

LOCAL GOVERNMENT
ASSOCIATION
OF QUEENSLAND INC.

ABN 11 010 883 293



Local Government House
25 Evelyn Street Newstead Qld 4006
PO Box 2230 Fortitude Valley BC Qld 4006
Phone (07) 3000 2222 Fax (07) 3252 4473
www.lgaq.asn.au

11 May 2006

Parliamentary Crime and Misconduct Committee
Parliament House
George Street
BRISBANE QLD 4000



Dear Sir

Three Year Review of Crime and Misconduct Commission

The Local Government Association of Queensland Inc is pleased to respond to the call of the Parliamentary Crime and Misconduct Committee (PCMC) for public submissions on the three year review of the Crime and Misconduct Commission (CMC).

The Association has sought input from member councils on the issues raised in the call for submissions and has used such input in developing the responses to the review issues.

The LGAQ response to the call for submissions follows the order of the issues identified in the paper.

In addition, attached as appendices are the LGAQ's two responses to the CMC Inquiry into allegations concerning the Gold Coast City Council Election held in March 2004.

These responses address in part, the processes and performance of the CMC during the Inquiry, and comment on the need for objective determination of the facts, without bias or personal opinion.

The Association notes that the CMC is to deliver its report on the Commission's investigation into Gold Coast City Council to the Speaker of State Parliament on Thursday 11 May 2006.

It may be that the Association could wish to provide further submissions to your Parliamentary Committee's three year review as a result of findings or content of that CMC report.

If this is the case, a supplementary submission will be made as soon as possible, hopefully within two weeks of the report being publicly available.

Should you have any queries don't hesitate to contact **Mark Leyland, Finance and Governance Policy Advisor** phone 3000 2201 (mark_leyland@lgaq.asn.au).

Yours sincerely

[Original Signed]

Greg Hallam PSM
EXECUTIVE DIRECTOR

gjh:mjl

Attach



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RESPONSE TO

PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

THREE YEAR REVIEW OF THE CRIME AND MISCONDUCT COMMISSION

DISCUSSION PAPER

MAY 2006



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RESPONSE TO PARLIAMENTARY CMC THREE YEAR REVIEW OF THE CRIME AND MISCONDUCT COMMISSION DISCUSSION PAPER

1.1 INTRODUCTION

The Local Government Association of Queensland Inc is pleased to respond to the call of the Parliamentary Crime and Misconduct Committee (PCMC) for public submissions on the three year review of the Crime and Misconduct Commission (CMC).

The Association has sought input from member councils on the issues raised in the call for submissions and has used such input in developing the responses to the review issues.

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The Association notes that the CMC is to deliver its report on the Commission's investigation into Gold Coast City Council to the Speaker of State Parliament on Thursday 11 May 2006. It may be that the Association could wish to provide further submissions to your Parliamentary Committee's three year review as a result of findings or content of that CMC report.

If this is the case, a supplementary submission will be made as soon as possible, hopefully within two weeks of the report being publicly available.

2.1 REVIEW ISSUES - THE JURISDICTION, RESPONSIBILITIES, FUNCTIONS AND POWERS OF THE CMC

Discussion

The Crime and Misconduct Commission has a responsibility as per its charter, to improve integrity and reduce misconduct in the Queensland Public Sector. Through its excellent publications, including Volumes 1 and 2 "Facing the Facts", the public sector is appropriately informed on the Commission's role, functions and powers.



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It is, however, apparent from recent dealings between the Commission and some Local Governments, that there is a need for further guidance, for Local Government Members and Senior Management on the CMC's role and responsibilities. This objective may partly be achieved with the development of a Local Government specific module for inclusion in the "Facing the Facts" Resource Manual. It appears the Commission recognises the need for this module to address the legislative structure, language and administrative arrangements in place for Local Governments.

LGAQ Response

There should be resources provided to the CMC to allow further development of Local Government specific capacity building and education in prevention of corruption and misconduct.

2.2 REVIEW ISSUE - THE CMC'S HANDLING OF COMPLAINTS OF CORRUPTION AND OTHER MISCONDUCT IN THE PUBLIC SECTOR AND IN THE POLICE FORCE

Discussion

Local government contact with the CMC is split between capacity building and education provided by the CMC on "corruption prevention" and complaint investigations

As part of the public sector, local government, its elected members and employees are often the subject of complaints or allegations of corruption or misconduct. It is apparent that a vast majority of those complaints are not substantiated by investigation, and only a very small minority result in action against the public official.

