KEVIN LINDEBERG

Phone: **Mobile** **Email:**

15 October 2017

The Hon Lawrence Springborg MP

Chairman

Parliamentary Crime and Corruption Committee

Parliament House

George Street

BRISBANE QLD 4000

Dear Mr Springborg

RE: Review of the Operation of Section 329 of the *Crime and Corruption Act 2001*

1. The Terms of Reference of this review have been stated as follows:

   The Committee's review will focus on section 329 of the Act in relation to:

   - ***the definition of improper conduct;***
   - ***the operation of the provision with respect to notifications received by the Committee and Parliamentary Commissioner; and***
   - ***any other matter the Committee considers appropriate.***

2. For the sake of this public submission's completeness, section 329 of the ***Crime and Corruption Act 2001*** ("***CCA 2001***"), along with an interrelated statutory obligation on the **Crime and Corruption Commission ("CCC")** to notify the **Parliamentary Crime and Corruption Committee ("PCCC")** and Parliamentary Commissioner when a suspicion involving or which may involve such improper conduct (as set out below) arises, states as follows:

   Section 329(4) of the Act defines improper conduct as —

   (a) disgraceful or improper conduct in an official capacity; or
   (b) disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the commission; or
   (c) conduct that would, if the person were an officer in a unit of public administration, be corrupt conduct; or
   (d) disclosure of confidential information without the required authorisation, whether or not the disclosure contravenes an Act; or
   (e) failure to ensure—
   (i) a register kept by the commission under an Act is up to date and complete; or
   (ii) all required documentation is on a file kept by the commission and correctly noted on a register kept by the commission under an Act; or
   (f) exercise of a power without obtaining the required authorisation, whether inadvertently or deliberately; or

(g) noncompliance with a policy or procedural guideline set by the commission, whether inadvertently or deliberately, that is not of a minor or trivial nature; or
(h) exercise of a power conferred on the person under this or another Act in a way that is an abuse of the power.

Introduction of a Hypothetical Scenario to Illustrate a Matter of Concern

3. The PCCC has stipulated in conducting this review that "***...The Committee's review will not consider individual complaints about the Commission or commission officers***". Consequently, in the public interest to enable the exposure a *prima facie* serious mischief in section 329 as it stands, one is therefore forced to create a situation to be treated as hypothetical (but which I am prepared to be cross-examined on in public by the PCCC in due course should it so desire) in order to illustrate the mischief. It ought to assist in the realisation that one or all of the following outcomes has been reached. They need urgent remedy, if indeed one can be found due to the apparent lack of political will dominating the current political environment:

   a. **as it stands, the meaning of section 329 is sufficiently broad in its wording for the purpose of addressing alleged '*disgraceful and improper conduct*' inside the CCC so as to also rightly include and justify the usage-cum-finding of the adverse descriptor of <u>non-punishable</u> '*unbecoming*' conduct engaged in, via the following hypothetical scenario, by a CCC Chair in respect of a complaint alleging unconscionable false and misleading conduct when dealing with a whistleblower and his/her public interest disclosure (PID).**

   b. **a finding of '*unbecoming*' conduct may be hypothetically permitted to be found by the PCCC and Parliamentary Commissioner following the review of the following hypothetical complaint triggered under section 329, even in the face of the applicability of section 15 of the *CAA 2001* - meaning of <u>corrupt</u> conduct [which is authorised via section 329(4)(c)] such in section 15(1)(b):**
      1. **(i) is not honest or is not impartial; or**
      2. **(ii)involves a breach o trust placed in a person holding an appointment, either knowingly or recklessly;**

      section 15(d) would, if proved, be -
      (i) a criminal offence; and
      (ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of the appointment.
      Section 15(2) Without limiting subsection (1), conduct that involves any of the following could be corrupt conduct under subsection (1) -
      (a) abuse of public office;
      (e) fraud;
      (h) perverting the course of justice

   c. **the meaning of section 329 offending descriptor words of "*disgraceful*" and "*improper conduct*" <u>do not capture</u> adverse "*unbecoming*" conduct worthy of penalty, even if hypothetically engaged in by a CCC Chair in the face of the statutory requirement attendant on said office holder of having to be a qualified legal practitioner capable of appointment as a judge to the High Court and Supreme Court and whose own legal professional Code of Conduct can find such "*unbecoming conduct*" sufficient reason to either discipline or remove the likewise private (if not the aforesaid) legal practitioner from the Rolls to thereby disqualify him/her from practising law in order to preserve and protect public confidence in the integrity of the administration of justice;**

   d. **no matter what words may be used, our current machinery of government in this vital sphere of addressing and eradicating misconduct in government and of holding the CCC to account may be now so dysfunctional, unreliable and self-serving in unicameral**

