criminal-justice>

<sup>5</sup> [2020] QIRC 032

s187(1)(a) of the *Public Service Act 2008* has a higher threshold than an employee performing '... the employee's duties carelessly, incompetently or inefficiently' which is a separate ground for discipline under s187(1).

15. In considering the relevant case law, Deputy President Merrell observed that, "...the definition of 'misconduct' contained in s 187(4)(a) contemplates a deliberate departure from accepted standards, serious negligence to the point of indifference, or an abuse of the privilege and confidence enjoyed by a public service employee."<sup>6</sup>

16. Ostensibly, the CCC recognises the distinction between misconduct and corruption. In *Corruption in focus: a guide to dealing with corrupt conduct in the Queensland public sector*<sup>7</sup> it is noted:

*"Corrupt conduct has a specific meaning under the CC Act. It is not the same as misconduct under the Public Service Act 2008, although they do share some attributes; therefore not all misconduct will amount to corrupt conduct under the CC Act.*

*Misconduct encompasses any inappropriate or improper conduct relating to an officer's duties, or any private act by an officer that reflects seriously and adversely on the public service. Misconduct may not warrant dismissal or criminal charges, and therefore has a lower threshold than corrupt conduct."*

17. Of concern, however, is the lack of requirement for a 'deliberate departure' from acceptable standards, serious negligence, or abuse of privilege or confidence in the CCC's view of misconduct. The CCC's definition seems a lower threshold than considered in *Coleman*.

18. In these submissions Together will argue, relevant to the Terms of Reference, that the CCC has expanded its activities into areas below the threshold of Misconduct or Corruption resulting in unfair treatment of Public Servants and unnecessarily drawn out disciplinary processes that have resulted in unreasonably significant financial and mental strain to individuals and waste of public moneys.

## Case Study: TASKFORCE FLAXTON

### Overview

19. In March 2018, the Crime and Corruption Commission (CCC) commenced TASKFORCE FLAXTON to review corruption risks inherent in the custodial environment and increases in the number of allegations made to the CCC about corrupt conduct involving staff working in Queensland prisons and the outcomes of a number of CCC investigations that identified possible systemic issues.

20. As per the report, Taskforce Flaxton sought to examine:

- a. corruption and risks of corruption in QCS facilities (including 14 prisons (two managed under private contracts), and work camps)

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<sup>6</sup> *Coleman v State of Queensland (Department of Education)* [2020] QIRC 032 at [57] to [62]

- b. features of the legislative, policy and operational environment that may enable corrupt conduct to occur or are vulnerable to corrupt conduct
- c. reforms to better prevent, detect and deal with corrupt conduct within QCS facilities.

Together welcomed the review and provided a written submission and gave evidence.

The outcome of TASKFORCE FLAXTON were findings that the prison environment creates corruption risk. Specifically:

- a. Prison overcrowding is negatively affecting the way prisons operate and increasing corruption risk.
- b. The complexity and diversity of the Queensland prisoner population influences prison dynamics and the range and nature of services offered. Further, prisoners with special needs are more dependent on services and correctional staff, and at risk of being exploited as a result of corrupt conduct.
- c. The inherently closed nature of prisons can facilitate and perpetuate corruption. Greater investment in surveillance technology, improved public reporting and an enhanced independent inspection function will facilitate transparency and accountability.
- d. The relationships between custodial correctional officers and prisoners that are necessary to maintain order in a prison create significant corruption risk.
- e. Privately operated prisons create challenges for the State in ensuring prisoners detained in these facilities are treated humanely and have appropriate access to programs and services.

#### Outcomes

21. The TASKFORCE FLAXTON report made 33 Recommendations to reduce corruption risk in Queensland prisons. However, despite the wide-ranging nature of the Inquiry, there were very few findings of actual corruption. Together is aware of only 4 instances where charges were laid under s92A of the Criminal Code, Misconduct in relation to public office. This was the section previously used to charge the "Tahitian Prince" but in this case was used for alleged conduct well below that seriousness.

22. The prosecution of those matters stretched out over the best part of two years with submissions made at committal hearings that the evidence was so lacking that the charges should be withdrawn. This eventually occurred for three of the four individuals (the fourth having died during the drawn out process). It is unclear why, given the charges had such limited prospects of success, which had been repeatedly raised with Prosecutions, the charges were dropped mere days, in most cases, before committal hearings were to take place.

23. In the meantime, each individual has been forced to expend in the vicinity of \$30,000 in legal costs that they are unable to recover due to the drawn-out way in which the matters have been handled by the CCC.

24. The CCC is still pursuing one individual in the Administrative Appeals Tribunal under s50 of the *Crime and Corruption Act 2001*, an action usually confined to Police Officers. Significantly, the powers available to QCAT under s219(4) are all a subset that are available to the employer taking Disciplinary Action under s188 of the *Public Service Act 2008*.

