

Commissions of Inquiry Order (No 1) 2022

Submission to the Commissioners the Hon Tony Fitzgerald and the Hon Alan Wilson

[REDACTED]

[REDACTED]

Key Words

Process and procedures Crime and Corruption Commission (CCC), devolution to unit to self-investigate, capacity of unit to manage investigation, unit reprisal against the complainant, lack of feedback and support to the complainant, abuse of ethical standards unit, exposure of whistle-blower, humiliation and diminishing conduct, psychological abuse, intimidation, failure to provide safe work place, failure to respond and react to reasonable employee complaints,

Failure to address workplace bullying, harassment, threats and intimidation, corporate bullying, misuse of Human Resource management strategies.

PART 1

Abstract

This submission is to ask the Honourable Commissioners to review the processes and procedures in relation to current and past CCC investigations.

This submission is a plea to ask the Honourable Commissioners to uphold all the power bestowed on the CCC and to give consideration to further extension of the powers of the CCC.

This submission is in two parts, it outlines the consequences of the process and procedures of the CCC in dealing with a complaint [REDACTED]

The submission is in 2 parts

- Part 1 is generic and details the alleged shortcomings of the CCC's dealing with a complaint against a Local Government Authority, hopefully it will be deemed fit for publication
- Part 2 is a confidential document to the Commission; [REDACTED]
[REDACTED] s.

The purpose of the submission is to convince the Commissioners to recommend to strengthen or maintain the powers of the CCC and in no way to diminish them.

The further purpose is for the Commissioner to consider the use and abuse of the devolution principle, Crime and Corruption Act 2001 Part 3 Division 1 Corruption function S34 (c) and also (d)

Address to sections 7 and 8 of this order

at

7. The Commission will ensure that it has regard to the need to protect and promote human rights protected under the Human Rights Act

and to consider this in conjunction with;

8. The inquiry may consider processes and procedures in relation to current and past CCC investigations and judicial proceedings arising from CCC related investigations and charges.

This submission questions the processes and procedures that were taken by the CCC in the earlier stages of a complaint [REDACTED]. The matter of systemic corruption in a LGA was brought to the attention of the CCC by an employee, [REDACTED]

The specifics that identify the matter, the LGA and the employees are in a separate document which puts the matter into context, and is not suitable for public release [REDACTED]

The employee first lodged complaints with the employer including the [REDACTED] Department. This was audacious as the allegations, involved the professional conduct of [REDACTED] to whom [REDACTED] was making the complaint.

At some point the LGA notified the CCC as they deemed the complaint "serious", and in accordance with the need to notify as per the CC Act 2002 s38 (1) and (20). Whether this happened prior or after the employee reported directly for assistance from the CCC is unknown.

In accordance with the Crime and Corruption Act 2001, the CCC referred the complaint back to the LGA under devolution, CC Act 2001 Part 3 corruption s34 (c) Devolution and also (b) Capacity Building.

It is contended that the CCC erred in its judgement of management strategy in this case.

Further the CCC failed at clause s34 (d) Public Interest. Which states; the commission has an overriding responsibility to promote public confidence,

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- If corruption does happen within a unit of public administration, in the way it is dealt with

And

The commission should exercise its power to deal with particular cases of corruption when it is appropriate having primary regard to the following –

- The capacity of, and the resources available to, a unit of public administration to effectively deal with the corruption
- The nature and seriousness of the corruption if there is a reason to believe that corruption is **prevalent** or **systemic** within a unit of public administration.
- Any likely increase in public confidence in having the corruption dealt with by the commission directly

The above is author's emphasis. It is contended that the CCC erred in its judgement on all the above counts.

What happened is that the CCC reflected the matter back to the LGA to be dealt with internally. Including the LGA's Ethical Standard Unit. **Which meant the alleged offenders were investigating themselves.**

It is contended that the LGA used the CC Act 2001 in a manner that exposed the employee. In compliance with Division 2. s 38 the LGA notified the CCC but utilised s39 Duty to notify is paramount (1) the duty of a public official to notify the commission of a complaint under section 38 must be complied with despite

(a) the provisions of any other Act

(b) any obligation the person has to maintain confidentiality about a matter to which the complainant relates.