Queensland that words and their innate purpose have lost their commonly held reliable meaning so that they may now mean anything and nothing at the same time under the *CCA 2001* in the same material circumstances if and when the ends apparently suit the purposes of the respective decision-makers or political parties, not the whistleblower who risks everything or the decent public at large who instinctively and reasonably recognise and know real or suspected dishonesty when confronted with self-evident betrayals of trustworthiness in public office.

The Hypothetical Scenario

The hypothetical scenario sees a whistleblower personally lodge a public interest disclosure (PID) with the CCC Chair. The PID's characteristics and supporting evidence are agreed to be so credible and serious as to warrant, in the joint opinion and decision of the CCC Chair and CCC Board (and with the agreement of the whistleblower) that the special appointment of an *interstate* retired Supreme Court judge to perform a preliminary review of the allegations and by coming from a jurisdiction external to Queensland shall satisfy the CCC's legal/ethical requirements under which it must always operate to be independent, fair, impartial and act in the public interest. The undertaking is then put in writing by the CCC's Chair to the whistleblower (with prior agreement of the CCC Board). It includes the material precondition that a retired *interstate* senior judge would be engaged. At no stage in the subsequent legal process under the authority of the *CCA 2001* is the whistleblower ever informed or led to believe that such a material change has taken place because it is known by the CCC Chair that he/she (i.e. the whistleblower) would immediately withdraw from the review which, *inter alia*, included allegations against certain sitting Queensland judges. Indeed, the whistleblower is so (mis)led into believing that the agreement is being fully complied with by the CCC that he/she discloses the identity of a (hitherto unknown) key witness to the CCC Chair to be interviewed by the senior *interstate* judge which he/she (i.e. the whistleblower) would not have otherwise done in order to afford the witness protection from reprisal and related considerations.

The hypothetical scenario continues on. Some 4-6 weeks after signing the agreement, the CCC secretly switches and thereby materially changes the agreement by engaging a recently retired Queensland Supreme Court judge which was hitherto accepted as not being legally and ethically open to do due to the PID's special characteristics and the CCC's obligation to always act in an impartial manner. After the passage of another 4 weeks, despite a recorded request from the whistleblower to be told, the CCC Chair refuses to disclose the engaged judge's identity on the grounds of confidentiality and so refuses to disclose the identity at a time when the CCC Chair unquestionably knows that the material change has occurred. The whistleblower still continues to trust the CCC Chair that nothing of a materially relevant nature has changed, and continues to honour his/her undertaking requested of him/her by the CCC Chair to remain silent about the preliminary review. As events transpire this CCC Chair leaves the office with the review continuing in his/her absence.

The review is completed after a period of around 12-14 weeks. The whistleblower contacts the new CCC Chair to discuss the status of the preliminary review including the new CCC Chair's own conflict of interest in handling the PID due to an earlier involvement. In writing, the new CCC Chair informs the whistleblower that the review has been completed with none of the allegations able to be substantiated. No explanation is provided. The new CCC Chair declares that no meeting is warranted and nor will any further help be provided. No report is ever made available for public scrutiny.

The whistleblower then writes several letters to the new CCC Chair seeking an assurance that the original agreement was fully honoured after learning that the CCC has secretly breached the agreement in a material way by engaging a retired Queensland Supreme Court judge to conduct the preliminary review and never informed him/her (i.e. the whistleblower) about

this material change of inquirer/decision-maker. When challenged by the whistleblower, the new CCC Chair admits that there was an original agreement but that the CCC subsequently just changed its mind and that he/she has examined the findings and concurs with the outcome. The new CCC Chair fails to recognise his/her own conflict in the matter by his/her previous involvement at a commission of inquiry when acting as Counsel Assisting which the whistleblower submits should properly and automatically recuse him/her from being a decision-maker in the PID as CCC Chair due to the perception of bias based on the presence of prejudgement.