25. By continuing to pursue the individual in QCAT, rather than referring the matter back to QCS for action under the *Public Service Act 2008*, an unprecedented step, the CCC is forcing further legal expenses upon the individual and the state and further drawing the matter out. In the meantime, the individuals have remained suspended on full pay for the duration.

26. In Together's view, there is a real perception that the course of action taken by the CCC in continuing to pursue these matters is due to a need to achieve a demonstrable result from TASKFORCE FLAXTON, a 'scalp', and in doing so the CCC has acted far in excess of any reasonable disciplinary action that could be justified.

## Case Study: Public Service Discipline

### Public Service Process

27. There are a range of issues with the treatment of potentially corrupt conduct within the public sector and the relationship between employing agencies and integrity agencies.

28. The definition of corrupt conduct and/or the requirement for all such potential conduct to be reported to the crime and corruption Commission before any assessment is undertaken may need to be reviewed.

29. It seems clear that the bottleneck of reporting all matters to the CCC is a significant contributor to the timeframes for the resolution of investigations and complaints. The vast majority of these notifications are referred back to the agency to undertake an investigation.

30. The union is also aware of things that appear to be routine employment matters such as failure to fill in a timesheet or errors on a timesheet being referred to the CCC as potential fraud. This is an absurd outcome and one that is not identified and resolved under the current system until the CCC refers the matter back to the agency several months later.

### CCC Allegation Data

31. A review of the Crime and Corruption Commission Corruptions Allegation Data<sup>7</sup> reveals that since 2015 there have been, in relation to Public Service Departments:

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<sup>7</sup> <https://public.tableau.com/app/profile/ccc3204/viz/CCCdata/Sheet1>



- a. 3033 instances of allegations of a “Failure of Duty”, which is defined as *“Failure of duty allegations can involve failures to comply with legal, policy or reporting obligations or failures to execute duties to an appropriate standard. This type of conduct includes failures resulting from a lack of knowledge, competence or appropriate care or diligence but do not include deliberate acts or omissions with the intent to gain a benefit or cause detriment to another.”* These allegations included sub-categories such as
  - i. “Operational diligence: Fail to investigate or follow appropriate investigative practice”;
  - ii. “Policy obligation: Fail to comply with good governance policy obligations”; and
  - iii. “Other unprofessional personal conduct”.
- b. 837 instances of allegations regarding “Professional Conduct”, which is defined as *“Professional conduct allegations can involve a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence, the mismanagement of public resources that may be described as improper, incompetent or negligent, as well as dishonest conduct, such as plagiarism or the misrepresentation of qualifications/experience/work history.”*

#### Allegation thresholds

- 32. No doubt, many of these allegations will have been serious and will reach the threshold of Official Misconduct mentioned previously, i.e. *“a deliberate departure from accepted standards, serious negligence to the point of indifference, or an abuse of the privilege and confidence enjoyed by a public service employee”*.
- 33. However, in Together’s experience, numerous allegations referred to the CCC do not meet that threshold. This has the following effects:
  - a. **Significant delays in resolution.** Once the CCC takes oversight of a matter it inevitably extends the timeframes for resolution and increases the outlay of public moneys through suspensions and investigations.
  - b. **Circumvention of employee rights.** One of the outcomes of the [“A Fair and Responsive Public Service for All report”](#) (the Bridgman Review) was a series of Directives to ensure fair process relating to discipline and suspension, these included:
    - i. [Directive 14/20: Discipline](#)
    - ii. [Directive 16/20: Suspension](#)
    - iii. [Directive 17/20: Workplace Investigations](#)

34. These Directives all contain exclusions for corrupt conduct matters, which results in significant protections contained in the directives not applying. The over classification of disciplinary matters as 'corrupt conduct' has the effect of circumventing these protections.

## Relevance to Terms of Reference

35. The causal contributors to this expansion of activities highlighted above directly links to the three key elements of this Inquiries' Terms of Reference:

- a. The structure of the Crime and Corruption Commission in relation to the use of seconded police officers.
- b. Legislation, procedures, practices and processes relating to the charging and prosecution of criminal offences for serious crime and corruption in the context of Crime and Corruption Commission investigations.
- c. Section 49 (Reports about complaints dealt with by the commission) of the *Crime and Corruption Act 2001*

If the only tool you have is a hammer...

36. The current structure of the CCC where seconded police officers are used to investigate and consider all matters under the CCC purview, including Misconduct and Official Misconduct, skews the way in which matters better suited to disciplinary processes under the *Public Service Act 2008* are dealt with. It is an old adage that if the only tool you have is a hammer, every problem looks like a nail.