This was utilised to expose the employee and to place them in line for further acts of reprisal in addition to what had already occurred and exposed the employee as the whistleblower.

The employee wrote to the CCC by email [REDACTED] this was a plea for prompt help

In the email the employee detailed allegations of corrupt procurement practices, record modification and concealment, dishonest dealings with ratepayers and the state government and multiple breaches of local government laws. The employee gave examples of actions at [REDACTED] level. [REDACTED] gave examples of rewards and privileges, some

of which were financial, to employees that also demonstrated that the [REDACTED], [REDACTED] f [REDACTED] would also have known of the practices. Further, there were breaches with contracting and dealing with external actors, including developers, contractors, suppliers and lawyers.

The employee also claimed staff who spoke out were subject to bullying and harassment and that [REDACTED] was scared of reprisal.

"I fear that I'm going to be [REDACTED] one day for the things I have argued against them with," the employee wrote to the CCC.

The employee was [REDACTED] [REDACTED].

[REDACTED]

It is contended in this Submission that the CCC did not exercise its power to act to a situation reported where the information to the CCC gave a clear indication of the extent of the corruption throughout all levels of the unit demonstrating that the nature and seriousness of the corruption. This is not compliant with the CC Act 2001 as if there was a reason to believe that corruption is **prevalent** or **systemic** within a unit of public administration, as per CC Act 2001 S34 (d) The commission (sic) should exercise its power to deal with a particular case of corruption when it is appropriate having regard to the following - the capacity of the, and the resources available to, a unit of public administration to effectively deal with corruption.

It is contended that from the outset of this complaint that it was evident that the alleged corruption involved all levels [REDACTED] all levels participated, [REDACTED]

[REDACTED]

Re the capacity of the unit to handle the matter; it is contended that the CCC has failed on this occasion to comply with its own remit as per the CC Act 2001. This was organised crime, there was no one in the unit suitable, it had no capacity.

The complaint was multifaceted and contained all areas wrongdoing that constitute grounds for a public interest disclosure. There were no allegations of wrong doing or of corrupt conduct by the elected councillors.

- bullying and harassment and coercion of subordinate employees to break the [REDACTED] Act

- workplace health and safety, breaches of [REDACTED] regulations and Disability Act legislation. (With respect to public access.)
- misuse and maladministration of public resources
- workplace conflict and mismanagement of same with intimidation and threats
- danger to public safety and the safety and wellbeing of persons with a disability, and of the environment.

The time interval: The CCC failed to respond to the complaint in a timely manner; the consequence was that the LGA had many months in which to hide, delete, redact, replace or otherwise alter the record of systemic corruption and time to show apparent current compliant behaviour. The consequence:

- (a) was that the LGA employees were able to continue to threaten the employee,
- (b) the [REDACTED] management through use of the [REDACTED] process was able to intimidate, demean, diminish, humiliate and question the integrity of the employee as reprisal for the employee questioning the prior behaviours of the [REDACTED]

The CCC evoked the Devolution principle;

The consequence was the LGA used its internal management processes and the privilege extended to it by the CCC to address the complaint in the unit, and via the [REDACTED] [REDACTED] to take reprisal against the employee and punitive action. This was to allocate the employee to a 'safe' location with tasks well below the pay grade and skill level of the employee, and then to investigate the procurement set up as if the employee had committed an offence of fraud. Part of the internal investigation included re-evaluation of the Enterprise Bargaining Agreement (EBA) by the [REDACTED] but the [REDACTED] [REDACTED] had represented the LGA to the EBA negotiations and issued directions to the employees *which meant that **these actors were investigating themselves.** [REDACTED]

Brief history of events: The employee became fully aware of the extent of the corrupt practices when [REDACTED] Nearly a year before [REDACTED] an attempt was made within the workplace to set the employee up to appear to be fraudulent, or at least as culpable as the others in the Departments in the practice of procurements. The employee believed this to be reprisal for reporting the offences and not participating in, or ignoring the corrupt practices. The employee was asked to sign for [REDACTED] delivered that were other than, and more expensive than, what the employee had specified [REDACTED] The employee refused to sign the document which had their name on it realising that it was a set up and would be revealed at audit. The employee's [REDACTED] ordered that the employee had to sign, instead the employee walked off the job and refused to work in the Dept. The [REDACTED] was fully aware that the standard process was to audit the project at completion.