The whistleblower alleges that an egregious betrayal of public trust has taken place. It is alleged to involve unconscionable false, deceptive and misleading conduct (i.e. a fraud against the administration of justice) by the former CCC Chair and others. The whistleblower states that the review is a nullity at law. The matter comes before Parliament under privilege by means of correspondence from the whistleblower (pursuant to reasons associated section 61 of the *Constitution of Queensland 2001*) while the CCC Chair refers the whistleblower's allegation to the PCCC pursuant to his/her notifying obligation under section 329 of the *CCA 2001*. The PCCC does not act immediately, instead it takes close on one year before referring the matter to the Parliamentary Commissioner to review and report back on.

After nearly another year, the CCC Chair's conduct is found by the PCCC and Parliamentary Commissioner to be "*unbecoming*" but <u>not punishable</u> under the *CCA 2001* (or *Criminal Code*), and that he/she acted alone. As events transpire, the accused CCC Chair is deceased when the adverse finding is handed down. The whistleblower responses by rejecting the finding, and declares it as a shocking, shameful and unjust act that the deceased former CCC Chair should be treated as "the lone scapegoat" when it was simply implausible to believe that he/she could have acted alone. The whistleblower is again told to not speak out about the matter by the PCCC by invoking as a threat the possible imposition of Parliamentary Standing Order 211A (i.e. contempt) against the whistleblower if he/she fails to comply. The PCCC declares the matter closed.

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Other Related Matters and Considerations

4. In his endorsement message of the CCC's October 2011 Code of Conduct, new and current CCC Chair, Mr Alan MacSporran QC, *inter alia* said the following to the CCC staff:

    "A code of conduct is particularly important at the CCC given that our role involves us in providing advice and direction to the public sector generally on ethical issues. The community therefore expects us to be above reproach and to adhere to high standards of ethical conduct — both in carrying out our duties in our working relationships and in our private lives."

5. The CCC's Code of Conduct undoubtedly formulated its ethical-cum-legal expectations so as to be in harmony with relevant provisions of the *CCA 2001*, *Criminal Code 1899* (Qld) and the *Public Sector Ethics Act 1994.* Its foundation and reasoning were based on acceptable and expected honest conduct by all public officials in public office (if not in their private lives as well so as to always be a '*fit and proper*' person worthy of holding public office).

6. In a democracy where its government purports to operate under the rule of law without fear or favour and rejects any application of the law by double standards (advantaging "the governors") and partisan arbitrariness in decision-making, it is a right and binding thing to expect complete trustworthiness in the functioning of those in public office by those whom they serve and from whom those public officials' salaries are secured by taxes, namely the public at large.

7. Equally, all free men and women, who respect and daily put their faith in the rule of law and government institutions operating under its 3 independent arms (i.e. the Legislature, Executive and Judiciary) within the confines of the doctrine of the separation of powers, consciously and in good faith pay their elected/appointed public officials to perform varying public services in exchange for a contractual, mutual benefit and security of trust while in public office not for its betrayal by deceit or abuse with an attitude of indifference and a corrupt confidence of impunity.

8. It follows therefore that, if and when the CCC strays from the path of high probity in its conduct, the PCCC and Parliamentary Commissioner owe Parliament and the people a heavy duty to perform their respective watchdog responsibilities pursuant to section 329 in a diligent, fearless, full and proper manner in order to bring the CCC and its officials back to that path of high probity, not to join them as well.

