

Our Ref: 11.1.5_AP

30 May 2013

Hon Jarrod Bleijie MP
Attorney-General and Minister for Justice
GPO BOX 149
BRISBANE QLD 4001

Dear Minister,

Request for Committee comments on the recommendations in the report on the Independent Advisory Panel's review of the Crime and Misconduct Act and related matters thereto

I refer to your letter to the Parliamentary Crime and Misconduct Committee, received by the Committee on 26 April 2013, in which you invited the Committee to comment on the recommendations contained in the report of the Independent Advisory Panel's review of the Crime and Misconduct Act and related matters thereto.

The Committee has addressed each recommendation below.

Recommendation 1

The Committee supports this recommendation and notes it is consistent with its findings and recommendations in its report no 90, *Inquiry into the CMC's release and destruction of Fitzgerald Inquiry documents*.

Recommendation 2

The Committee supports the intent of this recommendation but notes that the obligations proposed already exist in current legislative provisions, codes of conduct and ongoing training for state employees.

Recommendation 3A

The Committee supports the increase of the threshold of misconduct and official misconduct.

Recommendation 3B

The Committee considers that this recommendation, if it proceeds with the definition as set out in recommendation 3D, could lead to the CMC not accepting anonymous complaints. The Committee considers that a complainant should not be required to submit a statutory declaration with a complaint to the CMC.

The Committee does not consider that the requirements for a complaint to be accompanied by a statutory declaration will reduce vexatious or intractable complaints. In the experience of this Committee, some who feel that they have a genuine complaint to make to the CMC, despite that

complaint being baseless, will not be deterred by the requirement of providing a Statutory Declaration. Nor will it deter those persons who for a range of reasons do not have the requisite understanding of the requirements.

Conversely, the Committee considers that this requirement may deter a person who holds a genuine complaint which could expose corruption but feels vulnerable in making that complaint due to the requirement to sign a Statutory Declaration and disclose their name.

The Committee also notes that a statutory declaration should be witnessed by a Justice of the Peace, or a Commissioner for Declarations which could be problematic given the Panel's proposed requirement to maintain the confidentiality of a complaint to the CMC.

Recommendation 3C

The Committee does not condone the replacement of the online complaints system as proposed by the recommendation. The Committee supports the use of plain English in any communication from the CMC, in line with the approach taken with complaints handling bodies in this and other jurisdictions.

Recommendation 3D

The Committee considers that the proposed definition of 'baseless complaints' proposed in this recommendation is unnecessary.

The Committee considers that the intent of this provision, the reduction of vexatious or frivolous complaints being considered by the CMC, can be achieved with a better focus on triage of complaints rather than limiting the complaints that can be received by the CMC. The CMC already has a system in place to quickly identify and resolve these complaints.

The Committee does support the strengthening of the section 216 of the *Crime and Misconduct Act 2001* to remove provisions 216(2) and 216(3) which require the CMC to provide a notice to a vexatious complainant and then requires that complainant to re-submit a further complaint in the same or similar terms.

The proposed prohibition on the CMC receiving complaints only from persons who had directly seen or heard the conduct which would amount to official misconduct, or had heard the information from a 'credible person' could hamper the effectiveness of the CMC and may result in lengthy delays in the assessment of complaints as the CMC will be required to assess the credibility of persons before determining whether to accept the complaint.

The Committee notes that there are a number of significant investigations undertaken by the CMC which were commenced following information heard or seen by someone other than the person making the complaint and subsequently resulted in criminal convictions for official misconduct (e.g. Mr Joel Morehu Barlow).

Additionally, as above, the Committee does not support the proposal to prohibit the CMC from accepting complaints on an anonymous basis, which will be a result of the requirement for a complaint to be accompanied by a signed statutory declaration.

Recommendation 3E

The Committee supports the increase in the threshold of misconduct matters that are dealt with directly within government departments. The Committee considers that the increase in the threshold definition of misconduct and official misconduct will also increase the matters dealt with directly by Departments. The Committee considers that each Department should have in place a number of avenues outside the immediate management structure for the reporting and investigation of suspected official misconduct. There should be officers in place with the appropriate status within the Department to deal with those matters.