Local government is concerned that the handling of complaints by the CMC often leaves a lot to be desired, and the following matters are suggested to the PCMC Review as areas that should be addressed in order to improve the performance, image and effectiveness of the CMC.

Knowledge and expertise in Local Government

Local government in Queensland is a diverse and unique sphere of government. With 125 "mainstream" Councils ranging in size and capacity from Brisbane City to Perry Shire, there is a need for the CMC to have an awareness of the way in which matters are conducted by the perfectly ordinary processes found in different variations across all sizes of local government.



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At present, as nominated in the LGAQ first response to the CMC Inquiry into allegations concerning the Gold Coast City Council Election held in March 2004, there are a number of concerns relating to the extent and application of knowledge within the CMC of local government operations and practices.

Those concerns relate to:-

- the process by which allegations of misconduct are critically assessed upon receipt by the Commission by persons with the appropriate knowledge and experience of local government law and local government operations;
- the apparent lack of a clear separation between:-
 - consideration of potential misconduct issues; and
 - consideration of issues going to merely administrative or political behaviour which may well fall within the Commission's broad jurisdiction, but raise no possible issue of "official misconduct" as such.

It is suggested that there may be efficiencies for the CMC and better administration of prevention and detection of corruption and misconduct in local government if complaints were to be critically assessed upon receipt by the Commission by persons with the appropriate knowledge and experience of local government law and local government operations.

LGAQ Response:

That complaints be critically assessed upon receipt by the Commission by persons with the appropriate knowledge and experience of local government law and local government operations.

Requirement for confidentiality

The LGAQ maintains its position that the *Crime and Misconduct Act 2001* ("the CMA") should be amended to include a requirement that a complainant be required to keep the existence and nature of their complaint confidential until such time as: -

1. the Commission has notified the complainant in accordance with section 46(3) or 216 of the CMA; or
2. the CEO of a Council has notified the complainant in accordance with section 44(5) of the CMA.



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In the LGAQ's view public confidence in the honesty and integrity of the system of both State and local government is waning, due in no small part to the inappropriate level, and unbalanced nature, of publicity that presently occurs after the mere making of a complaint, regardless of its merits. Examples of the LGAQ's concerns in this regard were provided to the CMC in annexure 5 to the LGAQ submission to the CMC Inquiry into allegations concerning the Gold Coast City Council Election held in March 2004.

It is the LGAQ's submission that complainants should be obliged to keep the existence and nature of complaints against Councillors (and other public officials) confidential until a proper and balanced investigation of the matters of complaint has occurred and the person subject of the complaint and complainant has received the CMC advice of the outcome.

Confidentiality is clearly appropriate prior to the conclusion of an investigation so that the presumption of innocence (in the public's mind) is not lost.

If this confidentiality is breached, it is the LGAQ's submission that an appropriate sanction (such as that prescribed for the offence defined in section 216(3) of the CMA) should apply.

LGAQ Response:

That the legislation be amended to provide that complainants are obliged to keep the existence and nature of complaints against Councillors (and other public officials) confidential until a proper and balanced investigation of the matters of complaint has occurred and the person subject of the complaint and complainant has received the CMC advice of the outcome.

If this confidentiality is breached, an appropriate sanction (such as that prescribed for the offence defined in section 216(3) of the CMA) should apply.

Sanctions for frivolous or vexatious complaints

Again, the LGAQ submits that the CMA should be amended to require a sanction to be imposed on a complainant when their complaint is not further investigated on the grounds that the complaint is frivolous or vexatious.

As your own records will show, the vast majority of complaints against Councillors (by other Councillors or others with political motivations) are not



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further investigated and, it is speculated, a significant amount of those matters are dismissed on the grounds that the complaint was frivolous or vexatious. Notwithstanding this, the innocent Councillors who were the subject of the complaints would have already been vilified by the media for merely being the subject of a complaint. The damage to the personal reputation of the Councillor involved (and the Councillor's family) is significant.

The current system for making complaints is unfairly skewed against Councillors. In an attempt to restore some balance to the process (and in addition to the previous submission relating to confidentiality of complaints) it is the LGAQ's submission that a person who makes a frivolous or vexatious complaint should be subjected to a sanction such as, for example, reimbursing to the authority that conducted the investigation (i.e. the CMC or the Council) an amount representing the reasonable costs of conducting the investigation. This should go some (if not a significant) way towards discouraging baseless, politically motivated complaints leaving the Commission (and, in appropriate circumstances Council CEOs) free to concentrate their resources on dealing with legitimately founded complaints.