9. I respectfully submit that in its wisdom and sworn duty to enact laws, particularly concerning coercive law-enforcement which instils public confidence in the integrity of the watchdog operations of whole-of-government entities like the CCC, Parliament enacted this binding related operational principle/provision of honesty on the CCC and its staff, including on those agents who may, from time to time, be contracted in by the CCC to perform a particular task[1]. The plain unequivocal purpose was to ensure that such an entity with such coercive policing powers did and does not become a law unto itself. It is equally expected that the CCC's designated oversight watchdog, the PCCC, did and does not become captured by the CCC into becoming its polite, compliant partner, too frightened to bring to account all dishonest conduct engaged in by the powerful CCC at whatever level it may happen to occur. In this regard, Parliament enacted section 57 of the *CCA 2001* - **to act independently etc** - as a 'catch-all provision' to underpin and ensure probity/trust in public office within the CCC by its emphatically clear wording: (Quote)

> ***"The commission must, at all times, act independently, impartially and fairly having regard to the purposes of this Act and the importance of protecting the public interest."***

10. I submit that Parliament never intended any putative hair-splitting legal arguments further on in the *CCA 2001* (i.e. by the meaning of words like "*disgraceful*" and "*improper conduct*" in section 329) to be used to undermine or render foolish and/or uncertain, a general belief by Parliament itself and the public - most especially would-be whistleblowers - in the veracity of such an emphatic obligation because it is, by plain English reading of its wording, an **<u>unequivocal</u>** high duty on the CCC as a whole, inclusive of its Chair and Board, to always be pristine exemplars of probity like Caesar's wife.

11. It is submitted that to have such an essential duty of honestly open to hair-splitting, nonsensical definitional argument as currently exists must be addressed. For example, using the hypothetical scenario, in the face of alleged compellingly evidence suggesting that false and deceptive conduct exists against the CCC in respect of a highly material matter, **<u>non-punishable</u>** '*unbecoming/inappropriate*' conduct engaged in by the CCC (at whatever level it may occur including, by the hypothetical example, even its Chair), it may be declared as being correct at law and not otherwise constituting the available and **<u>punishable</u>** description of '*disgraceful or improper behaviour*', let alone triggering section 329(c) which in **<u>full</u>** combination triggers section 15 of the *CAA 2001.*

12. While the PCCC might take the position in this review that public policy ought not to be based on a hypothetical scenario as this submission present, but it would be dangerous in the extreme if

[1] See sections 239 and 256 of the *CCA 2001*

ignored until it became real because the unexpected often happens, let alone it having occurred and being concealed by the PCCC from Parliament and the people.

13. It follows therefore that unless the meaning of key words/loose terms like '*disgraceful'* or *'improper conduct*' are properly defined - were such a hypothetical circumstance to become real - then it would, in my opinion, to invite either a 'get out of jail' for CCC officials or bring ridicule on the PCCC, Parliament and the law by unacceptably and dangerously rendering the clear intent of section 57 of the *CCA 2001* to be:

    a. **a complete farce against the public interest;**
    b. **impotent of enforcement;**
    c. **breached with impunity; and**
    d. **devoid of any semblance of trustworthiness.**

14. Given that this is a PCCC review, it is relevant to illustrate what the CCC expects of itself, pursuant to complying with its own Code of Conduct in respect ensuring the integrity of conduct associated with inquiries and reports to the PCCC, Parliamentary Commissioner and elsewhere as the case may be. Point 1.6 of the Code is therefore relevant: (Quote)

1.6 – Factual accuracy

We share a professional and personal obligation to be honest, factual, impartial, balanced and complete when compiling reports and summaries relating to the work of the Commission. We must not deliberately make false or misleading assessments of the material available to us. This obligation applies across all aspects of our work, including:

- ***advice given internally or to other units of public administration***
- ***investigation reports***
- ***inquiry and hearing reports***
- ***research papers, reports and publications***
- ***selection and referee reports***
- ***performance reports***
- ***reports provided to the PCCC and the Parliamentary Commissioner.***

The Importance of a Common Understanding/Acceptance of what a Word Means

15. Civil society generally relies on reasonable people accepting (and where necessary obeying) what words plainly mean within reasonable and sensible bounds. They should not have to always rely on a court to define their legal meaning as expressed in legislation which, by being the law of the land, is required to be understood and respected by everyone, not just QCs, or for that matter the CCC, PCCC or Parliamentary Commissioner because ignorance of the law does not equate as an excuse for disobeying the law.

