



## Office of the Parliamentary Crime & Misconduct Commissioner

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14 July 2011

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

Dear Mr Hastie,

**RE: Three-yearly Review of the Crime and Misconduct Commission**

Thank you for the opportunity to provide a submission to the Committee's review of the activities of the Crime and Misconduct Commission (CMC). This submission relates only to the accountability of the CMC and, in particular, the role of the office of the Parliamentary Crime and Misconduct Commissioner.

The first issue I wish to raise concerns section 308 of the *Crime and Misconduct Act 2001*. Pursuant to section 308(1)(b) of the Act, the Speaker **must** appoint a person qualified to be appointed as the Parliamentary Commissioner to act as the Parliamentary Commissioner during any period, or all periods, when the Parliamentary Commissioner is absent from duty or from the State or, for another reason, can not perform the duties of the office.

Appointment as the Parliamentary Commissioner is on a part-time basis in accordance with section 309 of the Act and previous appointments have been made from the ranks of experienced senior members of the Queensland bar. It is to be expected that, on occasions, the private practices of such persons may require them to appear in legal proceedings conducted outside the State. It would seem unnecessary to appoint a person to act as the Parliamentary Commissioner in every such circumstance, particularly when the Parliamentary Commissioner may be absent from the State only for a limited period. Indeed, a literal reading of section 308(1)(b) as it presently stands would require the Speaker to appoint a person to act as the Parliamentary Commissioner even where, for example, the Parliamentary Commissioner visited Tweed Heads for the weekend.

A good deal of the more routine duties of the office of the Parliamentary Crime and Misconduct Commissioner are carried out by the Principal Legal Officer within the office under the direction of the Parliamentary Commissioner. There is no reason such activities cannot be continued under the direction of the Parliamentary Commissioner should he or she be absent from the State.

This issue may be easily resolved by substituting the word "must" with the word "may" in section 308(1) or alternatively (and perhaps preferably) by inserting before subsection (b), the following:

*"The Speaker may appoint a person qualified to be appointed as the parliamentary commissioner to act as the parliamentary commissioner –"*

This preferred option would ensure that an Acting Parliamentary Commissioner is appointed during any vacancy in the office but would allow the Committee some discretion (perhaps upon the advice of the Parliamentary Commissioner) as to whether it is necessary to recommend to the Speaker the appointment of an Acting Parliamentary Commissioner in circumstances set out in subsection (b).

The second issue I wish to raise concerns section 317(7) of the *Crime and Misconduct Act*. That subsection was inserted into the Act by the *Cross-Border Law Enforcement Legislation Amendment Act 2005*. Pursuant to section 317(7), the Parliamentary Commissioner may delegate any of the Parliamentary Commissioner's powers as inspection entity under chapters 11 or 13 of the *Police Powers and Responsibilities Act 2000 (PPRA)* to a legal practitioner engaged by the Speaker under section 315(2) of the *Crime and Misconduct Act*.

The Parliamentary Commissioner's powers under chapters 11 and 13 of the *PPRA* relate to regular inspections of the CMC's controlled operations records and surveillance device warrants records, respectively.

My concern is that whilst the Parliamentary Commissioner may delegate those inspection powers to the office's Principal Legal Officer pursuant to section 317(7) of the *Crime and Misconduct Act*, there is no provision for the delegation of the Parliamentary Commissioner's similar audit powers under chapter 12 of the *PPRA* which relates to the CMC's use of assumed identities. On occasions in the past, when the Parliamentary Commissioner has been involved in lengthy trials in the course of the Parliamentary Commissioner's private practice, it has proved difficult to arrange the attendance of the Parliamentary Commissioner to conduct the audit of assumed identities strictly in accordance with the required time frames.

It should be noted that under section 316(4) of the *PPRA* the audit of the Queensland Police Service's use of assumed identities may be conducted by a police officer. The equivalent provisions of the Victorian legislation (section 33 of the *Crimes (Assumed Identities) Act 2004*), the South Australia legislation (section 28 of the *Criminal Investigation (Covert Operations) Act 2009*) and the New South Wales legislation (section 37 of the *Law Enforcement and National Security (Assumed Identities) Act 2010*) all similarly permit the audit of the use of assumed identities to be conducted by an officer of the law enforcement agency.

Moreover, section 32(1) of the *Telecommunications Interception Act 2009* provides that the Parliamentary Commissioner may delegate any of the Parliamentary Commissioner's powers under that Act to a legal practitioner engaged by the Speaker under section 315(2) of the *Crime and Misconduct Act 2001*.

I can discern no reason why the Parliamentary Commissioner's audit powers under chapter 12 of the *PPRA* (section 316) should not also be able to be delegated to the Principal Legal Officer.

Yours faithfully



M. R. Kunde  
**Acting Parliamentary Crime  
and Misconduct Commissioner**