

Anti-Corruption Agencies in Australia; Roles, Challenges & Gaps

Introduction

The original Criminal Justice Commission (CJC) was established in 1990 following a recommendation arising from the Fitzgerald Inquiry which conducted hearings in Brisbane between 1987-1989. At that time, the jurisdiction given to the CJC was solely in respect of corruption matters. Separately, the Queensland Crime Commission (QCC) was established in 1997 to deal with matters involving serious and organised crime. In 2002, both entities were merged to create the new Crime and Misconduct Commission (CMC).

One of the ongoing challenges faced by the current organisation is that we have been forced to manage the different requirements for the exercise of our substantial coercive powers in the crime or corruption jurisdiction. This arises because when the entities were merged, the acts which established each of the entities separately were effectively merged into one larger act without reference to any attempt to reconcile the many varied and different provisions governing the crime or corruption jurisdiction.

This has caused considerable operational difficulty because the requirements for the exercise of our coercive powers differ according to which jurisdiction we are seeking to engage. There is no rational reason why these differences exist and it is simply a result of the different drafting styles engaged in at the time. We have raised this issue with successive reviews of our legislation and despite recommendations for reform nothing has been achieved. We have been assured that it is on the Government's radar and hope that something is done to resolve this anomaly sooner rather than later.

In 2014, we became the Crime and Corruption Commission (CCC) when our jurisdiction was altered slightly to make it clear that we would only deal with more serious and systemic corruption matters.

A new requirement was introduced to require complainants to complete a statutory declaration before the agency had jurisdiction to deal with their complaint matter. This was no doubt a well-intentioned amendment but our fear was that it would discourage complainants who had genuine matters of complaint to raise, but who, for reasons of literacy or simply not having the wherewithal to complete such a document would be discouraged from pursuing a complaint.

Of greater concern was that in this raft of amendments we also lost our prevention function, which in my mind is one of the critical functions that this agency exercises. After all, if corruption can be identified and prevented from developing, it is a much more efficient way to deal with it than to be forced to investigate serious and systemic corruption once it is established.

In 2016, the requirement for a statutory declaration to accompany corruption complaints was abolished and we regained our corruption prevention function.

We have just had our oversight Parliamentary Crime and Corruption Committee (PCCC) complete its review of our legislation, and the recommendations made by the PCCC have in large part been accepted by the government which is in the process of implementing most of the suggested reforms in the bill currently before Parliament.

The Agency

The CCC is unique in Australia as the only integrity agency that has jurisdiction across both crime and corruption matters. The agency also has a witness protection function, which is again unique in Australia as having sole responsibility for witness protection as opposed to

what happens in most other jurisdictions across Australia where the police service conducts that function.

The CCC also has a proceeds of crime division, a research division, an intelligence division, and also as part of its corruption jurisdiction has a significant role to play in oversight of the Queensland Police Service. During today's session I will focus on our corruption activities.

The CCC has a staff of approximately 350 people including approximately 80 seconded Queensland Police Officers who perform an investigative role as well as conducting covert surveillance activities as part of the many investigations in corruption and crime.

Fitzgerald recommended in his report that the agency have independent investigators who were able to investigate police without fear or favour. I accept that in an ideal world this would be the preferred model. However the reality is that the funding to resource such a model is simply not available to us. The other thing I need to say is that my experience as head of the CCC has been that the police seconded to the agency routinely investigate other police and do it extremely well. I think the reality is that trained police have exceptional investigative skills which are essential for a successful and thorough investigation. Secondly, I think it understates the honesty and integrity of police officers to believe they are incapable of investigating corrupt fellow officers. I think there is no finer endorsement of a police officer than to be able to say that he or she willingly and efficiently carried out an investigation into the wrongdoing of a fellow officer. We pride ourselves at the CCC as handpicking the best to come and serve here as part of our police contingent. Anyone who fails to measure up has their secondment cancelled forthwith. Those who stay and work well in our multidisciplinary teams leave here with a ringing endorsement and enhanced career prospects.

The CCC has a close working relationship with other integrity bodies in Queensland such as the Queensland Audit Office, the Integrity Commissioner, the Queensland Ombudsman, the Queensland Police Service, and the Public Service Commission. We also have a close relationship with the Office of the Information Commissioner which deals with all aspects of right to information enquiries and privacy issues.

As mentioned earlier, the agency has extensive coercive powers which are invaluable investigative and intelligence gathering tools.

It is important to note that the CCC is *not* a law enforcement agency, and we have no ability to determine guilt or innocence. If during the course of an investigation, we uncover evidence of corrupt conduct, we put together a brief of evidence for the Director of Public Prosecutions to determine independently whether a matter will proceed to hearing. The same evidence gathering exercise is carried out in respect of disciplinary investigations, except that in that case, the material is provided to the head or Chief Executive of an agency to enable them to make a decision whether the matter will proceed to a disciplinary hearing. The CCC in that case does have the power to review a decision if it considers that the agency has been too lenient and fails to meet community expectations. Such reviews are available through the Queensland Civil and Administrative Tribunal (QCAT).