16. Breaking this important and key word "*trustworthiness*" into its commonly accepted components, "*truth*" connotes a quality/something/someone that can be relied on; "*worthiness*" connotes a quality/something/someone that deserves respect. In combination, it therefore commonly connotes to be something or someone that is trustworthy deserving of your complete trust, and can be rightly expected to reciprocate that trust in word and deed.

17. In these circumstances involving the daily application of "*trustworthiness"* by CCC officials (but most especially at its highest levels inside the CCC insofar as setting standards by personal example goes) in performing their duties to eradicate official misconduct from Queensland's governance and to encourage would-be whistleblowers to come forward, I submit that any

deviation from its application (i.e. to be completely trusted) must reasonably and easily breach a lower threshold of **improper** conduct which equates to "*disgraceful*" and "*improper*" [i.e. *CCA 2001* section 329(4)(a)] by the destruction of that trust, and, depending on its material deceptive nature (to the issue at hand in the hypothetical), may equate to **corrupt** conduct [i.e. *CCA 2001* section 329(4)(c)] by reason of the violation of the state of trust (by act or act of omission) to knowingly advantage him/herself (i.e. the CCC official/s involved) or another (e.g. those who may be the subject of the alleged wrongdoing and its investigation).[2]

18. In these circumstances, when one is dealing with the conduct of CCC officials, many of whom have legal qualifications and, indeed, its Chair and Deputy Chair are obliged to hold legal qualifications sufficient to be appointed as a judge to the High Court and Supreme Court *et al*[3] a clear and consistent line of authority exists under the *CCA 2001*, *Criminal Code 1899* (Qld), *Public Sector Ethics Act 1994* and their relevant Code of Conduct. Accordingly, they ought to reasonably know that any false and misleading conduct on their part (e.g. to knowingly misled another into believing an unwarranted veracity of a material situation when knowing that the truth is otherwise) is always unacceptable professional conduct to be assiduously avoided. For example, it is well settled that a legal practitioner in private practice (i.e. solicitor/barrister) may be disciplined or removed from the (practice) Rolls if it is proved that he/she knowingly engaged in professional and personal conduct which was not fit and proper.[4]

19. Accordingly, given the explicit legal qualifications required of a person seeking to hold either the Office of CCC Chair or Deputy Chair, pursuant to section 224 of the *CCA 2001*, then if, as a hypothetical example, a CCC Chair were to be ever found to have engaged in "*unbecoming*" conduct in public office during the performance of his/her public duties but which the PCCC and Parliamentary Commissioner decree does not breach the full scope of section 329(4) of the *CCA 2001* [or other potential provisions of the *Criminal Code 1899* (Qld) regarding abuse of office *et al* as may be reached via section 329(4)(c) and section 15 (See **Point 3(b)**)], then it would tend to publicly show that the CCC, PCCC and Parliamentary Commissioner are content to hold its solicitor/barrister public officials to a different professional standard than those in private practice as they may currently interpret the meaning of the sections 329 and 15 in their full scope if the hypothetical example were ever to be a matter of fact.

20. It also reasonably and logically follows that if indeed such a hypothetical circumstance did exist in fact then it may be open to conclude that there would also appear to be a highly concerning contemptuous attitude towards to the importance of the concept of **all** emanations/entities of "the Crown" expected to conduct themselves honestly and ethically as "model litigants"[5] being held by the CCC and its watchdogs, the PCCC and Parliamentary Commissioner. That would be intolerable.

Authorised or Unintended Double Standards Exposed in the *CCA 2001*

21. While I have used the word "*unbecoming*" hypothetically in this submission and not mentioned any specific complaint (in according with the PCCC's guidelines), the PCCC (Parliament and the public) should nevertheless be fully cognizant of the fact in doing this review that if a police officer (equally sworn as a CCC official to uphold the law without fear or favour) were to engage

[2] See for examples, sections 87 - **Official Corruption**- and 92(1) - **Abuse of Office** - of the *Criminal Code 1899* (Qld)

[3] See section 224 of the *CCA 2001* - **Qualifications for appointment - chairman and deputy chairman**

[4] See Part 4.2. Key concepts - sections 418, 419 and 420 of the *Legal Profession Act 2007* - **Meaning of unsatisfactory professional conduct - Meaning of professional misconduct - Conduct capable of constituting unsatisfactory professional conduct of professional misconduct**

[5] Sir Samuel Griffith CJ in ***Melbourne Steamship Co Ltd v Moorehead*** (1912) 15 CLR 333, 342

in so-called "*unbecoming*" conduct - whatever the word connotes!! - he/she may be disciplined (and dismissed) under Schedule 2 of the *CCA 2001*.