LGAQ Response:

That a person who makes a frivolous or vexatious complaint should be subjected to a sanction such as, for example, reimbursing to the authority that conducted the investigation (i.e. the CMC or the Council) an amount representing the reasonable costs of conducting the investigation

Referral of complaints to Local Government CEOs or Mayors for investigation

The Association has noted the difficulties that exist for Queensland local government CEOs (and on occasions where the complaint relates to the CEO - Mayors) in carrying out investigations on behalf of the CMC.

The requirement for CEOs to investigate an alleged corruption issue, with particular regard to Councillors and in some cases, staff, is difficult because CEO's are answerable to Councillors in most other matters. This is particularly the case when a CEO is relatively new to the Council and may be unfamiliar with the community and council relationships.

Local government CEOs, with appropriate training and resources can be competent and professional in their approach to sensitive investigations of allegations of minor misconduct or corruption.



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However, such investigations are not core local government business, (while they are core CMC business) and the trend to increasingly require local government to conduct these investigations is a form of cost shifting from a State Agency to local government.

Source of funding aside, staff related complaints may be appropriate to investigate in house. Issues exist however with the depth of investigation required and acceptance of the ultimate outcome. The requirement in many cases for the CEO to report to the CMC and wait for further direction is an example of 'red tape' unnecessarily complicating the process. If a complaint is too complicated or serious for the CEO to handle without report back to the CMC it should not be referred to the CEO by the CMC in the first place.

Councillor related complaints are not appropriate to investigate in house. There is a resource issue in engaging an external investigator which should not be borne by local government. As the CMC is the governing body for crime and misconduct matters it should investigate complaints that involve a councillor, or councillors, as either party. Fundamentally there is an issue when the responsibility to investigate a councillor's action, or councillors' actions, is referred to the CEO. As you would appreciate the political atmosphere is not conducive to having a CEO investigate a councillor, or mayor. It is understood that the chief executive officers of state government agencies are not required to investigate complaints against their respective ministers. That, Council understands, is left to the CMC.

Council is merely asking for some parity with the principle applied to state government agencies and their ministers in respect to complaints involving councillors. The CMC should directly resolve such complaints.

It is submitted that the CMC needs to consider both the subject matter and council context of every complaint that might be referred to a local government CEO for further investigation.

A classic example of the risks of not doing this is the instance of a number of complaints against the Whitsunday Shire. The CMC referred the complaints to the CEO of Whitsunday Shire for investigation. Unfortunately, one of the complaints happened to be against the CEO himself - a situation that would have been avoided with the sort of consultation proposed here.

LGAQ Response:

That the CMC consider both the subject matter and council context of every complaint that might be referred to a local government CEO for further



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investigation, and the CEO be consulted as to whether the investigation should be conducted and resourced by the CMC rather than the Council.

Timeliness of completion of investigations

A common issue raised with the LGAQ by councils is the time taken to investigate and finalise complaints - especially complaints of which the public is aware.

This is clearly a result of the paucity of resources available to the CMC to apply to investigations, and is more of a problem when details of complaints become public knowledge.

For example, it is understood that complaints regarding Woocoo Shire Council have been under investigation for at least 18 months and they are not complete yet.

Whilst not an issue of timeliness as such, the under resourcing of the investigative arm of the CMC can have serious potential for embarrassment and possibly, damage.

LGAQ is aware that a number of witnesses involved with a CMC investigation of Burnett Shire Council requested transcripts or copies of their interviews with investigators. The CMC obliged but made serious errors in sending witness transcripts/tapes to the wrong witnesses - seriously undermining the confidentiality of the interviews and demonstrating the risk of investigations undertaken without adequate resources.

LGAQ Response:

That further resources be applied to the investigative arm of the CMC to permit speedier resolution to complaints.

Completion of a CMC investigation

The LGAQ has also noted the long delays that occur in determining the outcome of a CMC investigation, and the "weak" response where a complaint of misconduct or corruption has not been proved.

