

# PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

## Annual Report 2001/2002

### Report No. 57

#### THE COMMITTEE

The Parliamentary Crime and Misconduct Committee is an all-party committee of the Queensland Legislative Assembly constituted under the *Crime and Misconduct Act 2002*.

The principal functions of the Committee are to monitor and review the performance of the functions of the Crime and Misconduct Commission (CMC), to report to Parliament on matters pertinent to the CMC (subject to confidentiality constraints), and to participate in the constitution of the CMC.

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

#### COMMITTEE MEMBERSHIP

Mr Geoff Wilson MP (Chairman)	<i>Member for Ferny Grove</i>
Mr Howard Hobbs MP (Deputy Chairman)	<i>Member for Warrego</i>
Ms Desley Boyle MP	<i>Member for Cairns</i>
Mr Stuart Copeland MP	<i>Member for Cunningham</i>
Dr John Kingston MP	<i>Member for Maryborough</i>
Mr Andrew McNamara MP	<i>Member for Hervey Bay</i>
Mr Kerry Shine MP	<i>Member for Toowoomba North</i>

#### STAFF

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[www.parliament.qld.gov.au/Committees/](http://www.parliament.qld.gov.au/Committees/)

## 1. INTRODUCTION

This year has seen a major change to the criminal justice oversight regime in Queensland. With the introduction of the *Crime and Misconduct Act 2001*, the former Criminal Justice Commission (CJC) and the former Queensland Crime Commission (QCC) were merged into a new body known as the Crime and Misconduct Commission (CMC).

The CJC was established in fulfilment of a major recommendation of the Fitzgerald Inquiry into police and public sector corruption. The QCC commenced operation in 1998.

As the Parliamentary Committee having oversight of the former CJC, the then Parliamentary Criminal Justice Committee (PCJC) which was initially established in 1990, underwent a name and jurisdictional change as a result of the merger which came into effect on 1 January 2002.

The Parliamentary Crime and Misconduct Committee (PCMC) is established under s. 291 of the *Crime and Misconduct Act*.

The main difference in the Committee's responsibilities is that the body which it oversees now has jurisdiction in relation to major crime and paedophilia. Other differences created by the new legislation will be identified throughout this report.

While the Committee's role requires it to rigorously examine the activities of the CMC, and therefore be critical of the CMC at times, the Committee acknowledges the cooperative and responsive approach adopted by the Commission.

The Committee is assisted in its oversight process by the Parliamentary Crime and Misconduct Commissioner, a position originally established in 1998 as the Parliamentary Criminal Justice Commissioner (See 3.2 below).

## 2. THE COMMITTEE'S RESPONSIBILITIES

Under the *Crime and Misconduct Act* the Committee has the following functions:

- to monitor and review the performance of the CMC's functions;
- to report to the Legislative Assembly where appropriate;
- to examine reports of the CMC;

- to participate in the appointment of commissioners;
- to conduct a review of the activities of the CMC at the end of the Committee's term ("the three year review"); and
- to issue guidelines and give directions to the Commission where appropriate.

The PCMC can also receive complaints and deal with other concerns which it may be aware of about the conduct or activities of the CMC or an officer or former officer of the CMC.

### 2.1. MONITORING AND REVIEWING THE CMC

The Committee and its predecessors have developed a range of mechanisms to "monitor and review" the Commission. Currently, these mechanisms include:

- holding regular Committee meetings;
- considering confidential bi-monthly reports from the CMC in relation to its activities;
- considering confidential minutes of meetings of the Commission and its Executive;
- holding bi-monthly in camera meetings with the Chairperson, Commissioners, and Assistant Commissioners of the CMC;
- receiving and considering complaints against the CMC and its officers;
- reviewing CMC reports;
- requesting reports from the CMC on matters which arise (via complaints, the media or other means);
- conducting inquiries into specific or general matters relating to the CMC;
- conducting (either itself or through the Parliamentary Crime and Misconduct Commissioner) audits of various registers and files kept by the CMC concerning the use of its powers;
- seeking independent legal advice to assist the Committee where a particular skill or expertise is necessary;
- examining the appropriateness of the CMC's performance measures; and
- examining the CMC's performance against its performance measures.

