

CRIME AND MISCONDUCT COMMISSION

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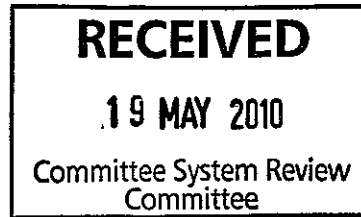
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Sub # 10

17 May 2010

The Hon Judy Spence MP
Chair
Committee System Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Spence

**RE: SUBMISSION TO THE REVIEW OF THE COMMITTEE SYSTEM OF
THE QUEENSLAND PARLIAMENT**

Attached is a submission from the Crime and Misconduct Commission in response to your letter of 8 April 2010.

Please feel free to contact me if any further information is required.

Yours sincerely

A handwritten signature in black ink, appearing to read "Martin Moynihan".

MARTIN MOYNIHAN AO QC
Chairperson

Encl.

Submission on the Parliamentary Committee System to the Parliamentary Committee System Review Committee May 2010

Introduction

This submission is based on the 21 years of experience the CMC and its predecessor agency have had reporting to a parliamentary committee. In those 21 years eight parliaments were elected with each parliament establishing a stand-alone committee to oversight the operations of either the CJC or the CMC. In the case of the CJC it was the Parliamentary Criminal Justice Committee (PCJC) and in the case of the CMC it is the Parliamentary Crime and Misconduct Committee (PCMC).

While this submission focuses on CJC/CMC experience with the PCJC and the PCMC it is recognised that the review will cover wider issues, including an examination of the Estimates Committee process. The CMC supports any initiative to improve committee effectiveness and notes, in particular, the seemingly transparent, comprehensive and rigorous processes of the Commonwealth Estimates Committee.

The PCMC

The *Crime and Misconduct Act 2001* (CMC Act) provides for the parliament to monitor and review the performance of the Commission by way of a Committee having seven members - four nominated by the Leader of the House and three nominated by the Leader of the Opposition. This membership allows the PCMC to give bi-partisan consideration of matters relevant to the overseeing of the CMC. It also provides backbench members of parliament the opportunity to be directly engaged in matters of public policy and the delivery of public services.

Were the PCMC or similar committees not to exist, opportunities for backbench members of parliament to obtain close experience in public policy and service delivery may not be available. It would also mean agencies such as the CMC would be without the advantage of structured access to feedback direct from backbench members of the parliament, and through them, from the people of Queensland.

The role of the PCMC

The role, primary functions and mandated administrative processes of the PCMC are laid out in sections 291 to 302 of the CM Act. These provisions state that the Committee is charged with reviewing the performance of the Commission's functions and reporting to the Legislative Assembly on matters pertinent to the CMC, its functions and its powers. The Committee has authority to, for example:

- Examine the CMC's annual report or other reports or matters arising from reports.
- Participate in the selection of Commissioners.
- Review the activities of the CMC close to three years after the appointment of the Committee members (the three year review).
- Call for persons, documents, things to assist the Committee conduct its activities.
- Appoint persons to assist it perform its functions.

- Inspect non-operational records and make copies of relevant extracts.
- Direct the CMC to investigate a misconduct matter.
- Request the police service or the parliamentary commissioner to investigate a matter concerning the CMC.
- In defined circumstances ask for reports from the CMC, the police service or the parliamentary commissioner.
- Refer a concern about the conduct of the CMC or the improper conduct of a CMC officer to the director of public prosecutions.
- Issue guidelines to the CMC about its conduct and activities.

Further, the CMC is obliged to advise the Committee of instances of suspected improper misconduct on the part of CMC staff (s 327 of the CM Act).

To some significant degree the Committee's powers assist to overcome occasionally aired public concerns about 'Caesar judging Caesar' in relation to complaints against staff or the operations of the agency.

The powers of the PCMC have resulted in it closely overseeing the CMC. While such intense oversight creates administrative burdens for the CMC the level of examination is accepted as necessary and appropriate given the unique and intrusive powers exercised by the CMC.

It is important that the PCMC be adequately resourced to perform its functions. This is achieved not only through its secretariat performing research and support tasks but also through the office of the Parliamentary Crime and Misconduct Commissioner who has the authority to:

- Audit the records of the CMC, including records of current matters, so as to ensure that:
 - the CMC used its powers correctly
 - matters investigated by the CMC were appropriate for investigation
 - the necessary registers required by the CM Act were maintained
 - proper authorities for the exercise of its powers were obtained
 - there has been compliance with policy and guidelines.
- Investigate complaints made against the CMC or a CMC officer.
- Investigate allegations about the unauthorised disclosure of information.
- Inspect registers of confidential information withheld from the PCMC.
- Review reports from the CMC to the PCMC to ensure their accuracy and completeness.

It is the support available to the PCMC that appears critical to its success given the broad functions it is required to perform. Through the Parliamentary Commissioner the Committee obtains, from an independent body empowered to access confidential and sensitive information not otherwise available, required information and assurances.

Amongst the PCMC's many responsibilities two matters are of particular interest to the CMC and bear on the role of parliamentary committees. These matters are:

- The three year review of the CMC and its governing legislation.
- The Committee's overseeing of the CMC by way of two-monthly meetings with the Commissioners.

