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Office of the  
**Director-General**

Department of  
**Emergency Services**

- 5 JUL 2006

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

Dear Mr Wilson

Thank you for your letter dated 7 March 2006, inviting submissions to assist in conducting the Parliamentary Crime and Misconduct Committee (PCMC) three (3) year review of the Crime and Misconduct Commission (CMC). I understand officers from the Department of Emergency Services (DES) have liaised with officers from the PCMC regarding the DES submission and were subsequently given an extension in responding to the three year review.

I am now pleased to provide you with the following submission on behalf of the DES.

The DES established a whole-of-department Ethical Standards Unit (ESU) in May 2002. Since that time the department has worked closely with the CMC in enhancing the department's complaint handling processes towards a more effective case management model, in particular those issues that are related to matters of official misconduct. The role of the CMC Liaison Officer rests with the Executive Manager of the ESU.

The DES has welcomed the CMC's commitment to assist agencies to develop and enhance their own capacity to manage complaints in general and official misconduct in particular. The experience of the DES ESU is that the CMC continues to add value. However areas remain where changes could better assist the department to address day-to-day matters.

### **Criminal matters**

An area of concern to the department is dealing with matters where an employee of the department is criminally charged.

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### **Creating a safer Queensland**

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In circumstances where the employee is charged in connection with their duties, the matter falls within the jurisdiction of the CMC, although the charges may be preferred by the Queensland Police Service (QPS). In these circumstances, typically, the employee is suspended from duty whilst the criminal charges are progressed. The timeframes for dealing with these matters can be extremely protracted. The department has had ongoing discussions with the CMC with a view to progressing internal disciplinary matters concurrent with criminal proceedings. The CMC has been supportive of this approach, however the difficulty arises in the disclosure of sufficient information to the department to allow for disciplinary matters to be progressed.

The department may initiate its own investigation into matters, however, this has the potential to prejudice the investigation by the QPS. This may occur in situations where the evidence provided to the department is inconsistent with the evidence provided to the QPS. An alternative would be for the department to be provided with a copy of the QPS brief of evidence after the employee had progressed through committal proceedings, where the charges were such that they were being dealt with through the superior courts, or alternatively at the conclusion of proceedings where the matters are dealt with summarily. The QPS has not freely provided briefs of evidence to the department in the past. In these circumstances, the department will seek the transcript of the proceeding, however in cases where the committal proceeds by way of a hand up committal, the transcript does not provide any assistance to the department.

The department has been faced with circumstances where an employee has been suspended for periods in excess of twelve (12) months, whilst waiting for the criminal charges to be dealt with. In some cases, despite the fact that the employee has been committed for trial, the Director of Public Prosecutions may choose not to offer an indictment, and the criminal charges are discontinued. In those circumstances, the department is left to make its own determination on the matter, often many months after the actual incident occurred. The department's capacity to investigate the matters in such circumstances can be compromised.

Whilst Section 60 of the *Crime and Misconduct Act 2001*, provides the authority for the CMC to provide information to the department, which may include the QPS brief of evidence, the Commission has been reluctant to exercise its discretion in this regard. The department has attempted to establish protocols with the QPS for the provision of such information; however, to date these efforts have not been successful.

The exchange of relevant information between the CMC, the QPS and the department is of significant concern in these types of matters. It is acknowledged that the CMC is endeavouring to progress these issues with relevant stakeholders, however in the interim, departmental processes have been frustrated.

### **Whistleblowers**

The department continues to be concerned about the need to clarify the *Whistleblowers Protection Act 1994* (the Act). The intent of the Act was to provide a scheme that in the public interest, gives special protection to disclosures about unlawful, negligent or improper public sector conduct or danger to public health or safety or the environment. The CMC's low threshold of reporting all matters of suspected official misconduct has the potential to mean that complainants are able to be protected under the Act for matters that may be at the lower end of the threshold of seriousness.

The comprehensive requirements to protect whistleblowers under the Act should be weighed against the importance of the information provided to the department. Minor matters brought to the department and addressed through managerial resolution should not require the department to fulfill the full obligations required under the Act.

Reprisal in any form is taken seriously by the department. However, the form of protection to whistleblowers should be focused on those matters that are serious in nature, or where there is a very real risk of reprisal action.

### **Other matters**

The department's ESU is working closely with the CMC to ensure the most effective case management of matters of misconduct and to ensure that DES has sufficient capacity to deal with these matters. Regular meetings have been established to support this working relationship.

The department is currently reviewing its response to prevention issues, and the CMC has been of assistance in enhancing its capabilities in these areas. The CMC publications and ongoing meetings with CMC liaison officers in relation to these types of matters have been particularly useful.

In the past there have been issues concerning the length of time that the CMC has taken to provide assessment of matters referred. However, the department has found that in circumstances where an urgent assessment of a matter of suspected official misconduct has been required, the CMC has been able to provide the department with verbal advice on its assessment of a matter, or alternatively has assessed the matters promptly to allow appropriate action to be taken in a timely manner. The development of the protocols between the department and the CMC pursuant to Section 40 of the *Crime and Misconduct Act 2001* will further enhance these processes.

I trust that the information contained in this submission is of assistance to you. Should you require any further information or wish to clarify any of the information provided, please contact Mr Craig Rosenthal, Executive Manager, Ethical Standards Unit, Human Resource Services, Business Support Services on telephone number (07) 3247 8627.

Yours sincerely

Fiona McKersie ESM  
**Director-General**