LEGISLATIVE ASSEMBLY OF QUEENSLAND

PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

A report on an investigation by the Parliamentary Crime and Misconduct Commissioner into the performance of the Crime and Misconduct Commission in dealing with four matters

Report No. 58

PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

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CHAIRMAN'S FOREWORD

In September 2002 several allegations were made publicly about the conduct of a number of investigations by the Crime and Misconduct Commission (CMC). Accordingly, the Parliamentary Crime and Misconduct Committee referred to the Parliamentary Crime and Misconduct Commissioner, Mr Robert Needham, the question of the performance of the CMC in three specific matters, the subject of consideration by the CMC. They were:

- *allegations involving Berri and Mr Arthur Beattie;*
- *allegations involving the company Cutting Edge;* and
- *allegations in relation to the Cleveland Palms development in North Queensland*.

The Committee also asked Mr Needham to investigate other allegations against the CMC contained in recent media articles, including comments attributed to a senior officer of the CMC, and to consider the adequacy of the CMC's legislation to properly equip the CMC to discharge its misconduct function in respect of the three matters referred to above.

Subsequently, on 29 October 2002, the Committee also referred to Mr Needham, and on similar terms, the performance of the CMC in its handling of concerns arising from the discontinuance of criminal proceedings against Mr Scott Volkers.

The allegations had attracted considerable media and public interest. While the Committee is satisfied that the CMC overall is operating effectively, it is important that such allegations and possible shortcomings in the way in which a particular CMC investigation has been conducted be examined, and that any desirable improvements in CMC systems or processes, or its legislation, be identified and acted upon.

The Committee is of the view that the allegations went to the heart of public confidence in the CMC. The Committee's role is to ensure the CMC is accountable, through the Committee, to the Parliament and ultimately to the people of Queensland. The Committee referred the allegations to the Parliamentary Commissioner to ensure that public confidence in the CMC is maintained.

Mr Needham has now reported on his investigation. The Committee has resolved to table the report of the Parliamentary Commissioner on the basis that, in all the circumstances, it is in the public interest that the report of the Parliamentary Commissioner be made available to the public.

In summary, the Parliamentary Commissioner has found the allegations regarding the performance of the CMC to be unsubstantiated in three of the four matters. In the Cleveland Palms matter, the Parliamentary Commissioner found that the Commission ought to have commenced an investigation into certain bribery allegations at an earlier stage (although the investigations actually carried out at a much later time disclosed that the bribery allegations were unfounded).

The Committee has requested the CMC to advise it as a matter of priority what action it proposes to take to address the issues raised in Mr Needham's report, particularly in relation to the Cleveland Palms matter.

Geoff Wilson MP
Chairman

12 March 2003

1. INTRODUCTION

The Committee has resolved to table the report of the Parliamentary Commissioner in the Legislative Assembly. It is therefore appropriate to set out here some detail regarding the role and powers of both the Committee and the Parliamentary Commissioner.

With the commencement on 1 January 2002 of the *Crime and Misconduct Act 2001* (the Act), 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). 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 following the merger.

The Parliamentary Crime and Misconduct Committee (PCMC or the Committee) is established under the Act as a bipartisan committee of the Queensland Legislative Assembly. It has the following functions:

- to monitor and review the performance of the CMC's functions;
- to report to the Legislative Assembly where appropriate on any matters pertinent to the Commission, the discharge of the Commission's functions or the exercise of the powers of the Commission;
- 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 CMC 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.

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. Following the enactment of the *Crime and Misconduct Act 2001*, the position became known as the Parliamentary Crime and Misconduct Commissioner. Mr Robert Needham was appointed as the Parliamentary Crime and Misconduct Commissioner (Parliamentary Commissioner) on 1 January 2002. Mr Needham's appointment is for a period of two years and is on a part-time basis.

The Parliamentary Commissioner has a number of functions under the Act. These include to, as required by the Committee:

- conduct audits of records kept by and operational files held by the CMC;
- investigate complaints made about or concerns expressed about the CMC;
- independently investigate allegations of possible unauthorised disclosure of information that is, under the Act, to be treated as confidential;
- report to the Committee on the results of carrying out the functions of the Parliamentary Commissioner; and
- perform other functions the Committee considers necessary or desirable.

To assist in the performance of these functions, the Parliamentary Commissioner has wide powers.

Under the Act, where the Committee has concerns about the conduct or activities of the Commission or an officer of the Commission or a person engaged by the Commission, the Committee has (amongst other options) the power to:

> *ask the Parliamentary Commissioner to investigate and give a report on the matter to the Committee*.

Any decision by the Committee to ask the Parliamentary Commissioner to investigate and report on a matter must be made unanimously or by a multi-party majority of the Committee.

2. BACKGROUND

In early September 2002, several allegations were raised in the Legislative Assembly, the media, and elsewhere regarding the performance of the CMC in relation to a number of matters.

On 19 September 2002, the Committee referred to the Parliamentary Crime and Misconduct Commissioner the question of the performance of the CMC in three specific matters, the subject of consideration by the CMC. They were:

- *allegations involving Berri and Mr Arthur Beattie;*
- *allegations involving the company Cutting Edge;* and
- *allegations in relation to the Cleveland Palms development in North Queensland*.

The Committee also asked Mr Needham to investigate other allegations against the CMC contained in certain recent media articles, including observations attributed to a senior officer of the CMC, and to consider the adequacy of the CMC's legislation to properly equip the CMC to discharge its misconduct function in respect of the three matters.

The Committee wrote to both the Premier and the Opposition leader inviting them to nominate any other particular complaints considered by the CMC which they believed ought to be scrutinised by the Parliamentary Commissioner. Subsequently, on 29 October 2002, the Committee referred to Mr Needham, and on similar terms to the previous referral, the performance of the CMC in its consideration of the investigation, prosecution, and discontinuance of proceedings against Mr Scott Volkers.

The background events leading to the referral of these matters to Mr Needham and the full terms of reference are fully set out in his report, which is attached as annexure A to this report.

3. THE REPORT OF THE PARLIAMENTARY COMMISSIONER

The Parliamentary Commissioner has carried out an investigation and delivered his report to the Committee.

In accordance with established procedures, before deciding what further action to take, the Committee invited submissions from the CMC on the contents of the report.

The CMC subsequently provided the Committee with a submission, in which it supported tabling of the report.

Subsequently, the Committee resolved to table the Parliamentary Commissioner's report.

The Parliamentary Commissioner's report is not a report of the Committee. The report of the Parliamentary Commissioner speaks for itself.

In summary, the Parliamentary Commissioner has found the allegations regarding the performance of the CMC to be unsubstantiated in three of the four matters. In the Cleveland Palms matter, the Parliamentary Commissioner found that the Commission ought to have commenced an investigation into certain bribery allegations at an earlier stage (although the investigations actually carried out at a much later time disclosed that the bribery allegations were unfounded).

The Committee respectfully agrees with this conclusion by Mr Needham. In any CMC investigation avoidable delay is unacceptable delay. In some cases such delay has considerable adverse impact on the person or organisation under investigation. Such delay also undermines the public's confidence in the CMC.

Furthermore, as the Parliamentary Commissioner states at page 26 of his report, political corruption is viewed seriously within the community, and allegations of such corruption must be treated seriously. There is an added imperative for the Commission to ensure it undertakes expeditious assessment, and if necessary investigation, of matters which raise allegations of corruption by public officials.

The terms of reference to the Parliamentary Commissioner, and his report, include reference to a speech by CMC Executive Legal Officer, Mr Russell Pearce. Mr Needham concludes that the speech was in the context of a discussion paper presented to a class of undergraduate university students. The issues raised in the discussion paper are of a broad policy or legislative nature. These broader concerns are more appropriately the subject of submissions to, and consideration as part of, the Committee's Three Year Review of the CMC, a review process upon which the Committee has recently embarked, having called for submissions on 7 February 2003.

Mr Needham's report deals with one aspect of the Commission's consideration of matters arising from the discontinuance of charges against Mr Scott Volkers. As at the date of this report, the Commission is yet to report on its consideration of those matters, or on its public inquiry into the handling of sexual allegations by the criminal justice system. In those circumstances, any further comment on that matter is inappropriate and premature.

Finally, the Committee endorses the observations of the Parliamentary Commissioner at page 43 of his report:

> *My review of these matters has confirmed my opinion that politicians, both on the Government side and in Opposition, and the media all have an important role to perform in public oversight of the Commission. However such oversight must be exercised with care.*
>
> *When issues are raised appropriately, it will enhance public confidence in the Commission. When raised inappropriately or prematurely however, public confidence may be unnecessarily or erroneously shaken.*
>
> *A second consideration concerns the individual, organisation or company under investigation by the Commission. If inappropriate publicity occurs during the course of an investigation there is the potential for damage to the individual's, the organisation's or the company's reputation and economic bottom line. If the allegations under investigation are later found to be baseless, such damage often cannot be fully repaired.*

APPENDIX A

REPORT

ON THE

INVESTIGATION

INTO THE PERFORMANCE OF THE

CRIME AND MISCONDUCT COMMISSION

IN DEALING WITH

FOUR MATTERS

OFFICE OF THE PARLIAMENTARY CRIME & MISCONDUCT COMMISSIONER

FEBRUARY 2003

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INTRODUCTION

In September 2002 a number of allegations were made in the media and in Parliament to the effect that the Crime and Misconduct Commission ("the Commission") had failed to adequately investigate certain matters referred to it. In particular, three articles which appeared in The Courier-Mail on 14, 18 and 19 September 2002 came to the attention of the Parliamentary Crime and Misconduct Committee ("the Committee") and, in part, led to this reference.