### 2.2. REPORTING TO THE LEGISLATIVE ASSEMBLY

The Committee has not tabled any reports during the year except for its 2000/2001 annual report. From time to time, the Committee has, for the information of the House and the public, tabled publications produced by the CMC.

The Committee has considered tabling a number of reports in relation to matters referred to the Parliamentary Crime and Misconduct Commissioner. However, in all cases to date the Committee has determined to not table the reports as they generally contained material that was confidential and considered inappropriate for tabling and it was not in the public interest to table the reports. (See 3.2 below)

### **2.3. EXAMINING THE ANNUAL AND OTHER REPORTS OF THE CMC**

Section 26 of the *Criminal Justice Act 1989* provided a mechanism for having CJC reports tabled in the Parliament. The Committee was required to direct that the report be given to the Speaker of the Legislative Assembly in order for it to be tabled.

The Committee gave such a direction once during the reporting year in relation to the CJC's report titled *Funding Justice: Legal Aid and Public Prosecutions in Queensland*. In giving the direction the Committee did not consider it necessary to make any specific comment in relation to the report, other than to note that the Committee should not be taken as endorsing or adopting the report in any way.

Section 69 of the *Crime and Misconduct Act* contains similar provisions in respect of reports of the CMC.

### **2.4. PARTICIPATING IN THE APPOINTMENT OF COMMISSIONERS**

The CMC is comprised of the Chairperson and four part-time commissioners.

Under the *Criminal Justice Act* the PCJC was required to give unanimous or bi-partisan support to the responsible minister's nominee for the position of part-time commissioner. Such support was given to the Premier's nominee, Honourable Mr Cecil William (Bill) Pincus, who took up his appointment on 20 December 2001.<sup>1</sup>

When the *Crime and Misconduct Act* was passed, the position of Chairperson of the CMC needed to be filled. The Chairman and the Deputy Chairman of the Committee participated in the selection process for

that appointment. Mr Brendan Butler SC was appointed as Chairperson of the CMC.

The *Crime and Misconduct Act* provides that the part-time commissioners of the CJC continued as part-time commissioners of the CMC. In any appointment or reappointment of a part-time commissioner, the responsible minister, currently the Premier, must consult with the Committee. The Committee has recently considered the re-appointment of Mrs Sally Goold and Mr Ray Rinaudo and provided unanimous support for their re-appointments.<sup>2</sup>

### **2.5. THREE YEARLY REVIEW OF THE ACTIVITIES OF THE CMC**

The Committee has considered a timetable for its three yearly review of the Commission and anticipates commencing its review process early in 2003.

### **2.6. ISSUING GUIDELINES AND GIVING DIRECTIONS TO THE CMC**

The Committee has not issued any guidelines or given any directions to the Commission in the reporting year.

### **2.7. COMPLAINTS**

The Committee's role in relation to complaints remained virtually unchanged with the commencement of the *Crime and Misconduct Act*.

Complaints about the CMC or its officers usually come to the Committee in two ways – directly from members of the public or from the Commission itself.

Considering complaints about the Commission and its officers assists the Committee in its oversight role by providing a valuable insight into the Commission's operations and activities. The Committee does not have jurisdiction over any organisation other than the CMC and so cannot itself consider original allegations of official or police misconduct. Further, the Committee is not able to substitute its own decision for that of the CMC in a particular matter.

The Committee examines complaints to assess whether the Commission or any of its officers has acted inappropriately. The Committee will where appropriate make recommendations to the CMC. Analysis of complaints, even where specific allegations against the Commission are not

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<sup>1</sup> The appointment of Mrs Dina Browne AO expired on 16 December 2001.

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<sup>2</sup> Mrs Goold's initial appointment expired on 15 July 2002. Mr Rinaudo's initial appointment expired on 19 September 2002. Both have been re-appointed for a further two years.

substantiated, can assist the Committee to identify procedural or systemic deficiencies and to take action to have the Commission deal with problem areas.

#### **2.7.1. Complaints from members of the public**

Most complaints come to the Committee directly from members of the public. The PCMC accepts only complaints in writing in order to efficiently identify and consider complaint matters and to prevent misunderstanding or misinterpretation as to the relevant facts or circumstances.