Recommendation 3F

The Committee notes that this power already exists. The CMC should not be obliged to initiate prosecutions as the resources required to progress prosecutions could negatively impact upon the necessary work of the Commission. As noted above, the Committee considers that amendment of section 216 with the removal of 216(2) and (3), would provide sufficient discretion for the CMC to easily initiate prosecution where it is necessary to do so.

Recommendation 4

The Committee supports, with reservation, the proposal to transfer the CMC's prevention functions under sections 24(c), 24(e), 24(h), 33(a) and 34(b) of the *Crime and Misconduct Act 2001*. The Committee's reservation stems from a lack of understanding of the implications of such a transfer to the Public Service Commission. The Committee notes that the Panel's recommendation does not contemplate the CMC's application of those prevention functions to universities, and more importantly, to local government. The Committee is aware that a large proportion of complaints to the CMC concern local government and consider that prevention advice in this area should continue.

The Committee considers that the Public Service Act and the Local Government Act may require amendment to extend the role of the Public Service Commission to universities and to local governments.

Recommendations 5 and 6

The Committee supports the creation of a Public Service Inspectorate, akin to the role of the Queensland Police Service Ethical Standards Command Inspectorate. However, the Committee considers that the Ethical Standards Units, particularly those in larger departments such as

Queensland Health and Police, should continue. Additionally, the Committee considers that in smaller departments, there should remain officers who are responsible for ethical standards.

Recommendation 7

The Committee supports this recommendation.

Recommendation 8

The issue of complainants releasing information regarding their complaints publicly is an issue which has occupied considerable time of the Committee in previous parliaments. The Committee appreciates the intent of this recommendation but is concerned that it contains a number of flaws that would make its drafting into law problematic and its enforcement impractical.

The Committee considers that complainants will simply release the information prior to making a complaint to the CMC, or will use social and other online media to anonymously release information. Careful consideration needs to be given to whether any expectations will be placed on the CMC that it will vigorously pursue such releases and any resultant impact on its resources in doing so.

The Committee is concerned that the recommendation does not allow for a person who has made a complaint, or a person who has been complained about to the CMC, to complain to the Committee about the CMC's conduct in dealing with that complaint. The Committee also reports to the Parliament on matters where it considers that the issue should be brought to the attention of the House. Careful consideration should be given to any amendment of the Act in this regard, to ensure that the role of this Committee in the oversight of the CMC and reporting to the Parliament is protected.

Further, the Committee is concerned about the implication for Members of Parliament in representing their constituents. Depending upon how such an amendment is drafted there could be unintended consequences for members of parliament in raising concerns of a constituent which are the subject of a complaint to the CMC.

Recommendation 9

Amendment or harmonisation of the Standing Orders with any amendments of the Crime and Misconduct Act is a matter for the Parliament. Consideration should be given to the powers of the Committee to report on a matter it considers should be brought to the attention of the House.

Recommendation 10

The Committee does not support this recommendation. Firstly, the Panel put forward no empirical basis for selecting the nine month timeframe. Secondly, the recommendation will result in a disproportionate negative effect upon applicants who apply for information under the *Right to*

Information Act 2009 or make a complaint under the *Ombudsman Act 2001* – regardless of whether their application or complaint relates to a complaint before the CMC.

There needs to be a balance between the public interest in protecting the privacy of those persons subject to a complaint to the CMC and the public interest of complainants to the Ombudsman or applicants under the Right to Information Act receiving reasons for the decisions of those agencies. This recommendation may impact upon the rights of those individuals to appeal against such decisions, or may negatively impact upon other matters relating to that individual in relation to the information they seek.

This recommendation will also likely increase the workload of the Office of the Information Commissioner and the Ombudsman's Office in dealing with complaints about refusal to provide reasons for their decisions. The Committee respectfully suggests that the Legal Affairs and Community Safety Committee may be able to provide more information on this issue given its oversight responsibilities for the Ombudsman and the Information Commissioner.

Recommendation 11

Under section 295 of the *Crime and Misconduct Act 2001*, the Committee may refer a matter to the Parliamentary Crime and Misconduct Commissioner for investigation and report back to the Committee. Additionally, the Committee can refer a matter to the Police Commissioner for an investigation and report to the Committee. Under section 295(2)(f) the Committee can also take other such action as it sees fit. The Committee therefore considers that the Committee has the power to refer suspected official misconduct on the part of CMC officers to the Parliamentary Commissioner.