The first, on 14 September, entitled *"Watchdog asleep on the job"* referred to perceived inadequacies in the Commission's investigation of allegations by a Townsville man that he had been required to pay $1500 to Townsville Mayor Tony Mooney in return for favourable treatment on a land deal. The article also referred to a Commission investigation into State Government tax-payer funded grants to video post production company Cutting Edge Post Pty Ltd which had produced advertising for the Australian Labor Party's 2001 Queensland state election campaign. The article stated that Commission investigators were *"not interested"* in claims by Cutting Edge's competitors that the company charged mate's rates to the Labor Party. (See Annexure A.)

The second article on 18 September, entitled *"Staffer attacks crime watchdog power drain"* concerned comments made by a Commission officer during a speech delivered to a group of Justice Studies students at the Queensland University of Technology. The Commission officer was reported as saying that *"The making of a complaint to the CMC can no longer carry with it the expectation it did previously, namely, that if reasonable suspicion of misconduct existed, the CJC would conduct its own investigation."* (See Annexure B.)

The last article on 19 September, entitled *"Nats lose faith in management of crime-fighter"* reported the then Leader of the Opposition, Mr Mike Horan MP as saying;

> *"We believe there's a couple of major issues now where there's quite obvious avenues of investigation, where reasonable suspicion occurred, and that the CMC had an obligation under the Act to follow those through.*
>
> *It now behoves that parliamentary committee to follow through so we can have confidence that that committee is achieving (the over-seeing) of the CMC."*

Further, the Premier, Mr Beattie, was reported as having *"called on the parliamentary crime and misconduct committee, Parliament's watchdog over the CMC, to examine recent CMC investigations and satisfy itself that the commission was doing its job."* (See Annexure C.)

Subsequently, at a meeting on 19 September 2002, the Committee unanimously resolved that pursuant to section 295(2)(d) and (f) of the *Crime and Misconduct Act* ("the *C&M Act*"), I be asked to investigate the performance of the Commission in dealing with three matters examined or being examined by the Commission and to report to the Committee on the results of such investigation. (The terms of reference are set out in full below.) Those three matters are:

allegations involving Berri and Mr Arthur Beattie;

allegations regarding the company Cutting Edge; and

allegations in relation to the Cleveland Palms development in North Queensland.

The Committee also wrote to the Premier and to the Leader of the Opposition on 19 September 2002, advising that the Committee had referred to me the issue of the performance of the Commission in accordance with the terms of reference, and in particular the three matters. The Committee asked the Premier and the Leader of the Opposition to advise the Committee if there were any specific matters, other than the three nominated matters, which they believed ought to be included in my investigation.

The Committee received a response from the Premier advising that he was unaware of any additional matters that would warrant the Committee's consideration.

The Leader of the Opposition responded by letter dated 7 October 2002. The letter contained a number of submissions and annexed a quantity of documents in relation to the three nominated matters. The Committee did not invite submissions or material in relation to those matters, nor did the Committee call for or receive any submissions on those matters from the Premier. Nonetheless, the Committee resolved to provide me with the material received from Mr Horan in relation to the three nominated matters, leaving me to decide what material I would take into account and to determine whether or not to seek submissions from any other party. That material was sent to me by the Committee under a covering letter dated 21 October 2002.

In his 7 October letter to the Committee, Mr Horan nominated one further matter which he felt warranted the Committee's attention as part of its inquiry, namely *"the investigative processes employed by the CMC in relation to the Volkers matter."*

Subsequently, on 29 October 2002, the Committee asked me to investigate the performance of the Commission *"in its consideration of the investigation, prosecution and discontinuance of proceedings against Scott Volkers"* upon similar terms to the three matters referred previously. The Committee also provided me with a copy of the 7 October letter from Mr Horan and all annexures thereto, including those relating to the Volkers matter.

Since the submission from Mr Horan outlines in some detail the recent concerns held by the Opposition regarding the adequacy of the Commission's consideration of certain matters referred to it, I have determined to take the submission into account in the conduct of my investigation and the preparation of this report. In fact, I have focussed on the specific concerns raised by Mr Horan during the course of my investigation and I have endeavoured to specifically address such concerns in this report.

TERMS OF REFERENCE

At a meeting on 19 September 2002, the Parliamentary Crime and Misconduct Committee unanimously resolved that:

> *"pursuant to section 295(2)(d) and (f) of the Crime and Misconduct Act 2001 (the Act), the Parliamentary Crime and Misconduct Commissioner be asked:*

1. *to investigate the performance of the Crime and Misconduct Commission (formerly the Criminal Justice Commission) in dealing with three matters, specified below, examined or being examined by the Commission, such investigation to include but not necessarily be limited to a consideration of the following aspects:*

    - *decisions by the Commission to interview or not interview individuals (including complainants) in any matter;*
    - *the timeliness with which the Commission has considered the matters;*
    - *the adequacy of the Commission's consideration of the matter;*
    - *the efficacy of the process by which the Commission has assessed the level of enquiry or investigation necessary to deal with the matters; and*
    - *the adequacy of the Commission's communication of its processes and determinations in the three specified matters to;*
        - *the complainant;*
        - *any person the subject of the complaint; and*
        - *the public.*

    The three matters are;

    - *allegations involving Berri and Mr Arthur Beattie;*
    - *allegations regarding the company Cutting Edge; and*
    - *allegations in relation to the Cleveland Palms development in North Queensland.*

2. *to examine whether the Commission has in any of those matters at any time not acted independently, impartially, and fairly having regard to the purposes of the Act and the importance of protecting the public interest;*

3. *to consider the adequacy of the Act to properly equip the Commission to discharge its misconduct function in respect of the three matters;*

4. *to investigate any other allegations against the Commission contained in the three articles referred to above;* (Annexures A, B & C) *and*

5. *to report to the Committee on the results of such investigation.*

By letter dated 29 October 2002 the Committee advised that it had unanimously resolved that:

> *"pursuant to section 295(2)(d) and (f) of the Crime and Misconduct Act 2001 (the Act), the Parliamentary Crime and Misconduct Commissioner be asked:*

1. *to investigate the performance of the Crime and Misconduct Commission (formerly the Criminal Justice Commission) in its consideration of the investigation, prosecution, and discontinuance of proceedings against Scott Volkers, such investigation to include but not necessarily be limited to a consideration of the following aspects:*

    - *decisions by the Commission to interview or not interview individuals (including complainants) in the matter;*
    - *the timeliness with which the Commission has considered the matter;*
    - *the adequacy of the Commission's consideration of the matter;*
    - *the efficacy of the process by which the Commission has assessed the level of enquiry or investigation necessary to deal with the matter; and*
    - *the adequacy of the Commission's communication of its processes and determinations in the matter to;*
        - *the complainant;*
        - *any person the subject of the complaint; and*
        - *the public.*

2. *to examine whether the Commission has in the matter at any time not acted independently, impartially, and fairly having regard to the purposes of the Act and the importance of protecting the public interest;*

3. *to consider the adequacy of the Act to properly equip the Commission to discharge its misconduct function in respect of the matter; and*

4. *to report to the Committee on the results of such investigation.*

RESULTS OF INVESTIGATION

1. INVESTIGATE THE PERFORMANCE OF THE CRIME AND MISCONDUCT COMMISSION IN DEALING WITH FOUR MATTERS, SPECIFIED BELOW, EXAMINED OR BEING EXAMINED BY THE COMMISSION.

A. ALLEGATIONS INVOLVING BERRI AND MR ARTHUR BEATTIE

On Friday 8 March 2002 Mr Jeff Seeney MP asked a question without notice in the Parliament to the Minister for State Development. The operative part of the question was as follows:

> *"Will he tell the Parliament how much money he approved to assist the Berri Plant, and was he aware when he approved that financial assistance of the concerns being expressed by other industry participants that the Premier's brother was involved in that project? What contact did the Minister have with the Premier while the application was being assessed?"*

Later that same day the Premier, Mr Peter Beattie, made a ministerial statement referring to Mr Seeney's question and stated:

> *"After question time I phoned my brother and discussed the allegations in the question. He reminded me that the company he works for is National Foods, not Berri. He has worked for National Foods or its predecessor since July 1985. He has never worked for Berri. The only possible connection between National Foods and Berri is that Berri took over National's Juice Division on 29 November 1999. As my brother understands it, there is now absolutely no connection between National Foods and Berri – absolutely no connection at all."*

It should be noted that Mr Seeney's question appears to have been carefully worded, containing no direct assertion that the Premier's brother was involved with Berri and merely referring to *"concerns being expressed by other industry participants"* to that effect. Inevitably, however, the media drew the obvious inference. For example, The Courier-Mail of Saturday 9 March 2002 stated:

> *"In Parliament yesterday, Mr Seeney suggested fruit juice company Berri received the* (taxpayer-funded investment*) incentives because it was linked to Mr Beattie's brother Arthur."*

On that same day, Saturday 9 March 2002, the Premier had left for overseas on a trade mission for 12 days. In an airport media conference prior to his departure he was recorded as saying:

> *"…they have made allegations which are matters properly within the CMC's responsibilities. I am going to be away for twelve days. I expect in my absence, and I do not think this is unreasonable, Mr Horan to produce or the member for Callide to produce evidence to the CMC. If they do not do that then I will refer it to the CMC and there will be an investigation… There should be a proper examination of this by an independent body. If they are not prepared to refer it there I will."*

Mr Horan appeared on television that same day admitting that *"their"* information with respect to Mr Arthur Beattie was wrong and the following day, Sunday 10 March, Mr Seeney appeared on television accepting that Mr Arthur Beattie never worked for Berri.