37. The Prosecuting and Investigative functions in Police services are commonly separated across jurisdictions similar to Queensland and such separation has evolved for good reason. Such separation means an independent review of a matter is undertaken before deciding that a prosecution is initiated, based on whether such a prosecution is in the public interest. As noted in the Office of the Director of Public Prosecutions [Director's Guidelines](#):

*"The prosecution process should be initiated or continued wherever it appears to be in the public interest. That is the prosecution policy of the prosecuting authorities in this country and in England and Wales. If it is not in the interests of the public that a prosecution should be initiated or continued then it should not be pursued. The scarce resources available for prosecution should be used to pursue, with appropriate vigour, cases worthy of prosecution and not wasted pursuing inappropriate cases."*

38. The current CCC processes are absent this separation and create a risk that prosecutions may be undertaken to justify reviews (TASKFORCE FLAXTON), or because there has been a loss of objectivity

by “getting too close to the case”. Together notes the comments of the Clerk of the Parliament, Mr Neil Laurie, in evidence to the PCCC<sup>8</sup>, and strongly supports the concerns he raises.

39. We would further submit that the underpinning concern applies further than prosecutions and also applies to QCAT action under the *Crime and Corruption Act 2001* and general management and over classification of discipline matters.

## Conclusion

40. The same root causes that led to the findings of PCCC in the *Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters* report as they relate decisions to prosecute, extend to the CCC's role in reducing the incidence of misconduct, official misconduct and corruption in units of public administration.

41. Together is concerned that the CCC has expanded its remit in investigating corruption in the Queensland Public Service well beyond the scope intended and now engages in matters that are properly the remit of performance management and discipline under the *Public Service Act 2008*. This results in unfair treatment of employees and significant unnecessary expenditure of public moneys. The issues set out in the Terms of Reference are a direct and indirect contributor to this.

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<sup>8</sup> [Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters. Report No. 108, 57th Parliament Parliamentary Crime and Corruption Committee December 2021](#) at p160

## Appendix 1: Terms of Reference

- “3. UNDER the provisions of the *Commissions of Inquiry Act 1950*, the Governor in Council hereby appoints the Honourable Gerald Edward (Tony) Fitzgerald AC QC as Chairperson and Commissioner and the Honourable Alan Wilson QC, as Commissioner, from 7 February 2022, to make careful inquiry, in a transparent and independent manner with respect to the following matters:
- a. noting the findings of Parliamentary Crime and Corruption Committee’s (PCCC) Report No. 108, *‘Inquiry into the Crime and Corruption Commission’s investigation of former councillors of Logan City Council; and related matters’*, the adequacy and appropriateness of the structure of the Crime and Corruption Commission (CCC) in relation to use of seconded police officers, including having regard to:
    - i. the views and recommendations of Tony Fitzgerald QC, as expressed in the report of the ‘Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct’ (the Fitzgerald Inquiry Report) in respect of the establishment of a Criminal Justice Commission (CJC);
    - ii. the structure of other Australian State and Territory integrity bodies, with a particular emphasis on the use of seconded police officers, including the tenure, qualifications and training of such personnel;
  - b. the adequacy and appropriateness of legislation, procedures, practices and processes relating to the charging and prosecution of criminal offences for serious crime and corruption in the context of CCC investigations, including having regard to:
    - i. relevant findings and recommendations of the PCCC Report No. 108, *‘Inquiry into the Crime and Corruption Commission’s investigation of former councillors of Logan City Council; and related matters’* and other previous relevant reports of the PCCC;
    - ii. the use and role of seconded police officers and the retention of their powers pursuant to sections 174 and 255 of the *Crime and Corruption Act 2001*;
    - iii. the extraordinary nature of the CCC’s powers and functions under the *Crime and Corruption Act 2001* and differences from police powers in the investigation, charging and prosecution of criminal offences, including provisions of the *Police Powers and Responsibilities Act 2000*;
    - iv. the consequences arising from the laying of criminal charges as a result of a CCC investigation, including the provisions under section 175K of the *Local Government Act 2009* for a person to be automatically suspended as a councillor when the person is charged with a ‘disqualifying offence’;
  - c. the adequacy and appropriateness of section 49 of the *Crime and Corruption Act 2001*, including consideration of:
    - i. relevant findings and recommendations of the Parliamentary Crime and Corruption Committee’s (PCCC) Report No. 108, *‘Inquiry into the Crime and Corruption Commission’s investigation of former councillors of Logan City Council; and related matters’* and other previous relevant reports of the PCCC;

- ii. the evolution of section 49, including the nature and purpose of amendments made in the *Crime and Corruption and Other Legislation Amendment Act 2018*;
- iii. current and proposed policy, procedure and practice relating to the obtaining of independent advice by the CCC on complex prosecutions;
- iv. the approach to review by, and the obtaining of advice from, respective Directors of Public Prosecutions in other jurisdictions of charges arising out of investigations by serious crime and corruption integrity bodies;
- v. the CCC's interaction with the Director of Public Prosecutions (DPP), including existing information sharing and other processes that facilitate interaction;
- vi. whether there should be a requirement that the CCC obtain a recommendation from the DPP, or a senior independent legal advisor, before police officers use their discretion to charge serious criminal offences and implications for agencies associated with such a requirement;"