

PARLIAMENTARY CRIMINAL JUSTICE COMMITTEE

Annual Report 1999/2000

Report No. 54

THE COMMITTEE

The Parliamentary Criminal Justice Committee is an all-party committee of the Queensland Legislative Assembly constituted under the *Criminal Justice Act 1989*.

The principal functions of the Committee are to monitor and review the discharge of the functions of the Criminal Justice Commission (CJC), to report to Parliament on matters pertinent to the CJC, and to participate in the constitution of the CJC.

The Committee both has a continual role in monitoring and reviewing the CJC and also conducts specific inquiries in respect of matters pertaining to the CJC. It is through the Committee that the CJC is accountable to the Parliament and to the people of Queensland.

COMMITTEE MEMBERSHIP

Mr Paul Lucas MP (Chairman), *Member for Lytton*
Hon Vince Lester MP (Deputy Chairman), *Member for Keppel*
Mr John Hegarty MP, *Member for Redlands*
Mr Bob Quinn MP¹, *Member for Merrimac*
Ms Karen Struthers MP, *Member for Archerfield*
Mr Geoff Wilson MP², *Member for Ferny Grove*

¹ Mr Bob Quinn MLA was appointed to the Committee on 18 May 2000 following the resignation of Mr Santo Santoro MP.

² Mr Geoff Wilson MP was appointed to the Committee on 29 February 2000, following the appointment of Dr Lesley Clark MP to a position as Parliamentary Secretary.

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1. INTRODUCTION

The Parliamentary Criminal Justice Committee (the Committee or the PCJC) is established by section 115 of the *Criminal Justice Act 1989* (Qld) [the Act].

This report represents a brief summary of the Committee's activities for the 1999/2000 financial year.

Unlike other Committees of the Legislative Assembly, the Committee is not required by the *Parliamentary Committees Act 1995* (Qld) to present an annual report. However, the Committee considers that it is in the spirit of the Parliamentary committee system that it make such a report to the Legislative Assembly and to the people of Queensland for its activities.

2. THE COMMITTEE'S RESPONSIBILITIES

The functions and responsibilities of the Committee, as detailed in section 118 of the Act, may be summarised as follows:

- to monitor and review the activities of the Criminal Justice Commission (CJC);
- to report to the Legislative Assembly where appropriate;
- to examine reports of the CJC;
- to participate in the appointment of CJC Commissioners;
- to conduct a review of the CJC at the end of the Committee's term; and
- to issue guidelines and give directions to the CJC, where appropriate.

Under section 118F of the Act, the Committee also has a specific role in relation to complaints made, or other concerns, about the conduct and activities of the CJC and its staff.

Under the *Misconduct Tribunals Act 1997* (Qld) the Committee also participates in the appointment of members of the Misconduct Tribunal¹ and may conduct a review, where appropriate, of the Misconduct Tribunal as part of its three yearly review of the CJC.²

2.1. MONITORING AND REVIEWING THE CJC

The phrase "monitor and review" is not defined in the Act, but is generally understood to require the Committee to ensure the accountability of the CJC to the Parliament, as was specifically envisaged by the Fitzgerald Report.³

In the absence of any definition, the Committee has developed a number of mechanisms which enable it to "monitor and review" the activities of the CJC. These mechanisms have included:

- holding regular Committee meetings to consider issues relevant to the CJC;
- receiving confidential bi-monthly reports from the CJC in relation to its activities and the discharge of its functions;
- receiving confidential minutes of internal meetings held by the CJC, including meetings of the CJC Commissioners and the CJC Executive;
- holding bi-monthly in-camera meetings with the Chairperson of the CJC, CJC Commissioners and senior CJC officers;
- receiving complaints against the CJC and its officers;
- reviewing CJC guidelines and making suggestions for improvement of CJC practices;
- reviewing CJC reports including its annual report and research reports;
- requesting reports from the CJC on matters which have come to the Committee's attention;
- conducting inquiries into:
 - the actions of the CJC and/or its officers;
 - matters involving the CJC;
 - issues arising from reports of the CJC as and when those matters arise;
- conducting audits of various registers maintained by the CJC and relevant files kept by the CJC detailing the use by the CJC of its powers;
- dealing with ad hoc issues concerning the CJC as they arise; and
- seeking independent advice from experienced legal Counsel, academics and persons with

¹ Section 7.

² Section 38.

³ Commission of Inquiry into possible illegal activities and associated police misconduct, 1989, *Report of an Inquiry pursuant to Orders in Council*, (Commissioner GE Fitzgerald QC), Brisbane.

particular skills and expertise with respect to various matters concerning the CJC.

The Committee's activities during the reporting period in relation to these various functions are discussed in more detail below.

The CJC is financially accountable to the responsible Minister who also performs a number of other functions under the Act.⁴

2.2. REPORTING TO THE LEGISLATIVE ASSEMBLY

The second main function of the Committee is to report to Parliament on the operations and activities of the CJC so that it is accountable to the Parliament and to the people of Queensland.

The Committee's general function is to comment and report, at the Committee's discretion, in respect of any matter concerning the CJC's operations.

During the reporting period the Committee tabled six reports to Parliament on matters concerning the CJC. The reports are discussed further below.

2.3. EXAMINING THE ANNUAL REPORT AND OTHER REPORTS OF THE CJC

By virtue of section 118(1)(c) of the Act, the Committee is obliged to "examine the annual report and other reports of the commission and report to the Legislative Assembly on any matter appearing in or arising out of any such report".

The Committee has adopted, with approval, the reasoning of its predecessor Committees that it is counterproductive and duplicative for the Committee to engage in a detailed examination and reporting process for every CJC report. The Committee therefore adopted a practice of reporting to Parliament only where it determined that a CJC report was of sufficient public interest or importance to the community, and the Committee was able to add to the process in some way by reporting to Parliament in respect of the CJC's report.

The definition of "report of the Commission" in section 26(9) of the Act also requires any report the CJC wishes to table in the Parliament under section 26, other than a report of a section 25 hearing, to be referred to the Committee, so that the Committee can consider whether it will direct that the report should be so tabled.