Currently, the Committee may become aware of suspected official misconduct by CMC officers in a number of ways: under section 329 of the *Crime and Misconduct Act 2001* which requires the Chairperson of the CMC to notify the Committee of conduct of a CMC officer that they suspect could amount to improper conduct; and through a complaint made to the Committee about the conduct of the CMC or a CMC officer.

In Report No. 90, the Committee noted that referrals to the Parliamentary Commissioner under section 295 of the Crime and Misconduct Act attached parliamentary privilege and the findings and proceedings of the Parliamentary Commissioner therefore could not be used in another forum, for example disciplinary or court proceedings by virtue of sections 8 and 9 of the *Parliament of Queensland Act 2001*.

The Committee recommended in its Report No. 90 that the Crime and Misconduct Act be amended to allow the proceedings of the Parliamentary Commissioner, upon referral of matters to him by the Committee, to be used by the Chairperson of the CMC in disciplinary proceedings.

The Committee suggests that any amendment in this regard should include a requirement for the Committee to be kept informed of any 'own initiative' investigations of the Parliamentary Commissioner.

Recommendation 12

The Committee received advice from the CMC that it recently restricted its research activities to matters relevant to current investigations and matters before it. The Committee notes the high regard in which the CMC research is held by the wider law enforcement community. The Committee also understands that the research of the CMC has driven policy change in a number of areas including recent Taser reforms.

On the basis of the CMC's own refocus of its research activities, the Committee does not support this recommendation which would require the CMC, an independent statutory body, to seek the advance permission from a Minister of the Executive Government before conducting broader research.

Recommendation 13

The Committee does not support this recommendation. The Committee considers the Memoranda of Understanding (MOU) utilised by the CMC and other bodies provides formal recognition of the responsibilities of each body where relevant legislation does not provide a delineation of each bodies' responsibility.

Contrary to the intent of the recommendation, the Committee understands that this recommendation could negatively impact upon the effectiveness of the CMC's operations and that of the other relevant agencies and bodies involved. The Committee understands that the CMC enters into a number of MOU to assist in maintaining important links with other law enforcement agencies and government departments to ensure the sharing of intelligence information, and the safety of witness protectees.

The Committee considers that a formalisation of such arrangements reduces the negotiation and confusion associated with informal arrangements in relation to sharing intelligence information, investigation of serious crime across State and Territory borders, and the witness protection program. The Committee considers MOU necessary for the CMC to continue to operate efficiently.

Recommendation 14

The Committee supports this recommendation.

Recommendation 15

The Committee notes that the CMC's media unit has two staff, one senior and one junior media officer. The Committee does not consider this staffing excessive.

Recommendation 16

The Committee does not support this recommendation as it is an unnecessary interference with the powers and rights of the Parliament and of a Parliamentary Committee to determine its own proceedings.

In Report No. 90, the Committee undertook to open its proceedings. The Committee followed up on that undertaking on 3 May when it held a public hearing with the CMC. The Committee is working on processes to support these public hearings with the CMC, including requiring the CMC to produce a report to the Committee which the Committee published on its website, and to justify why certain matters are excluded from the public report. There is no need to enshrine this undertaking in legislation.

Given the sensitive nature of many of the matters dealt with by the CMC, the Committee considers some matters in private in order for the Committee to satisfy itself that the CMC is using its resources efficiently and effectively. The in camera meetings with the CMC are supported by a full, confidential report from the CMC on its activities during the reporting period. It is not appropriate to discuss some issues in public and the Committee is best placed to determine which issues are suitable for public hearings and which should remain confidential.

Recommendation 17

The Committee supports the establishment of the implementation panel recommended by the Advisory Panel which would consist of the Public Service Commissioner and two others, not current or former public servants; one being a senior independent lawyer reporting directly to the Attorney-General.

The Committee appreciates the opportunity to offer its response to the Advisory Panel's report. We are in agreement with your publicly stated view that the State needs an independent, effective and efficient crime and misconduct investigative entity. The Committee is happy to discuss these matters further should you wish to do so.

Yours sincerely



Mrs Liz Cunningham MP
Chair