22. It relevantly states: (Quote)

> ***"police misconduct** means conduct, other than corrupt conduct, of a police officer that —*
>
> ***(a) is disgraceful, improper or unbecoming a police officer;***
> ***or***
> ***(b) shows unfitness to be or continue as a police officer; or***
> ***(c) does not meet the standard of conduct the community reasonably expects of a police officer. "***

23. It is submitted that while all public officials should always conduct themselves in a fit and proper manner in all their public activities, it can hardly be suggested, much less acceptable, as being ethically, morally right or just for a police officer to be disciplined (including dismissed) on the grounds of established '*unbecoming*' conduct if and when his/her judge (i.e. the CCC Chair), may engage in '*unbecoming*' conduct him/herself and not suffer any penalty if the hypothetical scenario did exist in fact. In my opinion, this would be a very significant inconsistency and so anomalous in justice that it ought not to be ignored in this review if the PCCC holds any information in its archives that my hypothetical scenario does exist in fact.

24. Nothing destroys confidence in the impartial administration of justice and in the trustworthiness of the instrumentalities of government more than when a perception-cum-reality of applied double standards by and for those in high public office has been rendered and enjoyed by them while those same officials are authorised to judge the conduct of others under them (i.e. "the governed") of suspected wrongdoing in materially similar circumstances where trustworthiness in public office is expected, if not demanded.

Recommendations

25. According, the following recommendations are submitted in good faith for consideration:

> **RECOMMENDATION 1: THAT if the PCCC decides that the words "*disgraceful*" and "*improper conduct*" in section 329 of the *CCA 2001* are sufficiently adequate to capture offensive and unacceptable conduct inside the CCC in order that it might be identified, addressed, eradicated and not repeated, it is respectfully recommended that a description of what those words shall mean should be inserted as a matter of urgency in Schedule 2 of the *CCA 2001*.**

26. I remind the PCCC of the necessity and wisdom of **Recommendation 1** due to the capacity of certain unethical decision-makers (as the occasion may arise from time to time) to abuse the discretion which they may exercise under statute by referring to well established case law going back to 1891.

27. For example, French CJ cited Kitto J words in ***R v Anderson; Ex parte Ipec-Air Pty Ltd*** [1965] HCA 27; (1965) 113 CLR 177 (28 May 1965) at 89 who, in turn, referred to ***Sharp v Wakefield*** [1891] AC 173: (Quote)

> ***"...a discretion allowed by statute to the holder of an office is intended to be exercised according to the rules of reason and justice, not according to private opinion, according to law, and not humour, and within those limits within which an honest man, competent to discharge the duties of his office, ought to confine himself".***

RECOMMENDATION 2: THAT if a legal practitioner holding whatever position in the CCC, but especially in its leadership group (by relevance of section 224 of the *CCA 2001*), is found to have engaged in "*unbecoming*" conduct in office in respect of a referral to the PCCC by the CCC under section 329 of the *CCA 2001* not warranting any penalty in contradiction as may normally apply from an action instituted in the private sector, pursuant to the legal profession's own Code of Conduct and respective legal profession legislations regarding standards and '*fit and proper conduct*' *et al*, it is respectfully recommended that it ought not be so founded by the PCCC and Parliamentary Commissioner without and unless a full explanation to Parliament by PCCC tabling a report so that any perception of double standards cannot arise in the CCC's conduct, especially given the role of the CCC Chair in respect of him/her having the duty to impartially address allegations of judicial misconduct pursuant to section 58 of the *CCA 2001*.

28. I respectfully request that this submission be made public without redaction. Should the PCCC so desire, I would be happy to appear at a public hearing to be questioned under oath regarding its contents and any other related matters.