In the relevant period, the CJC produced 23 reports, including investigative reports, research reports, research papers, issues papers, a Criminal Justice Monitor and Prevention Pointers.

2.3.1. Examination of the CJC's Annual Report 1998/1999

The CJC's 1998/1999 Annual Report was tabled in Parliament on 9 November 1999. In previous years, the Committee has examined the CJC's Annual Reports and has raised certain issues arising from those reports with CJC Commissioners and senior officers at various Joint meetings with the CJC.

This year the Committee resolved that as part of its review of the CJC's Annual Report it would hold a public hearing. At the regular bi-monthly meetings between the Committee and CJC representatives, confidential matters are frequently discussed, including current CJC operations. It is not appropriate that such matters are canvassed at a public hearing. However, the Committee was of the view that holding a public hearing was a means of enhancing the accountability process by providing an opportunity to increase public insight into that process.

The public hearing was held at Parliament House on Friday 18 February 2000. Appearing at the hearing to present information and answer questions on behalf of the CJC were the CJC Chairperson, Mr Brendan Butler SC, the other CJC Commissioners and senior officers of the CJC.

While the public hearing focussed on the information contained in the Annual Report, progress since July 1999 on issues arising from the report was also discussed where relevant.

2.3.1.1. Report No. 53 - Committee's examination of the CJC's Annual Report

On 28 April 2000, the Committee tabled its Report No. 53 entitled *Examination of the Criminal Justice Commission's Annual Report for 1998/1999*.

Major points discussed in the report include:

- the relatively low level of public awareness of the CJC's responsibilities in relation to local government, particularly when compared with the Independent Commission Against Corruption in New South Wales;
- delay in the publication of the first issue of the Police Service Monitor⁵, the importance of

⁴ On 29 June 1998, the Premier was reinstated as the responsible Minister.

⁵ Referred to in the CJC's *Annual Report for 1998/1999*, at p. 35.

which had been recognised by the Queensland Police Service Review⁶ and the previous PCJC⁷;

- the implications of the CJC's planned move to new city premises;
- strategies to facilitate more open communication between the CJC and the public of Queensland;
- the CJC's increased focus on long term preventative measures;
- trends in complaints made to the CJC; and
- progress on joint reviews with the Queensland Police Service, dealing with high-speed pursuits and the use of hand-held tape recorders for police officers in the field.

The Committee commended the CJC on its Annual Report, which the Committee notes has since won an award of excellence from the Institute of Internal Auditors.⁸

2.3.2. Consideration of CJC reports under section 26(9) of the Act

During the reporting period, the Committee considered and ultimately provided the requisite direction to the CJC to table in the Parliament under section 26(9) of the Act, three CJC reports:

- *Police and Drugs: a follow-up report* (tabled by the CJC on 2 August 1999);
- *Gocorp Interactive Gambling Licence: report on an advice by R.W. Gotterson QC* (tabled by the CJC on 30 September 1999);
- *Strip Searches in Queensland: an inquiry into the law and practice* (tabled by the CJC on 15 August 2000).

The key issue considered by the Committee in each case was whether the subject matter of each report made it a suitable report to be tabled in the Parliament. In providing each direction, the Committee did not consider it appropriate to make any specific comment in respect of any report, other than to note that the Committee should not necessarily

be taken as endorsing or adopting the report in any way.

The Committee agreed that it was appropriate to give the direction in each case in which it was sought.

2.4. PARTICIPATING IN THE CONSTITUTION OF THE CJC

The Commission comprises a full-time Chairperson and four Commissioners who are part-time.

Before selecting any person for appointment as Chairperson or part-time Commissioner of the CJC, the responsible Minister, in this case the Premier, is required by section 11 of the Act to consult with the Committee. A person must not be appointed as Chairperson or part-time Commissioner of the CJC unless that appointment is supported by a bi-partisan majority of the Committee.

During the reporting period, the Premier consulted with the Committee in respect of the appointment of part-time Commissioners of the CJC. The Committee unanimously approved the appointment of three part-time members:

- Mrs Sally Goold OAM (appointed on 16 July 1999 for a period of three years)⁹;
- Mr Orazio (Ray) Rinaudo (appointed on 20 September 1999 for a period of three years)¹⁰; and
- Mrs Dina Browne AO (re-appointed on 17 December 1999 for a further period of two years).¹¹

The appointment of Mrs Kathryn Biggs expired on 26 June 2000.¹²

2.5. THREE YEARLY REVIEW OF THE ACTIVITIES OF THE CJC

Section 118(1)(f) of the Act obliges the Committee to conduct a review of the activities of the CJC every three years.

⁶ Queensland Police Service Review, 1996, *Review of the Queensland Police Service*, Brisbane, p. 282.

⁷ PCJC, 1998, *A report of a review of the activities of the Criminal Justice Commission pursuant to section 118(1)(f) of the Criminal Justice Act 1989*, Report No. 45, Recommendation 21, p. 99.

⁸ This follows a similar award in 1997-1998.

⁹ The appointment of Professor Ross Homel expired on 10 April 1999.

¹⁰ The appointment of Mr James Crowley RFD QC expired on 19 September 1999.

¹¹ Mrs Browne was originally appointed on 20 September 1996 for a period of three years.

¹² The Committee unanimously approved the appointment of Associate Professor Margaret Steinberg on 20 July 2000, just outside the reporting period. Associate Professor Steinberg was subsequently appointed for a period of three years from 2 October 2000.

On 26 May 2000 the Committee called for submissions from the CJC, interested agencies and members of the public.

The three year review is currently in progress. It is anticipated that following consideration of submissions received, the Committee will conduct public hearings. Some of the issues that might be covered in the review include:

- the CJC's jurisdiction, functions and responsibilities;
- the CJC's handling of complaints of corruption and other misconduct in the public sector and in the police force;
- the use and effectiveness of the CJC's investigative powers;
- the CJC's role in overseeing the police force;
- the CJC's role in relation to the criminal justice system;
- corporate governance issues; and
- the accountability of the CJC, including the office of the Parliamentary Criminal Justice Commissioner (Parliamentary Commissioner).