Our powers enable us to compulsorily acquire the production of records, the production of information and to appear at hearings (private or public) to give evidence in respect of the subject of an investigation.

Witnesses who are required to appear at hearings of the Commission must answer questions asked of them even if such answers might tend to incriminate the witness. The safeguard for the witness is that whatever they say in such compelled circumstances cannot

thereafter be used against them in any other proceedings except in relation to the falsity of the answer given in a Commission hearing.

The clear rationale is that the CCC should be able to establish the truth in respect of an allegation without being unduly hampered by a person's reticence to answer in circumstances where a person's answer might tend to incriminate them.

The *Crime and Corruption Act 2001* s.177 sets out that ordinarily hearings of the Commission are to be held in private. The provision goes on to state that the Commission may open the hearings to the public if it:

- i. considers closing the hearings to the public would be unfair to a person or contrary to the public interest; and
- ii. approves that the hearing be a public hearing

The Commission currently holds the view that most hearings of the Commission will in the ordinary course be conducted in private, and be for the purpose of either gathering intelligence about potentially corrupt activities or investigating corrupt activities. This is particularly the case so that where it appears that the conduct being investigated and about which there seems to be a prima facie case resulting in the potential prosecution for serious and systemic corrupt conduct, these matters should be canvassed in private so as to ensure that trials that may arise out of the evidence gathered will not be prejudiced or otherwise impeded.

The current view is that public hearings should generally be reserved for instances where systemic flaws identified in processes and policies should be exposed to the public with a view to producing a public report which may make recommendations for legislative or other reform to correct such deficiencies. These hearings may in turn incidentally expose corrupt conduct but the purpose of the hearing would not only be to expose that conduct but to take a broader view of recommending the reform of a system that needs to be corrected.

The CCC has other significant powers that it routinely exercises, such as the ability to search a premises after executing search warrants, conduct surveillance and to use surveillance devices to gather evidence after obtaining a surveillance device warrant. We also have the power to employ controlled operations involving police officers (and others) to conduct covert operations, again with a view to gathering evidence of serious misconduct. All of these coercive, and other powers are subject to significant constraints and oversight.

In the case of search warrants, surveillance devices and our covert operations, these are required to be authorised by a judicial officer and approved by internal and external committees operated for that purpose.

In the case of our corruption investigations, we have a 'Matters Assessed Committee' (MAC) that routinely assesses complaints that come to us to see whether they comply with our jurisdictional requirements for being serious and/or systemic conduct warranting the exercise of our jurisdiction. If we determine that the matter is serious enough to engage our jurisdiction, we have the choice of investigating the matter ourselves or devolving the matter to the agency responsible for that area of public sector conduct to investigate subject to our monitoring of the agency's own investigation of the matter. Should the CCC investigate the matter and in the course of doing so exercises any of our coercive powers, serious consideration is always given to the propriety of exercising those powers, and as mentioned previously if it involves the use of surveillance devices, search warrants or covert access

and/or controlled operations, those matters are subject to the approval of a judicial officer who is fully briefed on the pros and cons of the exercise of such powers.

In addition, the organisation is the subject of oversight by the Parliamentary Crime and Corruption Committee (PCCC). Approximately every two months, I and my Executive Leadership Team meet with the PCCC at Parliament House in a public meeting wherein the Committee members are able to ask questions about the operation of the CCC in a session which is live streamed and available to the public. Following the public meeting, the Commission meets with the PCCC in a private session where matters that are not for public consumption are able to be discussed with the PCCC. Prior to these meetings the CCC provides detailed briefing material in respect of every operation and activity being conducted by the CCC in the previous reporting period. In addition, the PCCC are able to take complaints from the public and others about perceived deficiencies in the operations of the CCC.

The Parliamentary Crime and Corruption Commissioner is an individual who serves as an agent of the PCCC and can be tasked by the PCCC to carry out any investigation of the CCC's activities which are stipulated. In addition the Commissioner has inspection and oversight powers concerning the covert activity conducted by the CCC together with its telephone interception capability. The Commissioner routinely audits the records relating to such activity carried out by the CCC.

Challenges

One of our challenges is to ensure that we use our powers to combat and reduce the incidence of major crime and corruption in the public sector in Queensland in a balanced and fair way ensuring that we discharge our accountability in the use of those powers in accordance with the law, in the public interest, with integrity and with transparency.

We are required under our statute by s.57 to

'at all times act independently, impartially and fairly having regard to the purposes of the act and the importance of protecting the public interest.'

It is a necessary but not straightforward exercise to ensure that every decision we make to exercise our powers relies on the skills and knowledge of our specialist staff to ensure that we make correct and robust decisions that are transparent and demonstrably consistent over time.

Another one of our challenges is our current QPS disciplinary reform project. This is an area which has been looked at by several research projects over a long period of time in an attempt to cure the many ills inherent in the internal police disciplinary system. Despite the good will from all involved including politicians from both sides of politics and including a series of consistent recommendations to reform the system, nothing has been effectively achieved.