#### **2.7.2. Complaints about the Commission made to the Commission**

Prior to 1 January 2002 complaints made about the CJC or its officers that were made directly to the Commission itself were referred to the Committee under the Protocols for dealing with misconduct complaints against personnel of the CJC which were developed in 1999.<sup>3</sup>

Under the *Crime and Misconduct Act* the Chairperson of the CMC is now obliged by statute to advise the PCMC of conduct by officers of the CMC, where the Chairperson suspects that the conduct may involve “improper conduct”. Knowledge of such conduct might come to the Chairperson via a complaint made to the Commission about a Commission officer. At present, the Committee receives frank and prompt advice from the CMC Chairperson concerning conduct of Commission officers which the Chairperson suspects may involve “improper conduct”.

#### **2.7.3. Complaints considered 2001/2002**

In the reporting year the Committee received 60 complaints against the Commission or Commission officers. 13 of those complaints were referred by the Commission itself.

In most cases, the Committee determined that the complaints made against specific officers were not substantiated or was not satisfied that the Commission had acted inappropriately. In several cases the Committee requested further information from the Commission, asked the Commission to review or amend its practices and procedures or sought comment on particular aspects of a matter. In considering complaints the Committee takes into account material and submissions provided by the complainant, any reports and other material provided by the Commission and, if the matter has been

referred to the Parliamentary Commissioner by the PCMC, any reports from the Parliamentary Commissioner.

General issues that the Committee considers in determining whether or not the Commission has acted inappropriately include:

- timeliness in the handling of complaints and investigations;
- whether the Commission has made appropriate inquiries before determining not to pursue a matter;
- whether the Commission has considered all relevant facts and material;
- whether investigation methods are appropriate;
- whether the Commission has acted without bias in making its determinations;
- whether the Commission’s conclusions and determinations are justified; and
- whether the Commission has acted within its legislative powers.

Some specific matters considered by the Committee during the reporting period are:

- ensuring that complainants are kept properly advised as to the status of their matter;
- appropriate use of psychometric testing as part of selection processes used by the Commission;
- recording of reasons for decisions; and
- finalising guidelines governing the taping of telephone conversations between Commission officers and complainants and witness.

#### **2.8. MISCONDUCT TRIBUNAL VACANCIES**

The Misconduct Tribunals are established to determine disciplinary charges of official misconduct brought against certain prescribed persons – broadly, police officers and public officers.

Under s. 7 of the *Misconduct Tribunals Act 1997* the bi-partisan support of the Committee is required before the responsible minister (currently the Premier) can appoint a person (nominated by the minister) to the Misconduct Tribunal. During the reporting year the Committee considered and gave its support to 8 nominees.

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<sup>3</sup> See PCJC Report No. 48

### **3. MECHANISMS AVAILABLE TO THE COMMITTEE**

#### **3.1. POWERS OF THE COMMITTEE**

Under s. 293 of the *Crime and Misconduct Act* the Committee has the power to:

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

#### **3.2. PARLIAMENTARY CRIME AND MISCONDUCT COMMISSIONER**

The position of the Parliamentary Criminal Justice Commissioner was altered with the commencement of the *Crime and Misconduct Act*. The title of the position was changed and importantly the new legislation made clear that the Parliamentary Commissioner is an agent of the Committee.

Mr Richard Perry was the Acting Parliamentary Commissioner for the first part of the reporting period. The Committee conducted a selection process in late 2001. Mr Robert Needham commenced his appointment as Parliamentary Crime and Misconduct Commissioner on 1 January 2002. Such appointment is for a period of two years and on a part-time basis.

##### ***3.2.1. Role and functions of the Parliamentary Commissioner***

Under the *Crime and Misconduct Act* the PCMC may require the Parliamentary Commissioner to:

- audit records and operational files of the CMC;
- investigate complaints against the CMC and its officers;
- investigate allegations of a possible unauthorised disclosure of confidential information;
- verify the CMC's reasons for withholding information from the PCMC;
- verify the accuracy and completeness of CMC reports to the PCMC; and
- perform other functions that the Committee considers necessary or desirable.

