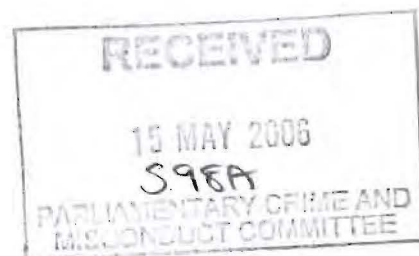




Your ref: S 98

12 May 2006

Mr Geoff Wilson MP
Chairman
Parliamentary Crime and Misconduct Committee
Parliament House
George Street
BRISBANE Q 4000



E-mail: pcmc@parliament.qld.gov.au

Dear Mr Wilson

RE: THREE YEAR REVIEW OF THE CRIME AND MISCONDUCT COMMISSION

Thank you for the invitation to make a submission for the purpose of the Committee's three-year review of the Crime and Misconduct Commission (CMC).

My submission addresses issues relating to the CMC's liaison with my Office to avoid duplication and our joint efforts to achieve a better system for dealing with public interest disclosures under the *Whistleblowers Protection Act 1994* (the WP Act).

Liaison

Under the *Crime and Misconduct Act 2001* (the CM Act), the CMC has:

- the obligation (under s.59) to work co-operatively with units of public administration and to liaise and co-ordinate activities to avoid duplication; and
- the authority (under s.62(2)) to give information to another unit of public administration if the CMC considers that the unit has a proper interest in the information for the performance of its functions.

The Ombudsman has a similar obligation and authority under s.15 of the *Ombudsman Act 2001* to:

- liaise with complaints entities (such as the CMC) about their respective functions for investigating administrative actions; and
- enter into arrangements to avoid duplication of investigative activity.

Liaison arrangements have been put in place by the CMC and the Ombudsman to avoid duplication of activity. The current liaison arrangements are:

ombudsman

- The Chairperson of the CMC and the Ombudsman are both members of the Integrity Committee that also comprises the Integrity Commissioner, the Auditor-General, the Information Commissioner and the Public Service Commissioner. This Committee meets every three months to discuss current projects, identify any opportunities for joint projects and ensure activities are co-ordinated.
- Senior officers of the Ombudsman and the CMC have been holding quarterly meetings since August 2005 to discuss a range of strategic and operational issues, incorporating both investigation and improvement activities.

The main topics discussed are local government issues, regional visits programs, prevention activities and training programs. In relation to operational issues, reports are exchanged on complaints being referred by one agency to the other and officers are briefed on major investigations proposed or underway, and any other issues considered to be of mutual interest.

- As the need arises, senior officers of the Ombudsman's Assessment and Resolution Team liaise with senior officers of the CMC's Complaints Services on specific complaints. Contact for this purpose occurs regularly, particularly where officers of one agency believe a complaint received by that agency would be more appropriately dealt with by the other agency or may also have been made to that agency.
- Officers from the CMC meet quarterly with officers of the Ombudsman who specialise in local government matters to discuss activities in that area of jurisdiction. Officers from the Queensland Audit Office and the Department of Local Government, Planning, Sport and Recreation (DLGPS&R) also attend these meetings.

I am confident that the arrangements in place effectively facilitate the sharing of information on strategic issues of mutual interest to the two organisations and avoid unnecessary duplication of investigative work.

Whistleblowers

The Committee would be aware that in accordance with the Government's response to recommendation 43 of the Committee's Report No 64, *Three Year Review of the Crime and Misconduct Commission*, the Public Service Commissioner has established a committee to review the WP Act.

Both the CMC and the Ombudsman are represented on that committee. At the time of preparing this submission, the committee had not finalised its consideration of the issues.

In my submissions to the three inquiries arising from problems at the Bundaberg Hospital, I have argued that the current decentralised whistleblowing model, whereby the recognition, investigation and resolution of a public interest disclosure (PID) can be handled totally within the agency whose officers are the subject of the PID, needs to be modified.

In summary, my recommendations to these inquiries were that:

1. PIDs received by an agency, other than those involving official misconduct, should be referred to the Ombudsman in the first instance (under similar

arrangements to those whereby PIDs involving official misconduct are referred to the CMC), and

2. The Ombudsman would either investigate the disclosure or refer it back to the agency to conduct the investigation, which the Ombudsman would be empowered to monitor, take over or review (as the CMC is empowered to do with PIDs involving official misconduct).

The Honourable Geoffrey Davies in his report on the *Queensland Public Hospitals Commission of Inquiry* – November 2005, noted that:

“At present there is no single body charged with overseeing public interest disclosures within the Queensland Public Sector (save where that public interest disclosure involves official misconduct). In my opinion this is a serious shortcoming. As the facts revealed in this Inquiry showed, it was futile to expect Queensland Health to manage public interest disclosures about itself with no external oversight.”

Commissioner Davies subsequently adopted my recommendations for improving whistleblowing in Queensland. In particular, he recommended that:

- The Queensland Ombudsman be given an oversight role with respect to all public interest disclosures save those involving official misconduct and that all PIDs be referred to the Ombudsman who may then either investigate the disclosure itself, or refer it back to the relevant department for investigation, subject to monitoring by the Ombudsman.
- The categories of persons who may make a PID protected by the WP Act be expanded in cases involving danger to public health and safety, and negligent or improper management of public funds, to include any person or body.

Although not dealt with in my submission, Commissioner Davies also recommended that:

- Whistleblowers should be able to escalate their complaint in the event that there is no satisfactory action taken by the relevant department within 30 days. If the matter is not resolved in that time to the satisfaction of the Ombudsman, the whistleblower should be able to make a PID to a Member of Parliament.
- If disclosure to a Member of Parliament does not result in resolution, to the satisfaction of the Ombudsman, within a further 30 days, the whistleblower should be entitled to make a further PID to the media.

I note that in December 2005, the Government announced that it would amend the WP Act to allow protected disclosures to be made to Members of Parliament.

The scheme I am proposing involves the CMC and the Ombudsman sharing responsibility for ensuring that agencies are appropriately administering their responsibilities under the WP Act so that the purposes of the Act are not defeated by misinterpretations, inconsistent approaches, inadequate investigations or lack of commitment.

There is also a role for CMC and the Ombudsman, as well as the Office of Public Service Merit and Equity, in working together to develop guidelines to assist agencies to properly handle and record details of PIDs.

I trust this submission assists the Committee in its review.

Yours sincerely

[Original Signed]

David Bevan
Queensland Ombudsman