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PARLIAMENTARY CRIME AND  
MISCONDUCT COMMITTEE



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Mr Paul Hoolihan MP  
Chairman  
Parliamentary Crime and Misconduct Committee  
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Dear Mr Hoolihan

**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 of investigative activity and our joint efforts in regard to the protection of whistleblowers.

### **Liaison**

Under the *Crime and Misconduct Act 2001*, 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.

Arrangements have been put in place by the CMC and the Ombudsman to avoid duplication of activity. Liaison arrangements that have been in place for some time are:

- 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 approximately 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 administrative improvement activities.

The main topics discussed are local government issues, regional visits, 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, Sport and Recreation also attend these meetings.

In April 2006, Mr Henry Smerdon completed a strategic review of my Office in accordance with the requirement under the Ombudsman Act that such a review be conducted every 5 years. In respect of our relationship with the CMC, he found:

There is regular interaction between the Office and the Commission and it was clear from my discussions that a good working relationship exists. Complainants often approach the Commission when in fact it is an Ombudsman matter and vice versa. These issues are dealt with speedily and efficiently.

While acknowledging that sound practices which were in place, Mr Smerdon recommended that we consider entering into a Memorandum of Understanding with the CMC to document the arrangements and protocols that govern the relationship between the two agencies.

In April 2008, the CMC and I entered into a liaison agreement, which formally documents the commitment of our agencies to the above arrangements.

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

### **Whistleblowers**

In February 2005, my Office became an industry partner in a national research project on whistleblowing. The *Whistling While They Work* project is funded by the Australian Research Council and 14 partners, including the Commonwealth Ombudsman, Australian Public Service Commission and public integrity bodies from NSW, Queensland, Western Australia, the ACT and the Northern Territory. The Ombudsman and the CMC contribute to the project through the joint funding of a research officer, and other activities.

The aim of the project is to identify and develop current best practice systems for the management of people in the public sector who are willing to make public interest disclosures or give evidence about misconduct or maladministration.

The first national report, entitled *Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations*, was launched in September 2008. The report found that:

- Less than two percent of public interest whistleblowers receive organised support from their government agency, even though their value to public integrity is widely acknowledged.
- Seventy percent of the agencies surveyed had no procedures in place for assessing the risks of reprisal when officials in their agency blew the whistle.
- Only three per cent of agencies surveyed were rated as having reasonably strong whistleblowing procedures, assessed against the relevant Australian Standard.

With the benefit of the report, my Office, the CMC and the Public Service Commissioner developed a checklist which highlights the critical elements for good practice in managing whistleblowers and other internal witnesses. Agencies can use it to evaluate their existing policies and procedures and to identify areas for improvement.

The research focus is now on working with public sector agencies across Australia to identify best practice in managing public interest disclosures.

The report for this part of the research is expected in early 2009. As the results of the research become available, three sets of guidelines for potential whistleblowers, managers and agencies respectively are being developed by the CMC, my Office and the Public Service Commission as practical tools to assist Queensland public sector agencies in this area.

These guidelines will provide further advice to:

- those thinking about making a public interest disclosure
- managers and supervisors who may receive disclosures
- public sector entities that must meet their obligations under the *Whistleblowers Protection Act 1994*.

The guidelines are also relevant to recommendation 26 of the last report on your review of the CMC.

The work already done during the project also provides a considerable volume of research that would be relevant for consideration in any review of the Whistleblowers Protection Act. I am aware that the Committee recommended in report number 64 on its 2004 review of the CMC that this Act be reviewed. I support that recommendation.

I trust this submission assists the Committee in its review.

Yours sincerely



David Bevan  
Queensland Ombudsman