Yours sincerely

KEVIN LINDEBERG

15 October 2017

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PUBLIC SUBMISSION

TO

PARLIAMENTARY CRIME AND CORRUPTION COMMITTEE

ON

THE REVIEW OF SECTION 329 OF THE *CRIME AND CORRUPTION ACT 2001*

Queensland Whistleblowers Action Group (Inc) (QWAG) wishes to express its concern at the nebulous character of the key triggering words in section 329(4)(a) and (b) of the *Crime and Corruption Act 2001*, namely "*disgraceful*" and "*improper conduct*".

The vagueness of their meanings per se would seem to leave them open to uncertain subjective interpretation which might see inappropriate conduct within the Crime and Corruption Commission (CCC) improperly slip through the net of accountability, and, in doing so, demoralise whistleblowers from coming forward.

QWAG has a real concern that unless caution, commonsense and completeness of potential reach of the relevant law are exercised by a decision-maker, the vagueness of those terms might adversely impact on the application of the meaning of section 329(c) which, on its plain understanding, also invokes the **full scope** of section 15(1) of the *Crime and Corruption Act 2001*, in particular sub-sections (b), (c), and (d), and (2)(a),(e) and (h) which involve conduct which may constitute abuse of public office, fraud and perverting the course of justice.

It is well settled in ***R v Rogerson and Ors*** *(1992) 66 ALJR 500* where Mason CJ at p.502 ruled: *"...it is enough that an act has a* ***tendency*** *to deflect or frustrate a prosecution or disciplinary proceedings before a judicial tribunal which the accused contemplates may* ***possibly*** *be implemented...*" (Bold and underlining added) and, working in combination, in ***Lazarus Estate Ltd v Beasley*** CA [1956] 1 QB 702,[1956] 1 All ER 341 where Lord Denning ruled: "...*No court in this land will allow a person to keep an advantage he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud.* ***Fraud unravels everything*****.**"[1] (Bold and underlining added)

The mischief which QWAG is seeking to address is that if conduct based on credible evidence exists showing that a CCC official, particularly one of senior rank, knowingly deceives a whistleblower about the true state of things in the CCC official's own knowledge at the time which, by its deceptive nature and breach of trust, improperly causes or tends to cause the whistleblower to accept or aid an

[1] Cited as a principle recognised in Australian jurisprudence by French CJ in ***Minister for Immigration and Multicultural Affairs v SZFDE*** (2006) 154 FCR 365 at [121]

investigative process which he/she would not have otherwise agreed to had the true state of things been made known to him/her, then a term such as "*disgraceful*" ought not to be applied because of vagueness of meaning does not properly describe or capture (and perhaps not trigger a disciplinary act) due to its potential seriousness of the deceit by being, at the very least, a tendency to have inferred with the due administration/course of justice.

Plainly, in QWAG's opinion, for any public official to engage in abuse of power, fraud and perverting the course of justice at any time and place can easily be described as "*disgraceful*" but the law does to limit it to such an 'open' and 'soft' descriptor (where it can really mean anything by the inappropriate exercise of a decision-maker's discretion) because the law specifically proscribes any such conduct which, if proven, would not just equate to official misconduct but would also be criminal in kind.

Therefore, QWAG calls on the PCCC to recommend to Parliament that Schedule 2 of the *Crime and Corruption Act 2001* define what the word/term "*disgraceful*" and "*improper conduct*" shall mean under section 329(4)(a) and (b) in order that whenever they are applied, Parliament, public, whistleblower or another (as may be directly affected) may judge as to whether or not either word/term accurately 'fits' the factual circumstances of the mandatory referral from the CCC to the PCCC, particularly against the breadth of the sister provision of section 329(4)(c) with its clear linkage to full scope of section 15(1) of the *Crime and Corruption Act 2001*.

Left undefined, an inappropriate discretionary application against the facts has the real and potential capacity to cause consideration disharmony within the Act itself, let alone the *Criminal Code* and the related *Public Sector Ethics Act 1994*.

QWAG would be prepared to speak to this public submission at any public forum established by the PCCC.

Gregory McMahon

President

Queensland Whistleblowers Action Group (Inc)

16 October 2017