On Monday 11 March 2002, the acting Chief of Staff of the Premier, indicating that he was acting on instructions from Mr Beattie, referred Mr Seeney's question without notice, the Premier's ministerial statement and the series of press articles from the previous Friday and Saturday to the Commission. His letter stated, inter alia:

> *"In the Premier's opinion, the accusation is one which suggests official corruption on his part and, as such, he has a responsibility to refer it to you as head of the Criminal* (sic) *and Misconduct Commission."*

On that same day 11 March, Mr Seeney was quoted in The Courier-Mail as indicating that the Opposition would refer the issue of the financial incentives given to Berri Limited to the Auditor-General for investigation. As can be seen from the later Report to Parliament by the Auditor-General, Mr L Scanlan, this reference was made by a letter from Mr Horan to the Auditor-General dated 11 March 2002. This letter raised several matters of concern with respect to National Foods Limited and Berri Limited but made no mention of Mr Arthur Beattie.

After the Premier's letter of referral was received by the Commission, the issues raised in it were considered by the Commission's Executive Assessment Committee, comprised of the Chairperson, Mr Butler SC, the Assistant Commissioner Misconduct and the Director, Research and Prevention. This Committee considered the material, concluded there was no reasonable suspicion of official misconduct and referred the file to the Commission's Receivals and Assessment Unit with a suggested endorsement for finalising the matter.

Within the Receivals and Assessment Unit, the matter was further considered by the RAU Assessment Committee, comprised of the executive legal officer (Receivals and Assessments) and the Principal Complaints Officer. This Committee endorsed the assessment made by the Executive Assessment Committee and adopted its suggested endorsement in the following terms:

> *"Unjustifiable use of resources – the information provided to the Commission is insufficient to reasonably raise a suspicion of official misconduct/police misconduct (i.e. if proven could amount to official misconduct/police misconduct but information insufficient to reasonably raise). Assessed in accordance with the recommendation of EAC; i.e. in light of the public documentation concerning this matter it would appear that there is general acceptance that there is no evidence of impropriety against Mr Beattie or anyone else. Therefore there is no reasonable suspicion of official misconduct."*

Subsequently, on 13 March 2002 a letter under the hand of the Chairperson was delivered to the Premier. That letter stated, inter alia:

> *"The material that you have forwarded to the CMC has been considered along with later information which is in the public domain. An assessment of all this material makes it clear that there is now general acceptance that there is no link between your brother and any taxpayer-funded assistance package to Berri Juice Company.*
>
> *Accordingly, it has been assessed that the matter does not raise a reasonable suspicion of official misconduct and no further action is intended."*

The aspects of the first term of reference which are relevant to this matter are:

- the adequacy of the Commission's consideration of the matter;
- the efficacy of the process by which the Commission has assessed the level of enquiry or investigation necessary to deal with the matter.

Mr Seeney's question of 8 March 2002 raised an imputation of possible official misconduct against the Premier and the Minister for State Development, Mr Barton.

Section 38 of the *C&M Act* requires a public official who suspects that a matter may involve official misconduct to notify the Commission of that matter. Although the situation was not within the strict letter of that section, the action of the Premier in having that imputation referred to the Commission was within the spirit of section 38.

Having received the Premier's letter, the Commission was required *to "expeditiously assess"* the matter[1]. This was done within 24 hours by the Executive Assessment Committee and the Receivals and Assessment Unit Assessment Committee and the result communicated back to the Premier on 13 March 2002.

Any assessment of the adequacy and efficacy of the Commission's consideration of the matter must be made in the light of the circumstances that:

- no complaint had been made to the Commission, the matter being referred by the Premier as a subject of the imputation;
- the Opposition, the group which could have referred the imputation to the Commission, had instead publicly accepted that Mr Arthur Beattie did not work for Berri Limited;
- the Opposition had announced its intention to, and in fact did, refer its queries concerning the grant of financial assistance to Berri Limited to the Auditor-General for investigation. As its queries by this stage did not raise issues of official misconduct, this was clearly the appropriate course to adopt;
- the only imputation in the matter which the Commission had jurisdiction to investigate was that concerning the possible favouring of Berri Limited as the alleged employer of Mr Arthur Beattie.

Once it was publicly acknowledged that Mr Arthur Beattie was not employed by Berri Limited there was nothing for the Commission to investigate. If the Commission had carried out any investigation into the remaining queries concerning the financial incentives granted to Berri Limited, it would have usurped the role of the Auditor-General.

[1] Section 35(1) of the *C&M Act*

This was acknowledged by Mr Horan in his letter dated 7 October 2002 to the Committee making submissions concerning the performance of the Commission. Mr Horan wrote:

> *"In relation to the issue of allegations involving Berri Limited and Mr Arthur Beattie, the Opposition's contention has always been focused on the issue of procedural regularity (or the lack of it) in relation to the Department of State Development's administration of the Queensland Incentives Investment Scheme (QIIS).*
>
> *The Committee should be mindful of the fact that the Opposition never referred any issue relating to Berri Limited, or Mr Arthur Beattie to the CMC. This matter was referred to the CMC by the Premier's office.*
>
> *As far as the Opposition is concerned, the Berri matters have always been based upon financial processes insofar as they related to the administration of the QIIS. The review of such processes is a matter properly falling within the responsibilities of the Auditor-General, not the CMC unless there are associated issues of official misconduct or evidence of the commission of a criminal offence.*
>
> *The Opposition has never made any allegations of official misconduct, or the commission by any person of a criminal offence in relation to these matters. Accordingly, in pursuit of industry concerns surrounding the QIIS grant to Berri Limited, the Opposition pursued the responsible course of action and referred the matter to the Auditor-General on 11 March 2002.*
>
> *The Opposition contends that the Premier's referral of these matters to the CMC was frivolous and vexatious and should have been assessed as such by the CMC under section 216 of the Crime and Misconduct Act 2001."*

I certainly agree that the Opposition's referral of the matter to the Auditor-General was a responsible course of action, but I cannot agree that the Commission should have assessed the Premier's referral to it as frivolous or vexatious under section 216 of the *C&M Act*.

Section 216 empowers the Commission to give notice to a person that information involving misconduct supplied by the person to the Commission will not be investigated by the Commission because it appears to concern frivolous matter or to have been given vexatiously. The giving of such a notice is itself a serious matter; the Commission must, in the notice, advise the person that if the person again supplies the same or substantially the same information to the Commission the person commits an offence punishable by a fine of 85 penalty units or one year's imprisonment or both.

The matter had been referred to the Commission at a time when events were moving quickly. The question was asked in Parliament on the Friday. Mr Beattie left for overseas on the Saturday morning. Later that week-end the Opposition publicly accepted that Mr Arthur Beattie never worked for Berri Limited. On the Monday the matter was referred to the Commission by Mr Beattie's acting Chief of Staff.

The imputation made against the Premier and his brother was serious and, as I have indicated above, I consider that it was within the spirit of section 38 of the *C&M Act* for Mr Beattie to have it referred to the Commission.

I consider that the Commission acted appropriately in assessing that, on the information available to it at that time, the matter did not raise a reasonable suspicion of official misconduct and no further

action was intended. The Commission's letter to Mr Beattie was expressed in those terms and made it clear that no investigation had been carried out by the Commission.

I find that the Commission's assessment of the information conveyed to it in the letter of 11 March 2002 from the Premier's acting Chief of Staff, was adequate and entirely appropriate in the circumstances.

B. ALLEGATIONS REGARDING THE COMPANY CUTTING EDGE

In his letter to the Committee dated 7 October 2002, the Leader of the Opposition stated that *"the main concerns held by the Opposition* (in relation to the Commission's investigation of issues pertaining to Cutting Edge) *are based on the CMC's previous refusals to investigate allegations of "mate's rates" for work performed by Cutting Edge Post Pty Ltd for the Australian Labor Party."*

This concern was expressed in the context of a Commission investigation into allegations of government favours being granted to a film and video post production company Cutting Edge Post Pty Ltd ("Cutting Edge") in return for Cutting Edge charging substantially discounted rates for post production work it had carried out for the Labor Party in the 1998 and 2001 state elections.