A major change brought about by the *Crime and Misconduct Act* is that the Parliamentary Commissioner can conduct hearings only with the authorisation of the PCMC.

##### ***3.2.2. Assistance provided by the Parliamentary Commissioner in the reporting period***

The Committee has referred four substantial complaint matters to the Parliamentary Commissioner for investigation during the reporting period. The PCMC also issued a reference to the Parliamentary Commissioner to conduct an audit of the Commission's records and operational files.

During the reporting period the Committee received 9 reports from the Parliamentary Commissioner or his predecessor (this included reports on matters referred in the previous financial year).

Recently, a new arrangement was initiated whereby the Parliamentary Commissioner has been provided with a copy of the CMC's bi-monthly briefing paper to the PCMC in order to assist the Committee to identify issues for examination.

### **4. PARTICULAR ISSUES CONSIDERED BY THE COMMITTEE**

#### **4.1. COMMITTEE/COMMISSION COMMUNICATION PROCESSES**

In September 2001 discussions were held between the Committee and the then CJC to develop more efficient processes for dealing with correspondence passing between the bodies. Procedures put in place as a result of these discussions have generally led to more timely responses to Committee requests for reports and information from the Commission. The Committee is appreciative of the Commission's efforts in this regard.

#### **4.2. REPORTING MECHANISMS – PERFORMANCE MEASURES**

Throughout the reporting year the Committee has discussed with the Commission more appropriate reporting mechanisms. The Commission has taken steps to report to the Committee in terms of performance measures, which have recently been incorporated into the Commission's bi-monthly briefing paper to the Committee. The Committee considers that this method of reporting provides a valuable insight into the Commission's operations and assists the Committee in assessing whether the Commission is delivering "value for money".

#### **4.3. CRIME AND MISCONDUCT BILL 2001**

Following the introduction of the Crime and Misconduct Bill on 16 October 2001, the Committee

dedicated considerable time to familiarising itself with the new legislative regime under which it would operate.

#### **4.4. COMMISSION MEDIA RELEASES**

There were two matters concerning media releases from the Commission that the Committee considered this year.

In the first matter the Commission took steps to correct its actions in improperly releasing confidential information. The Commission then actively took steps to formalise a procedure for drafting and finalising media releases to prevent a recurrence of such an event. The Committee discussed that procedure with the Commission. The Commission made alterations to address the Committee's concerns.

In the second matter the Committee engaged in dialogue with the Commission with a view to ensuring that media releases are accurate and effectively communicate the position of the Commission.

#### **4.5. CMC'S DRAFT 2002-2006 STRATEGIC PLAN**

The Committee has recently had the opportunity to consider and comment on the CMC's draft 2002-2006 Strategic Plan. The Committee made some suggestions for alterations to this document which were adopted by the CMC.

#### **4.6. OTHER CONFIDENTIAL ISSUES**

The Committee has considered many issues during the reporting period which, for confidentiality reasons, cannot be discussed in this report.

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### **5. MEETINGS**

In addition to Committee meetings (held at least once every sitting week) the Committee holds separate meetings with the Chairperson, Commissioners and senior officers of the CMC on a regular basis, usually every two months.

These meetings are held in camera and provide an opportunity for candid and open discussions. The Committee has found these meetings very valuable for open communication between the Committee and the CMC.

To assist with this meeting process the CMC provides bi-monthly briefing papers on its activities since the previous joint meeting. The Committee also considers minutes of internal CMC meetings. The PCMC asks questions in relation to any matter contained in these

documents or any other matter that has come to its attention.

The Committee also meets regularly (usually bi-monthly) with the Parliamentary Commissioner. The Parliamentary Commissioner also provides a report on his activities on a bi-monthly basis. This keeps the Committee informed as to the status of matters that have been referred to the Commissioner as well as administrative issues concerning the office of the Parliamentary Commissioner.

During the reporting year the Committee met 42 times including:

- 5 joint meetings with the CMC;
- 3 meetings with the former Acting Parliamentary Commissioner; and
- 2 meetings with the Parliamentary Commissioner.