2.6. ISSUING GUIDELINES AND GIVING DIRECTIONS TO THE CJC

Following passage of the *Criminal Justice Legislation Amendment Act 1997*, the Committee has the power to issue guidelines to the CJC under section 118A of the Act. Section 118A(4) requires the CJC to comply with such guidelines.

Section 118E(1) of the Act also empowers the Committee to direct the CJC, in writing, to investigate the matters stated in the direction. The CJC is required to investigate the matters specified in the direction diligently and in a way reasonably expected of a law enforcement agency, and to report the results of its investigation to the Committee.

During the relevant period the Committee did not issue any guideline to the CJC under section 118A. The Committee also did not direct the CJC to pursue or undertake an investigation of any matter under section 118E.

2.7. COMPLAINTS AGAINST OFFICERS OF THE CJC

2.7.1. Introduction

Given the nature of the CJC and its functions and responsibilities, it is inevitable that from time to time,

complaints will be made regarding actions of officers of the CJC in the course of performing their duties.

The establishment of an appropriate mechanism for the assessment and investigation of complaints against officers of the CJC is critical to ensure public confidence in, and the effective accountability of, the CJC.

The large majority of these complaints against the CJC are not substantiated. However the consideration of such complaints can provide the Committee with a valuable window into the operations and activities of the CJC. Even where a complaint is not substantiated, procedural and administrative deficiencies may be identified which make revision or clarification of CJC policies and procedures appropriate. Further, the very issues raised by a complaint can often provide useful indicators of areas where additional communication and feedback by the CJC may assist in alleviating misunderstandings.

The procedures governing the handling of complaints differ depending on whether the complaint is received directly from the public or redirected to the Committee from the CJC.

2.7.2. Complaints against the CJC received by the Committee directly from members of the public

Most complaints against the CJC or its officers considered by the Committee are provided directly to the Committee by members of the public.

The types of complaints vary, but more common examples have included complaints alleging:

- delay occasioned by the CJC in investigating a matter;
- the CJC's failure to investigate or adequately investigate a complaint;
- the CJC's failure to consider all relevant facts and material in making a determination;
- improper or inappropriate investigation methods used by the CJC; and
- bias in the CJC's final determination.

In rare instances, complaints of misconduct (as opposed to complaints regarding administrative actions, which are ultimately subject to judicial review) are made against CJC officers.

The Committee has no power to act on complaints that do not concern the actions of or inaction by the CJC, including complaints of general dissatisfaction with the criminal justice system.

Complaints alleging official misconduct by officers in units of public administration or official misconduct or misconduct by police officers which have not first been considered by the CJC, are ordinarily forwarded to the CJC. Complainants are then notified that the CJC will report to them directly about their complaints. However, in such cases the Committee retains an interest in the matter and the CJC provides the Committee with a copy of its final letter of response to the complainant.

Adopting the policy of previous Parliamentary Criminal Justice Committees, the Committee only considers complaints which are made in writing. The Committee considers these complaints 'on the papers', that is, on the available written documentation, and relies on research and briefings from the Committee secretariat, which comprises three lawyers and an executive assistant. As a general rule, again adopting the policy of previous Parliamentary Criminal Justice Committees, neither the Committee, individual Committee members nor staff of the Committee secretariat will meet personally with a complainant or anyone acting on that person's behalf.¹³

2.7.3. Protocols for dealing with misconduct complaints against CJC officers when made directly to the CJC

The *Criminal Justice Legislation Amendment Act 1997* amended the structure for handling complaints against the CJC and its officers, but left unresolved some issues relating to the manner in which complaints received directly by the CJC are to be handled.

¹³ This policy exists for several important reasons:

- The Committee comprises six members of Parliament, all of whom play an equal role in decisions on matters coming before the Committee. Considering matters in written form ensures that no one member is asked to speak to representations that are intended for the attention of the Committee as a whole. Instead, the whole of the Committee is in a position to consider the relevant facts and arguments.
- Due to the nature and membership of the Committee, issues can be considered far more efficiently and efficaciously where material is provided in written form.
- The volume of matters dealt with by the Committee does not allow oral representations to be considered.
- Receiving complaints in written form avoids the potential for a misunderstanding or a misinterpretation as to the relevant facts, which might occur if a complaint or further relevant information were provided orally.

The Committee determined to develop a set of protocols with a view to addressing these unresolved issues.

2.7.3.1. Report No. 48 – Report on protocols for dealing with misconduct complaints

Following extensive consultation with the Chairperson and other senior officers of the CJC, and the Parliamentary Commissioner, the Committee tabled in the Parliament on 17 September 1999 its Report No. 48, entitled *A report on protocols dealing with misconduct complaints concerning officers of the CJC*. The report included the set of Protocols which had been agreed.

These Protocols only govern complaints against the CJC and its officers which are received by the CJC itself. Complaints received by the Committee directly from the public are dealt with quite differently (see paragraph 2.7.2 above).

The Protocols aim to recognise the Committee's primary role in the accountability of the CJC – a role recognised by Parliament in enacting section 118F of the Act. Section 118F provides that if the Committee receives a complaint or has concerns about the conduct of an officer of the CJC, it is the Committee that is required to determine whether the complaint is to be investigated and if so by whom. The Protocols attempt to ensure that the Committee is fully informed by the CJC, as soon as practicable, of all complaints, but particularly those which reasonably support a suspicion of misconduct.

The Committee considered issuing and tabling the Protocols as formal guidelines pursuant to sections 118A and 118B of the Act (see paragraph 2.6 above). However, the Committee determined not to adopt that formal course at that time, but to carefully monitor the operation and effectiveness of the Protocols, with a view to reviewing them after they have been in operation for a period of 12 months.¹⁴

2.7.4. Complaints made in 1999/2000

During the reporting period, the Committee formally received 83 complaints against the CJC and/or its officers.

Most of those complaints (65 complaints) were received directly from members of the public. The remainder (18 complaints) were referred to the Committee by the CJC.

¹⁴ This review will be undertaken as part of the Committee's current three year review of the CJC.

After careful consideration of any investigation report provided by the CJC and/or the Parliamentary Commissioner¹⁵, together with the material provided by the complainant, the Committee considered that in the vast majority of cases, on the information supplied to the Committee, the complaints were unsubstantiated or the action taken by the CJC was not inappropriate.