On 22 May 2002, the Opposition's concerns about the propriety of state government grants awarded to Cutting Edge were made public in a Courier-Mail article entitled *"Labor attacked for grants to election advertising firm"*. The article raised a number of issues, namely:

- *"The Beattie Labour Government… spent public money on grants to a production company [Cutting Edge] that works on its election campaigns.*

- *A man with the same name as [a] Cutting Edge director …… had been convicted in 1994 of corruption related to post-production work for Queensland tourism marketing authorities. If it's the same [person] that pleaded guilty to a charge of official corruption in 1994, did the Government take that into account? ...what probity checks [did] they do in providing these grants."*

- *[One of the directors of Cutting Edge]…coincidentally lives across the street from Premier Peter Beattie."*

On 22 May 2002, the Premier and the Minister for State Development, Mr Tom Barton MP referred to the Commission these claims attributed to the Opposition. The letter enclosed a copy of the Courier-Mail article. Mr Beattie and Mr Barton also sent a similar letter to the Auditor-General on the same date.

On 24 May 2002 the Commission wrote to both the Premier and the Leader of the Opposition advising them that the Commission was seeking further information concerning the allegations. The Commission noted that the Auditor-General was conducting a probity audit of the Queensland Investment Incentive Scheme ("QIIS") and, as part of this audit, would be considering the awarding of grants to Cutting Edge. The Commission indicated it would be working in close cooperation with the Queensland Audit Office in its consideration of the matter. The Commission invited the Leader of the Opposition to provide any information considered relevant to the matter.

On 30 May 2002 the Opposition forwarded a letter of submission to the Commission, indicating that a copy of the letter was also being forwarded to the Auditor-General. The submission cited information provided to the Opposition by two anonymous sources, one of whom stated that he was a competitor of Cutting Edge, to the effect that:

- Prior to the last Queensland election, Cutting Edge had received $10 million in grants from the Beattie Government;
- Cutting Edge was the company that supplied the Labor Party with its Queensland election advertising post production services;
- A director of Cutting Edge was a neighbour of the Premier;
- One of the informants was told by an officer of the Department of State Development ("DSD") that there was an *'arrangement with Cutting Edge'*, and departmental contracts were awarded to Cutting Edge without the calling of tenders;
- Cutting Edge charged grossly inflated prices for the work it performed for the Queensland Government.

Over the next ten weeks through to late August 2002, the Commission conducted what I consider to be a comprehensive and exhaustive investigation into the allegation that Cutting Edge had received favourable treatment in relation to the QIIS grants and the allegation of serious irregularities in the propriety of the awarding of Queensland Government contracts to Cutting Edge. The investigation also expanded to include a consideration of whether Cutting Edge had received favourable treatment in relation to grants under three other schemes (QIDS, LAMP and ITSAP) and whether the company had received favourable treatment by the Pacific Film and Television Commission. The details of these investigations are set out in the public report of the Commission furnished at the conclusion of its investigations.

On 5 July 2002, Mr Horan supplied the Commission with further information relating to departmental contracts with Cutting Edge and requested a briefing as to the nature and depth of the Commission's investigation. On 19 July the Commission wrote to Mr Horan, advising in some detail the areas of inquiry investigated to that time and the future direction of the investigation. As would be expected, the Commission did not advise the outcomes of the investigations that had been conducted.

On 5 August, Mr Horan wrote again to the Commission stating that, *"Whilst I appreciate the advice you have provided in your letter to me of 19 July 2002, there are some notable omissions in the details it sets out. In particular, I refer to matters referred to by Mr Johnson in his letter to you dated 30 May 2002 concerning comparatives between pricing regimes employed by Cutting Edge Post Pty Ltd for work undertaken for the Queensland Government and the Australian Labour Party."* Mr Horan also requested a face-to-face briefing as to the nature and depth of the Commission's investigation between staff of his office and the Commission's investigators.

On 20 August, the Commission replied to Mr Horan advising that, inter alia:

- the Commission had completed its investigations into the awarding of grants to Cutting Edge under the QIIS and was in the final stages of its investigation into the awarding of grants under the three other schemes;
- the Commission was continuing its inquiries into post production contracts awarded to Cutting Edge by government departments.

The letter continued:

> *"This investigation is being conducted by experienced investigators who have regard to the nature of the allegations and the information to hand in determining the scope of their inquiries. On the basis of the information presently available it is not intended to inquire into the details of work conducted by Cutting Edge for the Australian Labor Party. However, the necessary scope of the inquiry will continue to be monitored as the investigation unfolds."*
>
> *I note your request for a face-to-face briefing for staff of your office. I hope that the further information provided in this letter clarifies the nature and depth of the investigation to date. It is important that as complainant in this matter you are kept informed of the action taken, but you would appreciate the importance of avoiding any perception that the independence of the investigation has been compromised in any way. CMC staff will be available to provide a briefing if you consider that would be of assistance. The contact for this purpose is… Acting Assistant Commissioner, Misconduct…"*

The Commission's offer was soon taken up and on 27 August 2002 staff of the Opposition attended a briefing with the Acting Assistant Commissioner, Misconduct, the executive legal officer (Misconduct Investigations) and members of the Complaints Team assigned to the investigation.

I should indicate that in my consideration of what transpired at this briefing I have referred to a synopsis prepared after the briefing by the investigation's senior legal officer. I have discussed, in general terms, the content of that synopsis with the senior Opposition staff member present at the briefing. He indicated that, whilst he could not comment upon the specific wording, the general context of the synopsis appeared to be accurate.

At the commencement of the briefing the Acting Assistant Commissioner explained that, since the investigation was still ongoing, there were restrictions upon the amount of information which could be disclosed and the Commission would not be advising the Opposition representatives of the outcomes or results of the investigation thus far. The Opposition representatives stated that they appreciated the Commission's position.

A member of the investigative team then outlined the process of the investigations to that time, without, as indicated, detailing what those investigations had disclosed. The Opposition representatives then expressed concern that the Commission's investigation had not extended to an analysis of the work done by Cutting Edge for the Labor Party and the cost of that work in comparison with the prices Cutting Edge charged government departments.

The Acting Assistant Commissioner stated that the Commission had considered the Opposition's advice as to possible investigative directions but, in the absence of signposts of corruption, there was no basis or justification to undertake such inquiries. However he did indicate that the investigation was extensive and ongoing and that *"this investigative decision might change, the CMC had not prejudged the matter… if evidence was forthcoming of an improper relationship then the inquiries would be made of the Labor Party. This would be undertaken if there were signposts disclosed by the intensive analysis during the investigation that grants had been improperly given, for example."*

Subsequently, on 29 August 2002, the Opposition issued a media release stating, in part, that *"The Crime and Misconduct Commission (CMC) must reverse its decision not to investigate details of work performed by Cutting Edge Pty Ltd for the ALP or risk a complete loss of public confidence in its investigation."*

The Commission issued a media release in response, pointing out that the investigation had already inquired extensively into the relationship between Cutting Edge and the Labor Party. Further, that: *"The CMC has made it clear to the Opposition that the investigation is continuing and that its scope will be determined as the evidence unfolds…At this stage of the investigation it is not considered the further inquiries urged by the Opposition can be justified."*

The following day the Courier-Mail printed a story on this issue quoting extracts from both media releases.

This publicity gave rise to concerns within the Commission that the integrity of the Commission's investigation may be undermined by continuing criticism to such an extent that its conclusions (particularly any which might clear people of official misconduct) and recommendations would be rejected by the Opposition and the public. In that event, there would be a real risk of:

- a lack of public confidence in the integrity of the processes involved in awarding Government grants and contracts;
- continuing damage to the commercial reputation of Cutting Edge, and to the reputations of many people in the company and in Government; and
- a risk that the Commission's corruption prevention recommendations would not be implemented.

The Commission determined to address the "mate's rates" allegation. This allegation was subsequently thoroughly investigated, the details of the investigation being included in the Commission's report. Nonetheless the concerns held by the Opposition are based on the Commission's earlier refusals to investigate the allegation.

Discussion of Issues

The Commission investigation, as it evolved, was into two allegations:

(i) that the Labor Government had extended favours to Cutting Edge in the form of improperly awarded grants and/or contracts;

(ii) that Cutting Edge had charged *"mate's rates"* for work it carried out for the ALP during the 1998 and 2001 State elections.

For corruption or official misconduct to be involved, the first of these allegations had to be proved. If only the second allegation was shown to be true, no corruption or official misconduct would be involved.

In other words, there is nothing inherently wrong in a company performing services for a political party at less than normal commercial rates, even for no fee, unless the company seeks or receives improper favours in return from that political party. The performing of the services at less than a normal commercial rate is akin to a donation to the political party and donations to political parties are an accepted part of our system of democracy.

Accordingly, it is not surprising that the Commission investigation up to August 2002 had concentrated mainly on investigating whether there had been any political favours emanating from the Labor Government to Cutting Edge.

By August this investigation was largely complete and had disclosed no evidence of corruption or official misconduct.

During this investigation, some inquiries were also conducted which were directed to the *"mate's rates"* aspect. For example, interviews were conducted with several persons concerning how Cutting Edge was selected to perform the post production work for the ALP. These inquiries also disclosed no cause for any suspicion.

In these circumstances it was correct and appropriate to say, as the Commission did in its letter of 20 August 2002 to the Opposition:

> *"This investigation is being conducted by experienced investigators who have regard to the nature of the allegations and the information to hand in determining the scope of their inquiries. On the basis of the information presently available it is not intended to inquire into the details of work conducted by Cutting Edge for the Australian Labor Party. However, the necessary scope of the inquiry will continue to be monitored as the investigation unfolds."*

Despite being told to the same effect, it appears that the Opposition staff who attended the briefing at the Commission on 27 August 2002 formed the view that the Commission was wrong in not considering that it was essential to investigate the *"mate's rates*" allegation.