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### **6. COMMITTEE STUDY VISIT**

On 27-29 May 2002 the Committee undertook a study visit to Sydney. The Committee met with the Joint Parliamentary Committee on the Independent Commission Against Corruption, the Joint Parliamentary Committee on the Ombudsman and the Police Integrity Commission, the NSW Crime Commission, the Police Integrity Commission, the Inspector of the Police Integrity Commission, the Independent Commission Against Corruption, and the Ombudsman. The Committee found these meetings to be extremely useful as they provided a valuable insight into the operations of relevant bodies in New South Wales, thus enabling a broader appreciation of the aspects of the Queensland regime that are operating well, as well as areas that could be improved.

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### **7. MINISTERIAL RESPONSES TO COMMITTEE RECOMMENDATIONS**

#### **7.1. MINISTERIAL RESPONSE TO REPORT NO. 55 ON THE FOURTH PCJC'S THREE YEARLY REVIEW OF ACTIVITIES OF THE CJC**

On 30 October 2001 the Premier tabled a ministerial response on Report No. 55. This report, of some 400-odd pages, made a number of recommendations for legislative and administrative changes to improve the operations and accountability of the CJC and the ability of the PCJC to carry out its oversight function.

Many of the recommendations in that report were accepted by the Premier.

Some recommendations require follow up action by the current Committee. The PCMC has finalised its consideration of most of these recommendations, and is in the process of considering the remaining matters.

## 7.2. MINISTERIAL RESPONSE TO REPORT NO 50 – TELECOMMUNICATIONS INTERCEPTION

The previous PCJC's report 50, in brief, addressed the desirability of QLD law enforcement agencies (including the then CJC and QCC) being granted the power to use telecommunications interception (phone tapping) and recommended the power be extended to those agencies, subject to strict guidelines.

In its last annual report this Committee provided information on interim responses from the Minister for Police on this report.

In April 2002, the Committee wrote to the Hon Tony McGrady MP, Minister for Police and Corrective Services, noting that a final response to Report No. 50 had not been tabled. In a letter to the Committee, the Minister responded:

*...as the debate on transnational crime proceeds, the issue of police powers, and in particular powers of covert surveillance, is a moving feast. Obviously, the State Government would be loathe to see the rest of the Nation move ahead with a scheme that leaves Queensland out of step and unable to participate in a national model.*

*The Commonwealth Government is in the midst of finalising new arrangements for its crime agencies and the State is awaiting the outcome to see what implications it may hold for Queensland.*

In the course of its recent study visit to Sydney, the Committee met with several agencies which either have the power of telecommunications interception or are involved in the oversight of the use of that power. All strongly supported the telecommunications interception power as an essential and effective law enforcement tool.

## 8. BUDGET AND EXPENDITURE

The total budget allocation for the Committee in 2001/2002 was \$290,675.06.<sup>4</sup> The Committee's total actual expenditure for 2001/2002 was \$225,923.54.<sup>5</sup>

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

Staff salaries and other employee related expenditure <sup>1</sup>	\$177,598.15
Salary related taxes <sup>2</sup>	\$10,172.28
Superannuation	\$19,152.36
Travel and hearing expenses <sup>3</sup>	\$7,818.35
Telecommunication costs	\$2,721.09
Legal fees	\$3,000.00
Meeting expenses	\$1,708.73
Stores, stationery, consumables and postage	\$616.90
Freight, miscellaneous & equipment expenses	\$856.24
Printing of reports and binding	\$563.44
Reference books, serial subscriptions, memberships	\$1,720.00
<b>TOTAL</b>	<b>\$225,927.54</b>

1. Includes temporary assistance, contracted staff expenses, overtime, extra remuneration, meal allowances and other allowances.
2. Includes FBT, payroll tax and Workcover premiums
3. Includes travel and other expenses relating to attendance at meetings, hearings and staff travel with, or for, the Committee.

<sup>4</sup> This compares with the Committee's budget allocation for 2000/2001 of \$291,296.68.

<sup>5</sup> This compares with the Committee's actual expenditure for 2000/2001 of \$258,208.31.