In most cases the Committee ultimately agreed with the actions and decisions of the CJC and its officers. However, in some cases the Committee requested the CJC to provide further information, to reconsider its decision, to review its practices and procedures or to comment upon a particular aspect of a matter.

As a result of complaints made to and considered by the Committee, the CJC has reviewed and/or revised its policies and procedures including:

- clarification that frequent flyer points could only be used for official purposes;
- the security management of protected computer files to ensure that access to personal information stored in CJC computers did not compromise the security of CJC information;
- additional education and training of CJC officers in respect of the *Freedom of Information Act 1992*;
- reviewing the process of interviewing and debriefing complainants and witnesses; and
- revising the policies governing the acquisition, storage and use of telecommunications information.

2.8. PARTICIPATING IN THE APPOINTMENT OF MISCONDUCT TRIBUNAL PANEL MEMBERS

The Committee plays a role in determining the appointment of Misconduct Tribunal panel members.

The Minister may not nominate a person for appointment as a tribunal member unless that nomination is supported by a bi-partisan majority of the Committee.¹⁶

The Committee was not required to take any action in relation to this responsibility during the reporting period.

¹⁵ The Parliamentary Commissioner's functions are discussed further at paragraph 3.2 below.

¹⁶ *Misconduct Tribunal Act 1997*, section 7.

3. MECHANISMS AVAILABLE TO THE COMMITTEE

3.1. POWERS OF THE COMMITTEE

The Act confers certain powers upon the Committee to enable it to fulfil the statutory functions and responsibilities imposed upon it, including the power to:

- call for persons, documents and other things;
- administer oaths to witnesses; and
- examine witnesses on oath.¹⁷

3.2. PARLIAMENTARY CRIMINAL JUSTICE COMMISSIONER

Since the passage of the *Criminal Justice Legislation Amendment Act 1997*, the Committee has also had the power to request the assistance of the Parliamentary Commissioner. This mechanism enhances the Committee's capacity to effectively monitor and review the CJC.

The inaugural Parliamentary Commissioner, appointed on 30 March 1998 for a term of 3 years, is Ms Julie Dick SC, a senior criminal lawyer who has worked in the criminal justice system for many years.

3.2.1. Role and functions of the Parliamentary Commissioner

The Parliamentary Commissioner may only undertake a function at the request of the Committee if a bi-partisan majority of the Committee agrees.

The Committee may request the Parliamentary Commissioner to:

- investigate complaints against the CJC or its officers;
- investigate allegations of possible unauthorised disclosure of confidential information or material;
- conduct audits of the CJC's records and operational files;
- verify the CJC's reasons for withholding information from the Committee;
- verify the accuracy and completeness of reports given to the Committee by the CJC;

¹⁷ In addition, the Committee has the power to issue guidelines to the CJC which are binding upon the CJC (sections 118A to 118C) and to direct the CJC to investigate a matter stated in the direction (section 118E). See paragraph 2.6 above.

- assist the Committee with the preparation of its three year review; and
- otherwise assist the Committee (section 118R(2)).

In order to carry out these functions, the Parliamentary Commissioner is equipped with a wide range of powers, set out in section 118T of the Act. In addition to these powers, for the purposes of conducting an investigation, the Parliamentary Commissioner has and may exercise all the powers, rights and privileges of a Royal Commission under the *Commissions of Inquiry Act 1950* [section 118W(a)]. Further, the *Commissions of Inquiry Act* applies to the Parliamentary Commissioner, in relation to an investigation and the subject matter of such investigation conducted by the Parliamentary Commissioner, as if the matter were one into which a commission, constituted by the Parliamentary Commissioner, had been appointed to make inquiry [section 118W(b)].

The Parliamentary Commissioner has an additional function under the Act – to acquire possession, custody and control of all the records of the former Connolly/Ryan Inquiry [section 118U(1)]. The Parliamentary Commissioner is required to review that material to determine if those records disclose any matter that should be investigated by an “appropriate agency”, as defined by the Act [section 118U(3)]. In performing this additional function, the Parliamentary Commissioner acts without the need for a reference from the Committee.

3.2.2. Assistance provided by the Parliamentary Commissioner

During the reporting period the Committee sought the assistance of the Parliamentary Commissioner in respect of numerous matters. These matters have included:

- an audit of the records, operational files and accompanying documentary material held by the CJC, including material relating to any current or sensitive operations conducted by the CJC¹⁸;
- the investigation of certain complaints of alleged misconduct against CJC officers; and
- the supervision of the CJC’s investigation of certain complaints against CJC officers.

Since the creation of the office of the Parliamentary Commissioner, the Committee has received assistance

from the Parliamentary Commissioner in 23 matters. These matters are in addition to the Parliamentary Commissioner’s function under the Criminal Justice Act in reviewing the records of the Connolly/Ryan Inquiry¹⁹ and functions under the *Crime Commission Act 1997* (Qld).

4. PARTICULAR ISSUES CONSIDERED BY THE COMMITTEE

4.1. TELECOMMUNICATIONS INTERCEPTION

4.1.1. Introduction

The issue of whether the CJC and other Queensland law enforcement agencies should have the power of telecommunications interception (phone-tapping) has been considered on a number of occasions over recent years.

Following the passage of relevant legislation in Tasmania in mid-1999, Queensland is now the only State whose law enforcement agencies do not have the power of telecommunications interception.

4.1.2. Public hearing

The Committee resolved to conduct a public hearing on various days in October and November 1999, at which the Committee heard both from proponents of extending the power of telecommunications interception to Queensland agencies, and from parties opposed to this course. The Committee also heard from persons with considerable experience in the oversight of the telecommunications interception activities of agencies in other Australian jurisdictions.

Some of the public hearings were conducted by video-conference. So far as the Committee is aware, this was the first time that any Parliamentary committee in Queensland had utilised such technology to conduct public hearings. The Committee considers that video conferencing can be an efficient and cost-effective method of conducting hearings in appropriate circumstances.

The Committee saw the central issue as balancing the cost and efficiency of telecommunications interception as an effective law enforcement tool with

¹⁸ See further paragraph 4.6 below.