With respect, those staff were not in a position to form that judgment. They had been advised that they could not be told the outcomes of the investigations to date. Without knowing those outcomes they could not judge what was essential for the Commission to investigate.

It is an important part of the role of the Opposition to express any concerns it holds as to how the Commission is carrying out its functions. The Opposition can properly express those concerns to the Commission itself or it can raise them with the Parliamentary Committee, the body set up to monitor the performance of the Commission's functions.

The Opposition can also make its concerns known to the public, either by raising them in Parliament or stating them in the media.

If the concerns are well founded, the addressing of those concerns through the taking of appropriate remedial measures can enhance public confidence that the Commission is performing its functions as intended.

If the concerns are not well founded, their public airing has the potential to lower public confidence in the Commission and lessen the Commission's ability to carry out its important role.

Their public airing in this case led to unfortunate statements in the comment article *"Watchdog asleep on the job"* (Annexure A). For example, it was said:

> *"When investigators brush aside allegations and take a once-over-lightly approach to serious claims, community confidence must surely suffer."*

If investigators did indeed *"take a once-over-lightly approach to serious claims"* then community confidence would surely suffer. However if this allegation is made wrongly, as I consider happened in this case, then again community confidence will suffer.

The further danger in inappropriate public airing of concerns is the damage that can result to the party the subject of the allegations. In this case, at the conclusion of the Commission investigations, Cutting Edge was found to have done nothing wrong. Yet it cannot be doubted that the reputation of that company, its personnel and its business suffered as a result of the publicity.

Politicians and the media must continue their watchful role vis-à-vis the Commission, but with care.

I am of the view that the Opposition's concerns based on the Commission's previous refusals to investigate allegations of "*mate's rates*" for work performed by Cutting Edge for the Labor Party are unwarranted.

Aspects of the First Term of Reference

- **decisions by the Commission to interview or not interview individuals (including complainants).**

The Opposition supplied further information to the Commission in relation to the Cutting Edge investigation by letter dated 5 July 2002. The information was said to have come from an informant who was the principal of a post production company in competition with Cutting Edge. This further information related to the issue of alleged irregularities in the propriety of the awarding of Queensland Government contracts to Cutting Edge.

The letter suggested nine lines of inquiry in relation to the informant's allegations, the first being from the informant himself who suggested that the Commission speak with other post production companies in Queensland. The informant specified four such companies that *"should definitely be included as part of the CMC's investigations."* The Opposition expressed concern *"that there appears to have been no attempt by the CMC to contact make [sic] with any post production companies in competition with Cutting Edge Post Pty Ltd."*

I do not find it concerning that the Commission had not taken steps to interview competitors of Cutting Edge at this stage of the investigation. Commission officers were otherwise engaged in conducting relevant and worthwhile investigations involving the units of public administration where the official misconduct was alleged to have occurred or been facilitated.

Subsequently, on 19 July 2002 the Commission wrote to the Opposition advising that:

> *"The CMC will be undertaking inquiries with the companies suggested in your letter. Inquiries to date have identified other avenues of investigation and further inquiries will be conducted along these lines."*

Interviews with the directors or chief executive officers of five competitors of Cutting Edge were conducted between 29 and 31 July 2002 inclusive.

Mr Horan did not raise this issue as a matter of concern in his letter to the Committee of 7 October 2002. It appears that the interviews the Commission conducted with competitors of Cutting Edge subsequent to the 5 July 2002 letter from the Opposition allayed this concern.

I have no concerns with any decisions by the Commission to interview or not interview individuals (including complainants).

- **the timeliness with which the Commission considered the matter.**

The investigation was dealt with in a most timely fashion. The draft report was completed by 14 October 2002 and, following the receipt of responses from the relevant government departments the report was released publicly on 8 November 2002.

- **the adequacy of the Commission's consideration of the matter**

For the reasons set out in my discussion above, I consider that the Commission's consideration of this matter was totally adequate.

- **the efficacy of the process by which the Commission has assessed the level of inquiry or investigation necessary to deal with the matters.**

This investigation was carried out by a Complaint Team comprised of police investigators, a senior financial analyst and legal officers.

It is not appropriate to discuss the processes of the investigation, but suffice it to say that the Complaint Team regularly reported, both in writing and through verbal discussion, to senior officers in the Commission, up to the highest level.

The manner in which the level of inquiry and investigation necessary in this matter was considered was such as to ensure that all necessary information was before those making the determinations.

In this investigation, the appropriate management strategies were in place, were complied with and resulted in an efficient investigation of a complicated matter.

- **the adequacy of the Commission's communication of its processes and determinations to:**
  - **the complainants**
  - **any person the subject of the complaint; and**
  - **the public**

Notwithstanding that this matter was originally referred to the Commission by the Premier and the Minister for State Development, the Commission regarded the complainant to be the Opposition since it had been the Opposition's information that had led to the reference and the subsequent investigation.

In his 7 October 2002 letter to the Committee, Mr Horan stated that the Commission's letter of 20 August 2002 failed to make any reference to his request for a face-to-face briefing between staff of his office and Commission investigators.

However the penultimate paragraph of the Commission's letter reads:

> *"I note your request for a face-to-face briefing for staff of your office. I hope that the further information provided in this letter clarifies the nature and depth of the investigation to date. It is important that as complainant in this matter you are kept informed of the action taken, but you would appreciate the importance of avoiding any perception that the independence of the investigation has been compromised in any way. CMC staff will be available to provide a briefing if you consider that would be of assistance. The contact for this purpose is ...Acting Assistant Commissioner, Misconduct."*

The briefing with the Opposition took place on 27 August 2002 with a further briefing on 19 September 2002.

Adequate communication was maintained throughout the investigation with the Premier, the Opposition, Cutting Edge and the public.

C. ALLEGATIONS IN RELATION TO THE CLEVELAND PALMS DEVELOPMENT IN NORTH QUEENSLAND

During the inaugural sittings of the Parliament in Townsville from 3 – 5 September 2002 Mr Lawrence Springborg MP was provided with a bundle of documents which related to the Cleveland Palms development[2], south of Townsville. Mr Springborg tabled these documents in Parliament on 4 September during a question to the Attorney-General and Minister for Justice. These documents included an affidavit from an Alan Sheret, Jnr, in which allegations were made that, shortly, the shareholders/directors of the company developing Cleveland Palms had donated $5,000 to the campaign fund of the Mayor of Townsville, Councillor Tony Mooney, after being told by a fellow director that the Mayor had demanded a donation or the development would not go any further.

In The Courier-Mail of the next day, 5 September 2002, it was reported that:

> *"A TOWNSVILLE BUSINESSMAN claims he paid Mayor Tony Mooney $1500 in return for favourable treatment on a land deal.*
> *In a sworn affidavit tabled in State Parliament in Townsville last night, earthmover Alan Sheret Jr wrote that a developer told him Cr Mooney "demanded a donation or he said the development would not go any further". Following the payment – banked in the 1994-95 financial year by the ALP, according to Electoral Commission documents – Townsville City Council allowed future leases over the rural subdivision to be extended from 25 to 99 years.*
> *Cr Mooney last night emphatically denied he had accepted a bribe and said the council was already waiting on a response from the Crime and Misconduct Commission about the claims.*
> *The Courier-Mail has learned the allegations are already the centre of a CMC investigation. A CMC spokesman said yesterday "the relevant parties would be informed no later than (Friday) of the findings".*
> *Opposition justice spokesman Lawrence Springborg tabled documents relating to the Phantom Retreat, a fishing village now known as Cleveland Palms, at Alligator Creek, south of Townsville.*
> *The documents claim that after the ALP banked the $1500, Townsville City Council gave final approval to an extra 188 lots of land. Tabled minutes of a shareholders meeting of Phantom Springs Pty Ltd noted a $5000 contribution to an "election campaign".*

On that same day, Mr Springborg wrote to the Commission, expressing his concern that the Commission investigation could not be concluded until fresh allegations had been properly investigated. In particular, Mr Springborg referred to the fact that Mr Sheret had indicated that he had not been interviewed by the Commission. He suggested that all shareholders of the company should be interviewed as to their involvement in the shareholders meeting at which it was resolved to donate to Mr Mooney's fund and as to their recollection of that resolution.

Mr Springborg repeated these concerns in Parliament on 17 September 2002.

Chronology of the handling of the matter within the Commission

[2] The development has been known by several names, including, up to the change in ownership of the development company in about 1997, Phantom Retreat. As this matter has been referred to me under the title Cleveland Palms, I shall use that title for convenience.

In November 2000 a phone complaint was received by the Commission from a complainant (not Mr Sheret). This verbal complaint was followed up shortly by a faxed letter confirming and elaborating on the substance of the complaints. The complaints related to six areas involving very general allegations against many named and unnamed elected and employed officials and officers of the Townsville City Council and various State Government Departments and certain private individuals. One of these series of allegations related to the Cleveland Palms Development but it did not include any allegation of payment of money to Councillor Mooney.