A typical advice to a person subject to a complaint seems to be:



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“The allegation could, if proved, amount to official misconduct (breach of trust; criminal offence/dismissible disciplinary breach) that having regard to the principles which apply under the Act, the nature of the complaint, the information provided in support of the concerns, it is not considered that the allegations justify the taking of action by the CMC or the ABC Shire Council. However, it was left to the ratepayer to raise as an issue for hearing and determination by a Civil Court.”

Such a response goes nowhere towards clearing the name or reputation of a person who is the subject of a complaint to the CMC - particularly when the matter has received sensational reporting in the media.

Another response cited by persons subject to complaints at Cloncurry Shire was:

“The allegation is unsubstantiated in the absence of further evidence.”

One person investigated at Cloncurry has advised the LGAQ:

“The CMC have stated that they have to conduct investigation because of public perception which cannot be substantiated with facts. At the end of it they have not cleared us and have stated only that the allegations could not be substantiated. To us this does not mean a clearance of the allegations.

... we do not believe there was a clearance and if enough mud is thrown some sticks.”

LGAQ Response:

That CMC determinations, where complaints are not substantiated by investigations, be more positively worded to restore the reputation of the person subject of the complaint.

Media

Linked to the issue of confidentiality is the release of reports or comment on matters being investigated to the media.

Procedurally, it is vital that the person subject of the complaint, and the complainant have actually received the CMC report or decision regarding the complaint before any release or comment is made to the media.



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This will prevent “ambush” questioning of those parties by media with better information than the parties.

LGAQ Response:

That the person subject of the complaint and the complainant actually receive the CMC report or decision regarding the complaint before any release or comment is made to the media.

2.3 REVIEW ISSUE - THE CMC'S ROLE IN THE PREVENTION AND INVESTIGATION OF MAJOR CRIME

Discussion

Local Government does not have any role in this issue.

LGAQ Response:

The LGAQ makes no comment on this issue.

2.4 REVIEW ISSUE - THE USE AND EFFECTIVENESS OF THE CMC'S INVESTIGATIVE POWERS IN PERFORMING ITS MISCONDUCT AND MAJOR CRIME FUNCTIONS

Discussion

The LGAQ would observe that the CMC has plenty of power and is able to require Councils to provide resources to assist in the conduct of investigations.

There has been comment that the investigators from CMC (or appointed by CMC) have been unnecessarily authoritative in using those powers.

Whilst a CMC investigation is a stressful and upsetting event for a Council and Council staff, Councils are not going to be deliberately obstructive to the investigation.



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The CMC investigators should always approach such an investigation with a view to negotiating the support and resources that might be required of the Council - rather than usurping or demanding those resources.

There has also been the observation made that the use and effectiveness of CMC's investigative powers is limited by the resources available to the CMC, and that referral of investigations to CEOs, Mayors/Councils is a form of cost shifting arising through the under resourcing of the CMC's investigative arm.

LGAQ Response:

That CMC investigators (whether seconded from the Queensland Police Service or full time employees of the CMC) approach investigations with a view to negotiating the support and resources that might be required of the Council - rather than usurping or demanding those resources.

2.5 REVIEW ISSUES - THE CMC'S ROLE IN OVERSEEING THE POLICE SERVICE, THE CMC'S ROLE IN RELATION TO THE CRIMINAL JUSTICE SYSTEM, THE OPERATION OF THE CMC'S WITNESS PROTECTION FUNCTION

Discussion

Local Government does not have any role in these issues.

LGAQ Response:

The LGAQ makes no comments on these issues.

2.6 REVIEW ISSUE - THE OVERALL PERFORMANCE OF THE CMC

Discussion

Whilst the CMC is to be commended for the capacity building and educational resources it maintains and is improving steadily, the overall performance of the CMC can be criticized in the area of the processes and resourcing of the investigative arm.

Those criticisms/comments are found in the discussion of section 2.2 above.

LGAQ Response:

The LGAQ makes no further comments on these issues.



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2.7 REVIEW ISSUE - CORPORATE GOVERNANCE ISSUES

Discussion

Local Government does not have any role in these issues.

LGAQ Response:

The LGAQ makes no comments on these issues.

2.8 REVIEW ISSUE - THE ACCOUNTABILITY OF THE CMC AND THE OFFICE OF THE
PARLIAMENTARY CRIME AND MISCONDUCT COMMISSIONER

Discussion

Local Government does not have any role in these issues.

LGAQ Response:

The LGAQ makes no comment on this issue.