## Meeting Attendance Record: 2001-2002

### Fifth PCMC

<i><b>DATE</b></i>	<i><b>PURPOSE</b></i>	<i>Geoff Wilson</i>	<i>Howard Hobbs</i>	<i>Desley Boyle</i>	<i>Stuart Copeland</i>	<i>John Kingston</i>	<i>Andrew McNamara</i>	<i>Kerry Shine</i>
1 August 2001	PCJC	✓	✓	✓	✓	✓	✓	✓
2 August 2001	PCJC / Parliamentary Commissioner	✓	X	✓	✓	✓	X	✓
6 August 2001	PCJC	✓	✓	X	✓	X	✓	✓
6 August 2001	PCJC / CJC	✓	✓	X	✓	X	✓	✓
8 August 2001	PCJC	✓	✓	✓	✓	✓	X	✓
12 September 2001	PCJC	✓	✓	✓	X	X	✓	✓
13 September 2001	PCJC / Parliamentary Commissioner	✓	✓	✓	X	X	✓	✓
15 October 2001	PCJC	✓	✓	✓	✓	X	✓	✓
15 October 2001	PCJC / CJC	✓	✓	✓	✓	✓	✓	✓
17 October 2001	PCJC	✓	✓	✓	✓	X	✓	✓
31 October 2001	PCJC	✓	✓	✓	✓	✓	✓	✓
7 November 2001	PCJC	✓	✓	✓	✓	X	✓	X
9 November 2001	PCJC	✓	✓	✓	✓	X	✓	✓
28 November 2001	PCJC	✓	✓	✓	✓	✓	✓	X
29 November 2001	PCJC / Parliamentary Commissioner	✓	✓	✓	✓	✓	✓	X
29 November 2001	<i>Sub-Committee</i>	✓	✓	✓	n/a	n/a	n/a	n/a
3 December 2001	PCJC	✓	✓	✓	✓	X	X	X
3 December 2001	Joint Meeting	✓	✓	✓	✓	X	X	X
4 December 2001	<i>Sub-Committee</i>	✓	✓	✓	n/a	n/a	n/a	n/a
5 December 2001	PCJC	✓	✓	✓	✓	✓	✓	X
6 December 2001	<i>Sub-Committee</i>	✓	✓	✓	n/a	n/a	n/a	n/a
12 December 2001	PCJC	✓	X	✓	✓	✓	✓	X
12 December 2001	<i>Sub-Committee</i>	✓	✓	✓	n/a	n/a	n/a	n/a
13 December 2001	<i>Sub-Committee</i>	✓	✓	✓	n/a	n/a	n/a	n/a
13 December 2001	PCJC	✓	✓	✓	✓	X	✓	X
19 December 2001	PCJC	✓	✓	✓	✓	✓	✓	X
20 February 2002	PCMC (8.30am)	✓	✓	✓	X	✓	✓	✓
20 February 2002	PCMC (12.10pm)	✓	✓	✓	✓	✓	✓	✓
22 February 2002	CMC Briefing	✓	✓	✓	✓	X	✓	✓
6 March 2002	PCMC	✓	✓	✓	X	✓	✓	✓
8 March 2002	PCMC / Parliamentary Commissioner	✓	✓	✓	✓	✓	✓	✓
27 March 2002	PCMC teleconference	✓	✓	✓	✓	✓	✓	✓
10 April 2002	PCMC	✓	✓	✓	✓	✓	✓	✓
12 April 2002	PCMC	✓	✓	✓	X	✓	X	✓
12 April 2002	PCMC / CMC	✓	✓	✓	X	✓	X	✓
17 April 2002	PCMC	✓	✓	✓	✓	✓	✓	X
8 May 2002	PCMC	✓	✓	✓	✓	X	✓	✓
10 May 2002	PCMC / Parliamentary Commissioner	✓	✓	✓	✓	X	✓	✓
15 May 2002	PCMC	✓	✓	✓	X	X	✓	✓
27 – 29 May 2002	Study trip to Sydney	✓	✓	✓	✓	X	✓	X
27 May 2002	PCMC	✓	✓	✓	✓	X	✓	X
17 June 2002	PCMC	✓	✓	✓	✓	✓	✓	✓
17 June 2002	PCMC / CMC	✓	✓	✓	✓	✓	✓	✓
19 June 2002	PCMC	✓	✓	✓	✓	✓	✓	✓