¹⁹ The records of the Connolly/Ryan Inquiry are quite voluminous. The records of the Inquiry are contained in over 800 boxes. The Inquiry held hearings between 18 November 1996 and 1 August 1997. Over 80 witnesses were called to give evidence at the Inquiry which is recorded in over 10,000 pages of transcript. A total of 790 exhibits were tendered during the hearings. The Inquiry also conducted 201 interviews and took 165 statements.

the impact of such a power upon the privacy of third parties.

4.1.3. Report No. 50 - Telecommunications interception

On 13 December 1999, the Committee tabled its Report No. 50 entitled *A report on the introduction of the telecommunications interception power in Queensland – balancing investigative powers with safeguards*.

In light of its deliberations, the Committee was satisfied that:-

- the ability of the CJC and other Queensland law enforcement agencies (the Queensland Police Service (QPS) and the Queensland Crime Commission (QCC)) to combat crime, especially major and organised crime, would be enhanced by giving such agencies the power of telecommunications interception;
- the power of telecommunications interception should be granted to the CJC, the QPS and the QCC; and
- on the evidence available to the Committee and having regard to the advantages of telecommunications interception, the costs (financial and social) of interception are not so great as to preclude any recommendation that the power be extended to Queensland agencies.²⁰

The Committee also concluded that the oversight scheme established by the Commonwealth legislation is not optimal. The Committee conceded that the matter is one of balance. Approaching the issues in this way, the Committee recommended consideration be given to the Public Interest Monitor being granted the power to examine and respond to proposed applications for interception warrants, before they are brought before the issuing authority. The Committee acknowledged that there may be constitutional impediments to such a proposal in that it is a matter of some contest as to whether the Queensland Parliament can provide for further safeguards beyond those set out in the Commonwealth Act.²¹

²⁰ Report No. 50 at paragraphs 6.4 and 7.5.

²¹ For more details see the Committee's Report No.50 available on the Committee's Internet web-site at <http://www.parliament.qld.gov.au/committees/crimjust.htm>

4.2. AN INVESTIGATION INTO THE ALLEGED UNAUTHORISED DISCLOSURE OF CONFIDENTIAL INFORMATION CONCERNING AN INVESTIGATION BY THE CJC IN RESPECT OF MR NORMAN ALFORD

4.2.1. Introduction

On Wednesday, 17 March 1999, an article in *The Courier-Mail* newspaper entitled "Alford admits to physical bond" referred in part to a CJC investigative hearing in February 1999. The contents of the article caused the Committee to have concern about whether there might have been an unauthorised disclosure of confidential information from the CJC.

The Committee unanimously resolved on 17 March 1999 to request the Parliamentary Commissioner to investigate and report to the Committee on the matter.

The Parliamentary Commissioner concluded that it was unlikely that there was an unauthorised disclosure by the CJC or one of its officers of the information referred to in the Terms of Reference.

4.2.2. Report No. 49 - The report on the investigation by the Parliamentary Commissioner

On 29 October 1999, the Committee tabled its report, entitled *A report on an investigation by the Parliamentary Criminal Justice Commissioner into the alleged unauthorised disclosure of confidential information concerning an investigation by the CJC in respect of Mr Norman Alford*. The report attached a public version of the Parliamentary Commissioner's report to the Committee.

4.3. AN INVESTIGATION INTO THE ALLEGED UNAUTHORISED DISCLOSURE OF CONFIDENTIAL INFORMATION CONCERNING AN INVESTIGATION BY THE CJC IN RESPECT OF MR JACK PAFF MP

4.3.1. Introduction

Allegations were made that at an official function on 28 September 1998, Mr Jack Paff MP, then a member of the Committee, had made serious allegations of criminal conduct by serving and retired police officers. Those allegations were subsequently investigated by the CJC.

On 30 October 1998, an article appeared in *The Courier-Mail* newspaper entitled "One Nation MP 'quizzed over police comments'".

The Committee subsequently requested the Parliamentary Commissioner to investigate and report to the Committee in relation to whether there had been an unauthorised disclosure of information or other material from the CJC concerning the CJC's investigation of the matter.

4.3.2. Report No. 51 - The report on the investigation by the Parliamentary Commissioner

In her report to the Committee, the Parliamentary Commissioner concluded:

...I am satisfied to the appropriate standard that the source of the information was the Criminal Justice Commission.

However there is no evidence that the information was disclosed directly to the Courier Mail by any of the officers involved in the investigation or mentioned in this report.

In accordance with established procedures, on receipt of the Parliamentary Commissioner's report, the Committee invited submissions from the CJC as to the contents of the report.

The CJC provided the Committee with a detailed submission. Following receipt of that response the Committee took further advice and considered the matter at some length before resolving to table the Parliamentary Commissioner's report.

The Committee noted that the matter had attracted the public interest, the reference to the Parliamentary Commissioner was a matter of public record, and the content of the report had become the subject of media speculation. Further the Committee believed it was not sustainable to refrain from publishing the report prior to court proceedings foreshadowed by the CJC, particularly given such proceedings had, at that time, not been instituted and would be of uncertain duration. Further, the Committee considered that in any court proceedings, the report itself would be an exhibit and enter the public domain. Finally, on the Committee's external and independent legal advice, the Committee considered that there was no current legal impediment to the report being tabled.

After careful consideration of the competing interests, the Committee affirmed its resolution to table a public version of the Parliamentary Commissioner's report. The report, entitled *A report on an investigation by the Parliamentary Criminal Justice Commissioner into the alleged unauthorised disclosure of confidential information concerning an investigation*

of allegations made by Mr Jack Paff MLA, was tabled on 13 December 1999.

4.3.3. Legal proceedings by the CJC against the Parliamentary Commissioner

On 23 December 1999, the CJC commenced legal proceedings against the Parliamentary Commissioner seeking, amongst other orders, a declaration that the report of the Parliamentary Commissioner to the Committee was outside her powers.²²

4.4. JUDICIAL REVIEW OF A DECISION BY THE COMMITTEE

4.4.1. Introduction

A complainant to the Committee, Mr Corrigan, sought judicial review of a decision of the Committee not to refer his complaint to the Parliamentary Commissioner.