On 3 January 2001 the Commission wrote to the complainant advising him of the statutory jurisdiction of the Commission to investigate complaints of official misconduct and that, in effect, the very generalised allegations made by him did not raise any matter which could be investigated by the Commission. The letter set out detailed reasons for these conclusions and invited the complainant to provide further details of his allegations.

Further contact was made by the Commission with the complainant over the ensuing months and on 24 May 2001 he was advised that the Commission was of the view that his complaints could not be productively investigated without further information from him and that the file was being closed, to be re-opened if and when additional details were provided.

In June 2001 a 158 page document was received from the complainant. This document contained a few short references to the payment of money to Councillor Mooney, but putting that aside for the moment, the balance of the document was a veritable morass of allegations of misconduct and negligence against an array of State Government and Townsville City Council officials. Whilst some of these allegations showed an initial appearance of possible veracity, at the conclusion of all its investigations in this matter the Commission determined that none of these additional allegations raised a reasonable suspicion of official misconduct. Although I cannot claim to have examined the minutiae of all these allegations, I am of the opinion that the Commission's findings with respect to these allegations were correct. Indeed the more serious of the allegations was demonstrably false.

With respect to the allegation of payment of moneys to Councillor Mooney, the submission contained the following assertions:

> *"Allegations that a financial contribution to mayors, campaign funds was a prerequisite to Townsville city council granting a further approval to the subject development."* (At page 9 in Executive Summary.)

> *"Allegations of Official Corruption have been raised regarding the circumstances surrounding An Expanded Development Approval granted by Townsville City Council And This Approvals Relationship to a $5000.00 contribution to the Mayors Campaign Fund?*
> *A previous director alleges he was required to contribute money to the Mayors Campaign Fund as an informal but essential part of Townsville City Council granting a further approval to the subject development.*
> *...*
> *Information and documents have identified a cheque butt identifying a $1500.00 payment allegedly by a person who was at that time a director of the subject development. A notation on the side of the cheque butt indicates the money was paid to Mr A* (name supplied but deleted by me) *for the purposes of making a portion of the total contribution to the mayors campaign fund?*
> *Information alleges the Townsville City Council were the council responsible for giving approval to the subject development – To increase the number of residences within the*

> *development to approximately 320 residences. The subject development received on going sub lease expansion approvals, and very questionable approvals and alleged informal dispensation regarding water, rubbish disposal, buildings being in excess of maximum size etc.*
> *These approvals seem to have been given despite the development allegedly failing to meet many of the original approval conditions. The extent of such alleged number of events is extraordinary to say the least. Was the favour shown to the subject development purely coincidental or do these events indicate "bribes" may have been paid.*
> *...*
> *Information alleges the Chairperson advised the then directors of the subject development: They were required to pay the sum of approximately $5,000 to a Mayor – Election Fund otherwise the subject development would not get Council approval to increase the development to 320 leases?*
> *Additionally a document exists sent to this person by the Election Commission querying the purposes of the payment of $1500.00 to a mayors campaign fund? The director alleges he was advised by the chairperson not to reply to the query, as he was not required to do so. The person alleges nothing further was heard from the Election Office on this matter."*(At pages 91 to 93.)

I have set out these assertions verbatim as I consider it necessary to state the details of these assertions for the purpose of my discussion of the Commission's handling of them. However, as a matter of fairness to the Townsville City Council and its Mayor the reader should not assume the correctness of the assertions with respect to that Council or its Mayor; for example that Council was not responsible for giving approval to the subject development to increase the number of residences to approximately 320. That had been done by the Thuringowa City Council prior to a redrawing of the city boundaries in March 1994 that resulted in the development coming under the jurisdiction of the Townsville City Council.

Amongst the attachments to the complainant's submission were extracts from minutes of two meetings of the shareholders of the company. In the minutes of the meeting held on 28 March 1994 there appeared:

- *"It was unanimously agreed to commit expenditure of $5,000 towards the election campaign for the Tony Mooney team."*

The extract from the minutes of the meeting held on 17 May 1994 included:

- *"The commitment of $5,000 to the campaign funds of the Tony Mooney team had not been paid due to lack of funds.*
  Resolved to seek contributions from shareholders to be repaid at the earliest opportunity."

Also included was a copy of a letter from the Australian Electoral Commission of 17 January 1996 to Betel Holdings, a company controlled by Mr Sheret, Snr. Contrary to what was contained in the written submissions, this letter did not query *"the purposes of the payment of $1500.00 to a mayors campaign fund"*. What it did was to remind the company that it was required to complete a form and forward it to the Commission identifying whether the $1,500 paid by the company to the Australian Labor Party was or was not a donation to the Party.

At the request of the complainant, a Commission investigator saw the complainant in Townsville to collect copies of documents the complainant desired to present to the Commission and to interview

the complainant so that he could point out the relevance of this documentation. Among this documentation were copies of the minutes and the letter from the Electoral Commission referred to in the above quote from the complainant's submission.

This submission and documentation was reviewed by a legal officer attached to the Commission. The purpose of this review was to determine if the submission contained any material that warranted investigation by the Commission, that is, whether there was any material that raised a suspicion of official misconduct on the part of any officer holding a position in a unit of public administration. This review considered the totality of the allegations raised in the full 158 page submission, including the quoted assertion concerning the payment to Councillor Mooney.

In a report of this review the legal officer stated:

> *"As to the issue of the expansion of the number of lease lots, even assuming that Mr Sheret and Mr Sheret Junior could provide the CJC with cogent versions indicating that it was put to them that they needed to make a donation to Mayor Mooney's Campaign in order to obtain an expansion in the number of lease lots, this suggestion was made by Mr* A, (name again altered by me*) who is not a holder of office in a unit of public administration. Mr* A *is said to be still closely involved with the Mayor. The CJC is highly unlikely to obtain a statement from him saying that the Mayor procured him to obtain such a donation on the promise that if it were approved the expansion of the number of leases would be approved. Further, it appears that the donation was appropriately registered with the Electoral Commission. I do not believe that this aspect of the complaint is capable of further productive investigation, particularly as it relates to events which took place in 1987."* (Sic. This is probably a typographical error, as the recital of facts earlier in the report correctly quoted the meetings at which the donation was discussed as having occurred in March and May of 1994.)

With respect to the other allegations raised by the complainant, the report concluded that a number of them raised no suspicion of official misconduct so as to warrant investigation by the Commission but recommended that several issues be further investigated.

Although it is not referred to in the passage in the report dealing with the issue of the payment of money to Mayor Mooney's campaign funds, it is relevant to note that the report, in the recital of facts, contains the following passage:

> *"Correspondence from the Townsville CC to Mr S* (name deleted by me) *dated 22 December 1999 confirms that the subject site* (that is the Cleveland Palms site*) was rezoned to "special facility" in 1987. The letter ... indicates that this was 'prior to the realignment of the Townsville/Thuringowa boundaries' and Thuringowa City Council was responsible for the expansion of the number of lease lots from 120 to 320."*

There is a slight inaccuracy in this statement, in that the letter recorded, correctly as shown by later material received from the Townsville City Council, that Thuringowa City Council's initial sub-divisional approval was for 320 lots and there was never any increase in the number of lots from 120 to 320. Putting this inaccuracy aside, the letter suggested that no donation would have been needed to secure an increase in the number of lots to 320 in 1994, that approval already being in place.

The letter referred to had been received by the Commission as part of the material supplied by the complainant to the Commission investigator. It consisted of a photocopy of the first page only of the letter with no signature upon it from the author or representative of the Council.

The legal officer's report was submitted to an executive legal officer. This officer in turn submitted it to the Commission's Executive Assessment Committee. This Committee, as its title suggests, is comprised of the senior executives of the Commission.

The executive legal officer's endorsement to the Executive Assessment Committee contains a notation requesting them to read the memorandum by the legal officer and a further notation endorsing the legal officer's opinions.

The matter came before the Executive Assessment Committee on 4 October 2001 but was adjourned until the next day, the notation of the adjournment of the consideration being *"EAC consideration of matter deferred until members have had the opportunity to read the memo."*

The following day the Executive Assessment Committee considered the matter and adopted the legal officer's recommendations. This meant that no further investigation was specifically carried out of the allegations with respect to the payment of money to Councillor Mooney, however as part of investigations carried out into other allegations the Executive Assessment Committee directed that a report and documentation be obtained from the Townsville City Council covering, inter alia, the initial and any subsequent approvals for the development of Cleveland Palms.

These matters were requested of the Townsville City Council by letter dated 15 October 2001. Material in reply from the Townsville City Council was received by the Commission on 20 November 2001. This material, which included copies of the original approvals by the Thuringowa City Council, verified what was contained in the copy letter from the Council dated 22 December 1999 to which I have referred above, namely that it was the Thuringowa City Council which approved the subdivision into 320 lease lots in 1987.

Following consideration of this matter within the Commission it was determined to seek further information from the Department of Natural Resources with respect to the other allegations then being investigated. This request was made and material from that Department received in February 2002.

During February and March of 2002 further material containing elaboration of allegations was received both from the complainant (on several occasions) and from another person who had been mentioned in the complainant's initial submissions.

In May, in the absence of the first legal officer on recreation leave, the material was assessed by a second legal officer. With respect to the other allegations which had been the subject of further investigation, this second legal officer recommended finalisation of the investigation.