Those matters are now addressed.

The three year review

Section 292 (f) of CM Act requires the Committee:

to review the activities of the commission at a time near to the end of 3 years from the appointment of the committee's members and to table in the Legislative Assembly a report about any further action that should be taken in relation to this Act or the functions, powers and operations of the commission.

Since the introduction of the CM Act three year review reports have been tabled in March 2004, October 2006 and April 2009. Also, in September 2004, the Department of the Premier and Cabinet reported in accordance with section 347 of the CM Act, which required the minister to review the CMC's operational and financial performance no sooner than 2 years after the commencement of the Act.

PCMC reports have resulted in 87 recommendations being referred to the government. Of those 87 recommendations 80% were accepted fully, accepted in part, accepted in principle or implemented before the government tabled its response to the recommendations. As a consequence of the government's actions on the recommendations made there has been legislative change, ambiguities and anomalies have been removed, issues have been clarified and some important initiatives to increase the effectiveness of the CMC's operations have been put in place. Most recently the government accepted the PCMC's recommendations for the CMC to be provided with telephone interception powers.

Three year reviews are mandated to occur when PCMC members are nearing the third anniversary of their appointment, making it common for the review to take place in or near the last year of the parliamentary term. In some circumstances the PCMC's three year review report has not been produced until the next parliament has resumed, its production in those circumstances being complicated by the previous Committee finalising a report while a new Committee is being formed.

There appears potential for an incoming Committee having different membership to choose not to pursue the recommendations or initiatives of the previous Committee.

It is noted that other integrity agencies in Queensland are not subject to the same frequency of review as the CMC. For example, section 83 of the *Ombudsman Act 2001* and section 68 of the *Auditor-General Act 2009* require strategic reviews of the relevant agency at five-yearly intervals.

Review arrangements in other Australian jurisdictions

In New South Wales there is no regime in place to regularly review the office of the Ombudsman or the Independent Commission Against Corruption, although the parliamentary committee monitoring and reviewing the agencies is required to report at any time to both houses of the parliament should matters warranting their attention come to light.

In Western Australia the *Corruption and Crime Commission Act 2003* has no provision requiring a parliamentary committee to review the performance of the Corruption and Crime Commission (CCC). As with the Queensland legislation, however, the Minister was required to review the operations and effectiveness of the legislation governing the CCC.

This once-only review was required to occur three years after the commencement of the Act and to consider whether the legislative scheme of the CM Act should be adopted in Western Australia. The required review was undertaken by independent counsel and a report submitted to the Western Australian government in February 2008. No action has yet been taken on the report's 58 recommendations, recommendations that are generally supportive of the scheme set out in the CMC Act.

The *Police Integrity Act 2008* establishing the Office of Police Integrity in Victoria makes no provision for a parliamentary committee to review the agency or its governing legislation.

The CMC submits that the parliamentary committee overseeing the CMC continue to report to the parliament on the CM Act and the powers, operations and functions of the Commission.

It is submitted that the reviews of the CMC's activities by the parliamentary overseeing committee occur every five years, as occurs in regard to other Queensland integrity bodies, notably the Ombudsman and the Auditor-General.

Overseeing of the CMC's activities - Joint PCMC/CMC meetings

The CMC meets with the PCMC at approximately two-monthly intervals. At those meetings the CMC reports on its activities in the detail required to allow the Committee to meet its statutory requirement 'to monitor and review the performance of the commission's functions' as stated in section 292(a), CM Act. The reporting occurs in a manner that allows the CMC to preserve the necessary confidentiality of, for example, covert operations.

Prior to the joint meeting the CMC provides the Committee with a report on its activities. The report has standardised broad headings to comply with the agreement between the Committee and the CMC on the content and format of briefings.

Proceedings take place in-camera and are in accordance with an agenda prepared by the Committee and earlier forwarded to the CMC. During proceedings the CMC chairperson and Commissioners have the opportunity to address the Committee and Committee members can explore issues raised, address matters of moment and seek information on material covered in the CMC's briefing report. To assist the Committee the Assistant Commissioner Crime, the Assistant Commissioner Misconduct and the Executive Director also attend meetings so as to advise on matters that may be relevant to their responsibilities.

Hansard staff make a record of the meeting which is forwarded to CMC participants for any required correction.

While it may be unusual for an agency to be subject to such close and regular oversight by a parliamentary committee it is, as mentioned earlier, considered appropriate in the case of the CMC.

It is submitted that a parliamentary committee, when it is required to perform an agency overseeing function, decide the type, frequency and arrangements for any monitoring required. Consultation with the monitored agency could be helpful in agreeing any protocols to facilitate the overseeing process.

Closing remarks

Close oversight of the CMC by the bi-partisan PCMC is necessary to provide the people of Queensland with the confidence that the CMC is performing its functions independently, effectively and efficiently for the purposes of fighting crime, promoting a trustworthy public sector and providing an effective witness protection service.

It is submitted that the PCMC is a significant, well functioning and relevant parliamentary committee – perhaps even a model committee - contributing to the integrity of administration in the State of Queensland.