The Committee took legal advice from experienced independent legal counsel. Consistent with that advice, senior counsel for the Committee sought to have the application summarily dismissed on the basis that:

1. it did not seek the review of a "decision of an administrative character"; and
2. more fundamentally, the decision of the Committee as a Committee of the Parliament was a decision of a parliamentary character and protected from judicial interference by Article 9 of the *Bill of Rights 1688*.

4.4.2. Corrigan v Parliamentary Criminal Justice Committee: decision of Dutney J. (unreported) 27 April 2000 - S 2646/2000²³

The Court agreed with the arguments put by Counsel for the Committee and dismissed the application by Mr Corrigan.

²² This matter was heard on 17 and 18 July 2000 and a decision by Helman J. was handed down on 25 July 2000. Helman J. declined to make the orders sought by the CJC. On 18 August 2000 the CJC filed a notice of appeal. The appeal has not yet been heard.

²³ The link to the decision may be found at <http://www.courts.qld.gov.au/qjudgment/OSC%202000/001-100/SC00-096.pdf>.

4.5. A REVIEW OF THE *CRIMINAL JUSTICE ACT 1989* (AND *CRIME COMMISSION ACT 1997*)²⁴

Following the announcement by the Premier on 18 September 1998 foreshadowing a review of the *Criminal Justice Act 1989*, the Committee has continued to spend some time considering various options for reform of the *Criminal Justice Act 1989* and to a lesser extent the *Crime Commission Act 1997*.

The Committee has provided the Premier with several comprehensive submissions in respect of numerous suggested reforms to the *Criminal Justice Act* including supplementary submissions in respect of a draft Bill in relation to which the Committee had been consulted.

4.6. AUDIT OF THE RECORDS, OPERATIONAL FILES AND ACCOMPANYING DOCUMENTARY MATERIAL HELD BY THE CJC

4.6.1. Introduction

The CJC has significant coercive investigative powers. They include the power to:

- conduct an investigative hearing (section 25);
- issue a notice to discover information or to produce a record or thing (section 69);
- enter and search public premises and inspect, seize or copy any record or thing (section 70);
- summon a person to attend before the CJC and give evidence or produce a record or thing (section 74);
- apply to a judge of the Supreme Court for a warrant to enter, search and seize (sections 71 and 73) or to permit the apprehension of a witness (section 79), or for an order approving the use of a listening device (section 82); and
- undertake visual surveillance (section 84(1)).

The CJC keeps various internal registers that represent a manual record (with computer back-up) of the CJC's use of such powers. These registers refer to, and must be read with, accompanying documentary material (such as the relevant notice or warrant, the statement in support of its issue and the oath of service) and relevant CJC operational files.

The CJC has also established detailed policy and procedural guidelines which regulate the use of these

coercive powers and which require that specified documents relating to the exercise of those powers be filed with the CJC's Records Supervisor.

4.6.2. Current audit of the CJC's records, operational files and relevant documentary material

The Committee unanimously resolved, in accordance with section 118R(3) of the Act, to request the Parliamentary Commissioner to conduct, other priorities permitting²⁵, an audit of the records kept by the CJC and to report to the Committee on the results.²⁶

4.7. CJC'S REVISED CODE OF CONDUCT

In March 2000 the CJC consulted the Committee on its revised draft Code of Conduct prior to submitting it to the Premier for his approval pursuant to section 17 of the *Public Sector Ethics Act 1994*.

The Committee noted that the revised draft Code was considerably more comprehensive than its predecessor, and commended the Commission on the revised Code.

The Committee did, however, make several suggestions which were adopted by the CJC and incorporated into the Code.²⁷

4.8. OTHER CONFIDENTIAL ISSUES

The Committee also considered a number of further matters, the confidential nature of which, at this stage, precludes public disclosure.

²⁴ The Committee's review of the *Crime Commission Act 1997* concerned only those provisions which might affect the Committee.

²⁵ The Committee made no specific request of the Parliamentary Commissioner in respect of the timing of this audit. The Committee was conscious that several investigations had been referred to her, some of which had not then been finalised. The Committee advised the Parliamentary Commissioner that it expected that such investigations would continue to be given priority status over the proposed audit. The Committee asked the Parliamentary Commissioner to liaise with the Chairperson of the CJC, Mr Butler SC, so that the audit could be conducted at a time of mutual convenience, particularly given the CJC had then foreshadowed a move to new premises in the city.

²⁶ At the time of this report, the audit had not been finalised.

²⁷ This Code of Conduct may be further examined as part of the Committee's three year review of the CJC.

4.9. WORKING GROUP OF PARLIAMENTARY COMMITTEES THAT OVERSEE CRIMINAL JUSTICE AND LAW ENFORCEMENT BODIES

4.9.1. Introduction

In late 1997, the PCJC and Parliamentary committees that perform a similar role in other States in overseeing anti-corruption and law enforcement bodies formed a Working Group.

The purpose of the Working Group is to provide a forum for the open exchange of views and ideas between members of Parliamentary oversight committees in Australia. The Working Group represents an invaluable opportunity for the members of such committees to discuss the many common issues they face and to hear from speakers presenting a wide range of views.

By comparing notes and discussing challenges and successful strategies, members of various committees and their staff can obtain valuable insight into the functioning of other committees that play a similar role. Participants also receive new ideas about how to improve the system of accountability in their own jurisdiction.

The Parliamentary committees represented on the Working Group are:

- the New South Wales Parliamentary Joint Committee which oversees the Independent Commission Against Corruption;
- the New South Wales Parliamentary Committee which oversees the Office of the Ombudsman and the Police Integrity Commission;
- the Western Australian Joint Standing Committee which oversees the Anti-Corruption Commission; and
- the PCJC.

4.9.2. Third meeting of the Working Group

The third meeting of the Working Group took place in Sydney on 3 September 1999.²⁸

The meeting format varied from previous occasions. The meeting was divided into two sessions, with a moderator and several panel members leading each session. The first session was entitled *The essentials of effective civilian oversight of the police and public sector*. The second session was entitled *How can*

Parliamentary committees maximise their effectiveness as oversight bodies.