I have taken it upon myself to lead the reform project to achieve a successful outcome. I'm pleased to say although it is early days, we have made significant progress and are currently involved in a trial of a process which is aimed to increase timeliness and to achieve a more transparent and just outcome not only for the police service as a whole but for individual officers who might be accused of wrongdoing.

I am pleased to say that the project has gained the universal support, not only of the government, but the opposition and the police unions. The current trial involves the use of what is termed the 'Joint Assessment and Moderation Committee' (JAMC) which has

membership of the Ethical Standards Command of the QPS together with representatives of the CCC including myself. The JAMC is designed to triage all complaints that come to the QPS and the CCC with a view to escalating at the very early stages of a complaint being received a discussion about how the matter should be dealt with. It is at this early stage that differences of opinion can be resolved so that the matter can be processed in an efficient way which will maintain fairness for the subject officer together with public confidence in the system and its operation. Although it is early days, we have been impressed thus far with the ability to have robust discussions and resolve any issues of contention between the CCC and QPS in respect of individual complaint matters.

We have moved to the second stage of the trial which involves matters which are devolved by the CCC back to the QPS for investigation and report to the CCC to again bring those matters to a smaller committee not dissimilar to the JAMC to resolve any differences of opinion between the QPS and the CCC as to how a matter is progressing or how it should be dealt with.

The project team has also resolved to form a sub-committee to produce a set of regulations which might define the entire protocol for the operation of the QPS disciplinary system. The notion being that once an agreement is reached by the parties in respect of that set of regulations, it will be provided to government and the opposition with a view to having them enacted by virtue of a small amendment to the current *Police Service Administration Act 1990* for that purpose.

Again, I must say I am impressed by the level of cooperation I have had not only from the QPS but significantly from the police unions in this process. There has been an enormous amount of goodwill directed towards achieving a successful outcome for this project, and I am cautiously optimistic that by the end of this year we will hopefully be in a position to complete the reform.

Another one of our current challenges is to inform the public about the sort of work that we do at the CCC. There are many matters as you would understand that we are not able to discuss publically, but there are many other matters that can be discussed and *should* be discussed with a view to having the public understand the important work that the agency does in order to gain their confidence in the way we do our work.

I've taken the view that where we decide not to take on a complaint because in our view it has either no substance or no reasonable prospects of a successful outcome, we should in those circumstances provide short and transparent reasons and be answerable to the public as we are to the PCCC for that decision. It seems to me that is a way we can hopefully ensure the public has confidence in the agency and the way it operates to protect the community at large.

That approach necessarily involves developing a relationship with the media. I have taken steps to make myself available in that regard, and have conducted several interviews on radio and with the print media. Where possible we have held press conferences to promote our work and inform the public of aspects of our work.

To enhance that process we have offered to conduct briefings with journalists who are interested in aspects of our work to explain to them the complexities of our jurisdiction, and to have them understand what we can and cannot do, and what we can and cannot talk about. It seems to me that this is a necessary part of our role, and in particular, my role as Chairperson.

Gaps

There is arguably a gap created in our jurisdiction being confined to the public sector. Our experience has been, and this experience is matched globally, that where you have corruption in the public sector, there is almost always a connection to the private sector. A recent proposed amendment to our jurisdiction to extend it to those who facilitate corrupt conduct although not public officials goes some way to redressing the concern. The difficulty is in the resources that you need to successfully carry out investigations into the public and private sector. ICAC in Hong Kong investigates both sectors, but of course they have a staff of approximately 2,000 employees.

Another gap is in the coordination of the various activities of the other Queensland integrity agencies. We currently have a quarterly meeting of the main integrity agencies in Queensland where we share notes of the sort of work we are doing, and the similarities involved in order to assist each of us to perform our statutory mandated roles. There seems to me to be a need to build upon those relationships to enable easier sharing of information to enhance the efficiencies of each agency.

A further challenge is in undertaking our corruption prevention function. We are in the process of employing our very first data scientist, on the basis that the future it seems to us involves data analytics. That is one efficient way that corruption risks of most priority can be identified and dealt with.

A further current challenge is the role of the CCC in relation to terrorism and counter terrorism activity. We have a standing reference which enables us to conduct investigations in intelligence hearings in respect of terrorism matters, but one concern we currently have is that this activity is constrained by the need to link it to organised crime activities. This in effect means, we are prevented even in respect of a public safety issue in exercising our powers in relation to a 'lone wolf' type of threat. That is a gap in legislation we are keen to have corrected because it severely limits our powers when arguably they are most needed.

In closing, I'd like to comment on the proposal that there be a federal anti-corruption agency for Australia. It seems to me that there is a compelling argument for such an agency. Each of the Australian states which have established an anti-corruption agency have been fully occupied with investigations brought to their attention, and the Queensland experience has shown the need for such an agency. It acts not only as an agency with an ability to investigate corrupt activities, but acts as a huge deterrent to those who might be minded to engage in such activities. There is no reason to suppose that the federal jurisdiction is any different.

A J MacSporran QC
Chairperson

Crime and Corruption Commission (Queensland)