The exact time interval is unknown, but thought to be about 4 months between this attempt to set the employee up and the employee's emotional plea in writing to the CCC to please come ASAP to assist which was sent by email on in mid- [REDACTED]. In this email the employee refers to threats of a work place accident [REDACTED]. The employee feared for threats against their family and estranged from them to protect them and took lodgings that were less traceable. [REDACTED]

The LGA at first stood the employee down and then the [REDACTED] directed the employee to work in a menial job well below skill level at an offsite location, and paid less. [REDACTED]

[REDACTED] At the same time one of the [REDACTED] resigned and two days later [REDACTED] resigned, followed shortly by [REDACTED]. The employee's [REDACTED] stayed into [REDACTED] and took extended leave then resigned mid-year, around the time of the CCC team's visitation to the Council premises but 3 months after [REDACTED].

The [REDACTED] extended the investigation from [REDACTED] to include the employee themselves for fraud, especially with respect to the procurement(s). This investigation was conducted as part of the internal investigation, considered as devolution to the unit and endorsed by the CCC.

Further [REDACTED] was to find a safe place for the employee to work. In an attempt to manage the situation employee's then "temporary position" was made into a new job with a title containing the employee's profession, but was still the low-grade [REDACTED] job. The employee was invited to apply for the position, in a different department and different GM and the pay would be some \$20,000 less than the employee's substantive position. This could be considered blackmail, as the employee had been forced into this situation in order to have some income. The employee had consulted an employment lawyer who advised action could be taken but could take years. The employee could not access public transport to the new location. The employee could not find suitable unlisted discrete secure accommodation in a time of the COVID 19. influence on housing. Similarly, there was a dire shortage of psychological support, which when available was of significant expense. The employee was also left devoid of supporting references to seek a new job as at that level and role the projects and their good outcomes were your reference. The employee applied for the new position, went to the interview and told the Manager why they could not do the job as they saw similar but lesser corruption in that Department too, and their presence would "taint" the team. By the start of [REDACTED] the employee was stood down as [REDACTED] employer had nowhere safe that [REDACTED] could work. The employee was in extreme distress over the pending investigation and the continuance of the LGA personnel being allowed to investigate themselves and no overt response from the CCC.

The employee's [REDACTED] was of little support as some of the alleged offenders were also in the same [REDACTED] and stood aside leaving it to the LGA and CCC to investigate in the first

instance. A similar position was adopted by the employee's professional [REDACTED]. The professional [REDACTED] did collaborate with the CCC to compile a media statement. [REDACTED] This did not assist or support the employee, who was not informed by either the [REDACTED] or the CCC but viewed it via general media. [REDACTED]

No support was offered by the CCC directly to the employee.

Shortly before [REDACTED] the employee wrote "everything I had has been taken away from me including the one thing I have worked all my adult life for my future, and stability and career and identity."

and also

"When is it a crime to report a crime !!!!"

Summary

The shortcomings of the matter are the process and procedures of the CCC that have significantly contributed to [REDACTED] Commissions of Inquiry Order (No 1) 2022 Terms of Reference 8

The CCC investigation in response to this complaint has failed to address the remit of the CC ACT 2001. Ironically this matter when fully exposed and duly and fully investigated may be of similar magnitude to the matter which was before the original Fitzgerald Inquiry that identified the need for and initiated the CC Act 2001.

The CCC failed to address this complaint in

- A timely and effective manner
- The CCC exercised deficient judgement and inadequate assessment in using the Devolution principle to return this matter to the unit for it to investigate itself.
- The unit, the LGA, did not have the Capacity to investigate itself as some of the alleged offenders were to be the investigators.
- The CCC has not followed its own remit, the CC Act 2001
- The CCC is under resourced and lacking in suitably trained staff in that a matter of this magnitude was not acted upon promptly, effectively or efficiently.
- The outcome amounts to dereliction of duty of care by the CCC

This completes the Section1 of this submission

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



