5. MEETINGS

5.1. MEETINGS OF THE COMMITTEE

The Committee meets on a regular basis. When Parliament is sitting the Committee meets at least once a week. In addition, the Committee meets before every bi-monthly Joint meeting between the Committee and the CJC to discuss matters that have arisen in the previous two month period. The Committee also meets at other times when particular matters arise and for the purposes of considering draft reports.

5.2. JOINT MEETINGS BETWEEN THE COMMITTEE AND THE CJC

In addition to Committee meetings, the Committee meets, usually at least every two months, with the CJC Commissioners, directors of each Division of the CJC, the chief officer of complaints, and, when required, other officers of the CJC, in order to discuss the CJC's activities in respect of the previous two month period.

These bi-monthly meetings with the CJC are conducted in private, so that the Committee has the opportunity to closely scrutinise the CJC's confidential and highly sensitive activities.

In the week prior to each bi-monthly meeting, the CJC provides the Committee with a strictly confidential detailed report which purports to summarise the significant activities of the CJC for the previous two month period. To this end, the reports contain a summary of each Division's activities and information including statistics, updates as to the status of operational matters and complaints, and information relating to current and potential future legal proceedings. The bi-monthly reports are also structured in such a way as to allow reference back to previous reports. This allows the Committee to continually monitor the progress of investigations, projects or initiatives of the CJC.

The information in these bi-monthly reports is supplemented by the provision to the Committee of the minutes of various CJC internal meetings, including meetings of the Commissioners and the CJC Executive Group which consists of the directors of each Division and other senior staff.

²⁸ The first meeting of the Working Group was held in Brisbane on 26 and 27 February 1998, and the second was held in Perth on 5 and 6 November 1998.

The meetings between the Committee and the CJC and the provision to the Committee of bi-monthly reports and minutes of internal CJC meetings are vital to the accountability process. These mechanisms attempt to ensure the regular flow of information between the bodies and keep Committee members informed about the CJC's activities. The meetings also enable Committee members to ask questions and scrutinise the actions of CJC officers who are responsible for particular matters, and promote the frank interchange of opinions between the Committee and the CJC.

5.3. JOINT MEETINGS BETWEEN THE COMMITTEE AND THE PARLIAMENTARY COMMISSIONER

In addition to Committee meetings and Joint meetings with the CJC, the Committee meets regularly with the Parliamentary Commissioner.

Meetings with the Parliamentary Commissioner are held on a bi-monthly basis in the month the Committee does not meet with the CJC.

In the week prior to the Joint meeting, the Parliamentary Commissioner provides the Committee with a strictly confidential report which summarises the significant activities of her office during the previous period.

5.4. MEETING STATISTICS

During the reporting period, the Committee met a total of 59 times.

These meetings include:

- five bi-monthly Joint meetings with the CJC attended by the Chairperson, Commissioners and Senior Officers of the CJC; and
- six Joint meetings with the Parliamentary Criminal Justice Commissioner.

A schedule of meeting dates and the attendance record of Members is appended to this report.

6. COMMITTEE TRAVEL

On 3 September 1999, a delegation of two members of the Committee visited Sydney to participate in the Third Meeting of the Working Group of Parliamentary Committees who have a role in overseeing criminal justice and law enforcement bodies.²⁹

On 6 to 8 September 1999, a delegation of the Committee attended the 15th Annual Conference of the International Association for the Civilian Oversight of Law Enforcement (IACOLE) held in Sydney following the Working Group meeting.

7. MINISTERIAL RESPONSES TO COMMITTEE RECOMMENDATIONS

7.1. INTRODUCTION

Section 24 of the *Parliamentary Committees Act 1995* provides that where a report of a committee of the Parliament recommends the Government or a Minister take action, or refrain from acting, in relation to a particular issue:

- the responsible Minister must table a response within three months of the report being tabled; or
- the Minister may table an interim response within three months of the report being tabled thereby extending the period, within which to formally respond, to six months from the report being tabled.

7.2. MINISTERIAL RESPONSE TO REPORT NO. 50 - TELECOMMUNICATIONS INTERCEPTION

On 13 December 1999, the Committee tabled its Report No. 50 entitled *A report on the introduction of the telecommunications interception power in Queensland – balancing investigative powers with safeguards*.

On 17 March 2000, the Minister for Police and Corrective Services, Hon Tom Barton MP, advised:

The report and its recommendations are currently being considered with a view to preparing a suitable response. The response to the report will be tabled in Parliament as soon as possible.

On 1 June 2000, Minister for Police and Corrective Services, the Hon Tom Barton MP, advised:

A response to the report and its recommendations will be considered by Cabinet in the near future. The response to the report will then be tabled in the Parliament.

²⁹ See paragraph 4.9 above.

8. BUDGET AND EXPENDITURE

The total budget allocation for the Committee in 1999/00 was \$272,083.02.³⁰ The Committee's total actual expenditure for 1999/2000 was \$248,116.20.³¹

The expenses for the Committee are set out in the following table.

| | |
|--|---------------------|
| Staff salaries and other employee related expenditure ¹ | \$179,988.36 |
| Salary related taxes ² | \$10,235.80 |
| Superannuation | \$20,306.51 |
| Plant and equipment | \$1,360.84 |
| Travel and hearing expenses ³ | \$16,198.39 |
| Telecommunication costs | \$5,120.21 |
| Legal fees | \$6,000.00 |
| Meeting expenses | \$2,359.40 |
| Stores, stationery, consumables and postage | \$1,343.65 |
| Freight | \$373.54 |
| Printing of reports and binding | \$3,479.50 |
| Reference books, Serial subscriptions | \$1,350.00 |
| TOTAL | \$248,116.20 |

1. Includes temporary assistance, contracted staff expenses, overtime, extra remuneration, meal allowances and other allowances.

2. Includes FBT, payroll tax and work cover.

3. Includes travel and other expenses relating to attendance at meetings, hearings and staff travel with, or for, the Committee.

³⁰ This compares with the Committee's budget allocation for 1998/1999 of \$301,189.99.

³¹ This compares with the Committee's actual expenditure for 1998/1999 of \$308,211.32.