With respect to the allegation concerning the payment of money to Councillor Mooney, this legal officer expressed agreement with the first legal officer's recommendation, while noting that one of the issues to consider was that the allegations relate to events in 1987. This notation refers back to the unfortunate typographical error in the first legal officer's memorandum of September 2001.

Although agreeing with the first legal officer's recommendation, this legal officer suggested that it might be advisable to attempt to interview the person I have referred to above as Mr A, that is the chairperson of the board of directors of the Cleveland Palms company, who was alleged to have advised the directors that they were required to pay the sum of approximately $5,000 to the Mayor's Election Fund.

In early June the complainant again contacted the Commission requesting that the Commission delay finalising the assessment of his complaints as he had been provided with additional information that *"by its nature and effect involves and adds important information in support of specific issues and concern raised in my original complaints".*

This further material was received from the complainant on 17 July 2002. This material included affidavits from Mr Alan Sheret and his son Mr Alan Sheret Jnr. This was the first time the Commission had received these affidavits, they being dated 10 July and 12 July 2002, respectively.

In the affidavit of Mr Sheret Jnr the following appears:

> *"It was during this development process in which at a shareholders' meeting that Mr* A *called for monies to be donated to Tony Mooney's Campaign Fund. Because of the varying political view from the shareholders the amount and the reason for this donation was questioned. The reply from Mr* A *was that the amount will be for $10,000 and it will be in the best interest of the development.*
>
> *I questioned Mr* A *in the presence of my father for further clarification of the amount and the reason. His reply was that he had spoken to Tony Mooney about the property and because of the restrictions with regard to water and sewerage Tony Mooney demanded a donation or he said the development would not go any further in development."*

Mr Sheret's Snr affidavit contains the following paragraphs:

> *"I was also present with my son Alan Sheret Jr at a shareholder/director meeting that occurred shortly before a Townsville City Council meeting.* A (chairman) *stated to the shareholder/directors present at this meeting that "it was in the Phantom Retreat and shareholders interest to make a cash contribution to the Tony Mooney Mayor's Campaign Fund.*
>
> A *intimated that making this contribution would align Phantom Retreat with the local government labor team and if elected would directly benefit the shareholder at a later date. It was my view that* A *by word, inference and gesture intimated that we had to make this contribution.*
>
> *I would not have voted in favour of this payment, if I felt that as a shareholder/director attending this meeting that I was not being obliged to do so by* A*. I personally felt council had treated me badly when seeking council approval on one previous occasion in relation to a small shopping complex development I was undertaking at the time. Furthermore I believe none of the directors would have voted to make this payment if it were believed making this payment to the Tony Mooney Election Team Campaign Fund was going to provide later favour or benefit to Phantom Retreat.* (In context this presumably should read "… if it were (not) believed …".)
>
> *My son has also given an affidavit concerning his own memory of these events. I have absolutely no reason to doubt that my son has made true and accurate statements concerning the subject events. The basis of this belief in my sons recollection being that*

> *Alan's statements support my own observations, of meetings I attended in his company and of subsequent discussions with my son and following each shareholder/director meetings. Additionally my inability to corroborate specific events outlined in my sons sworn testimony are supported by the fact the Townsville City Council approved a large increase in the number of sublease lots that Phantom Retreat was allowed to develop. This increase was over and above the original terms, which limited the number of sub, leases lots to approximately 200."*

Both Mr Sheret Snr and Mr Sheret Jnr referred in their affidavits to friction and dispute that had arisen between themselves and other shareholders of Cleveland Palms since 1994 and to court action taken against them by other Cleveland Palms shareholders.

The matter was discussed during August 2002 between the first legal officer and the Chief Officer, Complaints Section within the Commission. These discussions culminated in the Chief Officer giving an instruction to the legal officer to finalise the investigations and to draft finalisation letters to the complainant and the Townsville City Council. These letters had not been drafted by the time Mr Springborg tabled the material in Parliament on 4 September.

Following the raising of the matter in Parliament, the Commission re-opened its investigation. After an unsuccessful attempt to interview Mr Alan Sheret Jnr, the details of which I shall deal with in a separate topic in this part of my report, both Messrs Sheret and other persons were questioned at investigative hearings held by the Commission.

At the conclusion of all the investigations it was held that the allegations of bribery against Councillor Mooney could not be substantiated.

Discussion of the handling of the matter within the Commission

The assessment of such voluminous material as was received by the Commission in this case is difficult. I find nothing wrong with the Commission's handling of all the other allegations raised by the complainant in this matter, however I have some concerns with how the Commission handled the allegation concerning the payment of money to Councillor Mooney.

The assessment begins with the report of the legal officer in September 2001, though it must be remembered that this assessment was accepted by the officer's executive legal officer and ultimately by the Executive Assessment Committee.

The basic reason for the legal officer's opinion that the complaint was incapable of *"further productive investigation"* was the premise that the only person who could give direct evidence against Councillor Mooney was Mr A, and he was highly unlikely to co-operate with the Commission.

Political corruption, as alleged in this instance, is a notoriously difficult allegation to investigate. Direct evidence of such an offence will usually only come from the political officer involved and the private individual with whom the corrupt arrangement was made. More often than not this form of evidence will not be able to be obtained. Usually any charge will be based on circumstantial evidence, though it could happen, if the evidence against the private individual was clear, that that person could admit guilt and in turn give direct evidence against the politician.

To say an allegation of political corruption is not capable of further productive investigation if the private individual involved is highly unlikely to give a statement implicating the political official is to accept that virtually no allegation of political corruption is capable of productive investigation.

Political corruption is viewed seriously within our community. Allegations of it must be treated seriously. Such allegations have a habit of becoming public, as occurred in this instance. Then, for the sake of public confidence in the criminal justice system, the investigation will have to be carried out. It is better for all concerned if the investigation is carried out when the allegation is first made. **In my opinion, in this case, the investigation of the bribery allegation should have been carried out from September/October 2001.**

The following matters should have been considered as possible inquiries to be made, though the actual scope of the investigation would have depended upon what was discovered during its progress:-

- an investigation of the records within the Townsville City Council and inquiries, if necessary, with Council staff. The purpose of these inquiries would be to ascertain if, at the date of the alleged corrupt donation there were any issues outstanding in the Council with respect to the Cleveland Palms development, including those issues referred to in the allegations, about which the Mayor could have offered favourable treatment and, if so, how those issues were dealt with;
- interviews with both Messrs Sheret and the other director/shareholders of Cleveland Palms noted in the minutes as present at the meeting of 28 March 1994 when the resolution to donate the money was passed.

There is one piece of information which was held by the Commission at September/October 2001, which could have influenced the various officers' consideration of the matter, which I should discuss. This is the copy of part of a letter from the Townsville City Council, referred to above, which stated that the initial approval of the Cleveland Palms Development given by the Thuringowa City Council allowed sub-division into 320 lease lots. This was referred to in the recital of facts in the legal officer's report, though it was not mentioned that only part of the letter was held.

This information suggested strongly that Councillor Mooney could not have offered any benefit with respect to any increase in the number of lease lots. However it does not appear to me that any of the persons within the Commission who considered this matter in September/October 2001 placed any significant weight on this information.

The legal officer did not refer to it in discussing the reasons for not further investigating the allegation.

If the executive legal officer had considered it of particular significance one would expect it to have been drawn to the attention of the Executive Assessment Committee. It was not.

If the Executive Assessment Committee had considered it of particular significance to its decision one would expect reference to it to appear in the decision of that Committee when it was not noted in the discussion of reasons in the report which they were considering.

In any event I do not consider this information constituted sufficient reason to not investigate the allegations. The recital in the allegations of the alleged statement by Mr A as to why the donation was required was second hand, not coming directly from the Sherets. The allegations could have been in error on this issue and other matters of *"questionable approvals"* were referred to.

Fortuitously, the decision by the Commission to investigate some others of the allegations made by the complainant assisted in obtaining information relevant to the bribery allegation. The material obtained from the Townsville City Council, in particular the copies of approvals granted by the Thuringowa City Council in 1987, established beyond doubt that it was the latter Council that gave the approval for sub-division into 320 lease lots in 1987.

This material further did not disclose any decision of Council in which it could be said that the Townsville City Council favoured the development, or, more particularly, about which Councillor Mooney could have offered a benefit in about March 1994. The material disclosed that:

- the Cleveland Palms development area only came within the Townsville City Council boundaries following the re-alignment of city boundaries between Thuringowa and Townsville which became operative in March of 1994;
- at that time there were no outstanding applications before the Thuringowa City Council;
- no application was made by the developers of Cleveland Palms to the Townsville City Council until November 1994, when the developer requested the Council to change the sub-lease arrangements so that the development instead became a group title development;
- this application was considered by the Council officers but was never approved and was superseded by a further application in October 1995 to amend the use within the zone and to amend the conditions of the sub-divisional approval;
- this further application had not been approved by the Council by September 1996 when a different company, controlled by totally different personnel to those directors/shareholders involved as at March 1994, acquired the development company.

The issue of the extension of the sub-lease terms from 25 years to 99 years was mentioned in the complainant's original submissions in the context of *"questionable approvals"* by the Townsville City Council. The material received from the Council indicates that this issue did not arise until after the development company had been sold to the new owner and further, when it did arise, the Council opposed the extension until being forced to retract its opposition on the basis of advice from its consultant barrister (a specialist in the relevant area of law) that it had no power to prevent the extension.

