

27 July 2011

Mr Paul Hoolihan MP
Chairman
Parliamentary Crime & Misconduct Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Mr Hoolihan

I refer to your letter inviting submissions to assist the Parliamentary Crime & Misconduct Committee conduct its three year review of the Crime & Misconduct Commission (CMC) pursuant to section 292(f) of the *Crime and Misconduct Act 2001*.

Queensland Rail as a Government Owned Corporation and resulting from the split from QR Ltd with the sale of QR National, again fell under the jurisdiction of the CMC from 1st November 2010 having been exempt from the *Crime and Misconduct Act 2001* for several years.

Whilst the process of reengaging with the CMC has been smooth, Queensland Rail would benefit from the review of some operational aspects. These are outlined below.

Firstly, Section 39 of the Act states that the "*Duty to notify is paramount*" with Section 38 stating:

Duty to notify commission of official misconduct

*(1) This section applies if a public official suspects that a complaint, or information or matter (also a **complaint**), involves, or may involve, official misconduct.*

The CMC has advised that their interpretation of "suspect" is based on a "mere suspicion" and that the reportee "*does not have to have formed a reasonable suspicion or belief that any actual conduct, that could constitute official misconduct, has occurred. No evidence is required to support the complaint.*" The application of this threshold requires reporting of potentially unnecessary matters.

Additionally, Section 40 states "*the commission may issue directions about how and when a public official must notify the commission of complaints*". The direction given by the CMC is to report all suspicions of official misconduct and await CMC instruction. That is an investigation can't be commenced without CMC approval unless evidence tampering or safety may be an issue.

Queensland Rail would gain efficiency if permitted to investigate and confirm a matter to be official misconduct prior to reporting to the CMC.

Finally, we would also benefit from a more definitive application of what is and is not "official misconduct." Whilst the definition in the Act at face value is clear, the matter must also relate to a breach of trust as per Section 14(b)(ii). However, the definition of "trust" is viewed by the CMC, as we understand it, as referring only to employees in certain roles or positions, and then, only in certain circumstances. As a result, an employee action may not be official misconduct although it may be criminal or dismissible. In our view this inconsistency in application weakens the categorisation of official misconduct and the value of reporting.

Our dealings with the CMC since November 2010 have been positive. CMC officers have been available to assist Queensland Rail stakeholders better understand the new reporting requirements. We continue to work with the CMC in understanding and complying with the required processes and look forward to continuing collegial dealings.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Paul Scurrah', with a stylized, cursive script.

Paul Scurrah
Chief Executive Officer