Attendance Record 1999

| Date | Time | Purpose | Paul Lucas | Vince Lester | Lesley Clark | John Hegarty | Santo Santoro | Karen Struthers |
|--------------|---------|-------------------------------|------------|--------------|--------------|--------------|---------------|-----------------|
| 12 July | 12:10pm | PCJC | | | | | | |
| 21 July | 1:08pm | PCJC | | | | | | |
| 22 July | 11:39am | PCJC | | | | | | |
| 23 July | 8:54am | Joint PCJC / PCJ Commissioner | | | | | | |
| 9 August | 9:10am | PCJC | | | | | | |
| 19 August | 11:42am | PCJC | | | | | | |
| 20 August | 8:55am | PCJC | | | | | | |
| 20 August | 10.00am | Joint PCJC / CJC | | | | | | |
| 24 August | 11:40am | PCJC | | | | | | |
| 25 August | 9:15am | Joint PCJC / PCJ Commissioner | | | | | | |
| 26 August | 12:12pm | PCJC | | | | | | |
| 27 August | 10:40am | PCJC | | | | | | |
| 16 September | 11:30am | PCJC | | | | | | |
| 17 September | 8:30am | Joint PCJC / PCJ Commissioner | | | | | | |
| 24 September | 10:00am | PCJC | | | | | | |
| 4 October | 10:20am | Sub-Committee | | N/A | | | | |
| 4 October | 8:50am | PCJC | | | | | | |
| 5 October | 8:30am | Sub-Committee | | N/A | | | | |
| 25 October | 4:30pm | Joint PCJC / CJC | | | | | | |
| 27 October | 10:40pm | PCJC | | | | | | |
| 28 October | 11:30am | PCJC | | | | | | |
| 29 October | 8:30am | PCJC | | | | | | |
| 8 November | 10:45am | Sub-Committee | | N/A | N/A | | N/A | |
| 11 November | 11:50am | PCJC | | | | | | |
| 12 November | 8:00am | Joint PCJC / PCJ Commissioner | | | | | | |
| 25 November | 11:30am | PCJC | | | | | | |
| 26 November | 2:30pm | PCJC | | | | | | |
| 29 November | 4:30pm | Joint PCJC / CJC | | | | | | |
| 2 December | 11:30am | PCJC | | | | | | |
| 7 December | 5:30pm | PCJC | | | | | | |
| 9 December | 11.11am | PCJC | | | | | | |
| 10 December | 2.09pm | PCJC | | | | | | |
| 10 December | 3.20pm | PCJC | | | | | | |
| 13 December | 12.12pm | PCJC | | | | | | |
| 20 December | 10.00am | PCJC | | | | | | |

Attendance Record 2000

| <i>DATE</i> | <i>TIME</i> | <i>PURPOSE</i> | <i>Paul Lucas</i> | <i>Vince Lester</i> | <i>Lesley Clark</i> | <i>John Hegarty</i> | <i>Bob Quinn</i> | <i>Santo Santoro</i> | <i>Karen Struthers</i> | <i>Geoff Wilson</i> |
|-------------|-------------|---|-----------------------|-------------------------|-------------------------|-------------------------|----------------------|--------------------------|----------------------------|-------------------------|
| 14 January | 4.00pm | PCJC | ✓ | ✓ | ✓ | ✓ | | | | |
| 9 February | 9.30am | Special Joint PCJC / CJC | ✓ | ✓ | | ✓ | | | | |
| 9 February | 9.34am | Sub-Committee | ✓ | ✓ | N/A | ✓ | | N/A | N/A | |
| 9 February | 12.10pm | Sub-Committee | ✓ | ✓ | N/A | ✓ | | N/A | N/A | |
| 18 February | 9.00am | Public Hearings – CJC Annual Report | ✓ | | | ✓ | | ✓ | ✓ | |
| 28 February | 12.30pm | Joint PCJC / PCJ Commissioner | ✓ | | | ✓ | | ✓ | ✓ | |
| 2 March | 11.30am | PCJC | ✓ | ✓ | | ✓ | | ✓ | ✓ | ✓ |
| 14 March | 12.30am | PCJC Special | ✓ | ✓ | | ✓ | | | ✓ | ✓ |
| 16 March | 11.30am | PCJC | ✓ | ✓ | | ✓ | | ✓ | ✓ | ✓ |
| 17 March | 8.30am | PCJC | ✓ | ✓ | | ✓ | | ✓ | | ✓ |
| 17 March | 10.00am | Joint PCJC / CJC | ✓ | ✓ | | ✓ | | ✓ | | ✓ |
| 11 April | 9.00am | PCJC | ✓ | | | ✓ | | | ✓ | ✓ |
| 12 April | 8.30am | Joint PCJC / PCJ Commissioner | ✓ | | | ✓ | | ✓ | ✓ | ✓ |
| 13 April | 11.30am | PCJC | ✓ | ✓ | | ✓ | | ✓ | ✓ | ✓ |
| 3 May | 11.45am | PCJC Special (teleconference) | ✓ | | | ✓ | | | ✓ | ✓ |
| 18 May | 11.30am | PCJC | ✓ | ✓ | | ✓ | ✓ | | ✓ | ✓ |
| 18 May | 5.30pm | PCJC | ✓ | ✓ | | ✓ | ✓ | | ✓ | ✓ |
| 30 May | 1.30pm | PCJC Special | ✓ | ✓ | | ✓ | ✓ | | ✓ | ✓ |
| 1 June | 11.30am | PCJC | ✓ | ✓ | | ✓ | ✓ | | ✓ | ✓ |
| 2 June | 8.45am | PCJC | ✓ | | | ✓ | ✓ | | ✓ | ✓ |
| 2 June | 10.00am | Joint PCJC / CJC | ✓ | | | ✓ | ✓ | | ✓ | ✓ |
| 21 June | 8.30am | Joint PCJC / PCJ Commissioner | ✓ | ✓ | | ✓ | ✓ | | ✓ | ✓ |
| 22 June | 11.30am | PCJC | ✓ | ✓ | | ✓ | ✓ | | ✓ | ✓ |
| 22 June | 8.30pm | PCJC | ✓ | | | | ✓ | | ✓ | ✓ |