In short the material from the Council showed that the main claim with respect to the benefit allegedly being offered by the Mayor in return for a donation could not have been raised and there was no other issue in dispute between the Council and the development company at that time which could have provided the basis of the promise of any benefit by the Mayor.

During the time the Commission was carrying out its continuing investigation into the other allegations, the complainant provided, at various times, further material to the Commission. In July 2002 among the material he provided were copies of the affidavits by Mr Sheret Snr and Mr Sheret Jnr.

As can be seen from the extracts from those affidavits quoted earlier in this report, Mr Sheret Snr did not corroborate the version of events as set out by Mr Sheret Jnr, even though Mr Sheret Jnr stated that the relevant conversation with Mr A occurred at a meeting between Mr A and both Sherets.

In his affidavit, Mr Sheret Snr tied the donation in with the extension of the number of lease lots to 320. In contrast, Mr Sheret Jnr, in his affidavit, did not mention that issue and instead relates the demand for a donation to *"the restrictions with regard to water and sewerage"*.

As at March 1994, there was no issue before the Townsville City Council, nor indeed had there been before the Thuringowa City Council, with respect to water and sewerage. Those matters only became an issue after Mr Sheret Snr lodged an objection in November 1995 to the application lodged by the Cleveland Palms developer in October 1995.

This was the material then that the Commission had by the time its officers re-assessed all the material in August 2002 and determined to finalise all the investigations and to draft the finalisation letters. In addition to the matters I have referred to above, the Director, Complaints Services, who made this decision after consultation with the legal officer, relied upon a number of other factors, all of which I consider to have validity. I shall not detail all of these but shall mention one, namely that, contrary to the initial allegation, it was now stated that the relevant conversation allegedly implicating Councillor Mooney in procuring the donation occurred only between Mr A and the Sherets (although Mr Sheret Snr could give no evidence of it). This meant that Mr Sheret's Jnr account of the conversation could not possibly be corroborated by any other director/shareholder.

On all the material available as at August 2002, I find that the decision to pursue the bribery allegation no further was appropriate.

After the material in relation to this allegation became public in September 2002, the Commission acted appropriately, in accordance with the principle of promoting public confidence in the integrity of units of public administration, by re-opening its investigation. That investigation led to the conclusion which was inevitable on the material - that the allegation against Councillor Mooney could not be substantiated.

Concerns expressed in relation to the investigative techniques employed by the Commission in attempting to interview Mr Sheret Jnr.

In his letter of 7 October 2002 to the Committee, Mr Horan referred to matters raised in an earlier letter by Mr Springborg to the Commission.

One of the matters raised in this letter was concern in relation to the investigative techniques employed by the Commission in interviewing Mr Sheret Jnr. Reference was made to a media release by a Townsville lawyer apparently acting for Mr Sheret and to a subsequent press report.

In these it was reported that Mr Sheret had declined a formal interview with Commission investigators on legal advice after they warned him the interview could be used in evidence against him. Further it was reported that when Mr Sheret inquired about the possibility of being indemnified himself against a prosecution he was informed that only two persons had ever been so indemnified in Queensland. The press release concluded *"If the CMC were serious about investigating these allegations they would not be so keen to intimidate key witnesses (sic) out of their testimony"*.

Commission police investigators had earlier, on 12 September 2002, met with Mr Sheret Jnr by arrangement at the Townsville Police Station. I have seen a report by one of those Police Officers who indicates that at the outset of the meeting Mr Sheret inquired whether he could be granted an indemnity against prosecution. The report indicates that a discussion ensued in which it was explained that police officers did not have the power to issue indemnities as that was done by the Director of Public Prosecutions and that to their knowledge only a few indemnities had ever been granted. The report indicates a discussion ensued about Mr Sheret obtaining legal advice before being interviewed and he was advised that during an interview the police would be required to warn him that any answers he gave could be used in evidence against him.

The report indicates that the meeting concluded with Mr Sheret stating that he would not be interviewed until he had obtained legal advice. He was to contact the police after he had received the necessary legal advice to inform them whether he was prepared to take part in an interview. He did not contact them again. The next day the lawyer's press release was issued and the article appeared in the local press.

I have no hesitation in accepting the police officer's account that Mr Sheret was told that only a *"few"* indemnities had been granted to their knowledge as, indeed, that would be the opinion held by any experienced lawyer or police investigator in Queensland. It is perfectly feasible that Mr Sheret misheard them and understood them to say that only *"two"* indemnities had ever been granted.

The Commission police were correct in their statement that they had no power to grant an indemnity.

The police decision to advise Mr Sheret that he would be warned at interview that any answer he gave could be used in evidence against him also appears to have been impliedly criticised.

Section 246 of the *Police Powers and Responsibilities Act 2000* relevantly provides:

> *"(1) This part applies to a person ("relevant person") if the person is in the company of a police officer for the purpose of being questioned as a suspect about his or her involvement in the commission of an indictable offence."*

Section 258 of the Act relevantly provides:

> *"(1) A police officer must, before a relevant person is questioned, caution the person in the way required under the responsibilities code."*

Mr Sheret's affidavit, of which the police had a copy, contained an allegation of bribery and an admission that he, Mr Sheret, made himself a party to that bribery. In the circumstances he was a *"relevant person*" for the purpose of the *Police Powers and Responsibilities Act.* The provisions of that Act are mandatory and the investigators were obliged when questioning Mr Sheret to warn him, notwithstanding that the warning may have had the undesirable effect of potentially leading him to decline to be interviewed.

Subsequently the problem of self-incrimination was overcome by the Commission calling Mr Sheret to an investigative hearing where he claimed the protection of section 197 of the *C&M Act* whereby the answers that he gave were not admissible in evidence against him in any civil, criminal or administrative proceeding.

I find that the Commission police investigators acted fairly and reasonably and in accordance with their statutory responsibility when attempting to interview Mr Sheret Jnr on 12 September 2002.

Aspects of the First Term of Reference

- **decisions by the Commission to interview or not interview individuals (including complainants).**

As I indicated in my discussion above, I consider that the investigation should have commenced in October 2001. This investigation would have included interviews with the Sherets and if necessary, all the other shareholders/directors who had been present at the shareholder/directors meeting in March 1994.

In the light of the knowledge that subsequently came to hand in the form of the affidavits and information from the council records, it transpired that the interviews with the other shareholders/directors became superfluous.

- **the timeliness with which the Commission considered the matter.**

The initial contact by the complainant was in November 2000. The Commission decision to finalise the investigation was in August 2002.

At first sight, that period of time seems lengthy. However, on considering the matter, I do not believe that it can be said that the period was unduly long. Briefly my reasons for this opinion are:

- it was not until June 2001 that the complainant supplied any material that warranted assessment by the Commission;
- the allegations made were wide-ranging and complex;
- the Commission sought and received material from the Townsville City Council and the Department of Natural Resources and Mines;
- the complainant, on a sporadic basis, continued to send further large amounts of material in support of his complaints;
- during 2002 the complainant advised on several occasions that he had further information to send and requested the Commission to not finalise its investigations until he forwarded this material. It was only after a deadline was placed on him that the Commission received that further material in July 2002.

- **the adequacy of the Commission's consideration of the matter**

For the reasons I have set out in my discussion above, I do not consider the Commission's consideration of this matter in September/October 2001 to have been adequate.

- **the efficacy of the process by which the Commission has assessed the level of inquiry or investigation necessary to deal with the matters.**

In theory there was nothing wrong with the process by which the Commission assessed, in September/October 2001, the level of inquiry and investigation necessary to deal with the allegation against Councillor Mooney. However in this case, more care was required.

That process involved the assessment of all the material by the legal officer and the preparation of a written review with recommendations.

This review was submitted to an executive legal officer who considered it and endorsed the recommendations.

It was then considered by the senior officers who comprised the Executive Assessment Committee and it seems clear from the notations in the Commission records that those officers actually read the legal officer's report.

It is difficult to pinpoint where the process failed in this case, as I consider it did. It was probably a combination of two factors.

First, as I indicated above, the 158 page document received from the complainant contained a veritable morass of allegations of misconduct and negligence against an array of State Government and Townsville City Council officials. It is no easy task to sort from the dross of this material those couple of matters that would require further investigation.

Secondly, the legal officer who made the initial assessment had, at the time of the assessment, limited experience, having only very recently joined the Commission staff.

In these circumstances, greater responsibility must be taken by the senior officers who should be aware of the level of experience of the original assessing officer and the complexity of the task. If necessary, the executive legal officer should review not just the legal officer's report, but the original material itself. The Executive Assessment Committee cannot be expected to do this.

- **the adequacy of the Commission's communication of its processes and determinations to:**
    - **the complainants**
    - **any person the subject of the complaint; and**
    - **the public**

The interests of Councillor Mooney and the Townsville City Council in this investigation were represented through the Legal Services branch of the Council. The manager, Legal Services did express his concern to the Commission over what he saw as a failure of the Commission to provide regular reports to the Council on the progress of the investigation.

Each request by the manager for information as to the progress of the matter was responded to. I consider that the Commission's communication with the Council was adequate, however as these matters can always be improved it is pleasing to see that subsequently a meeting was held between a Council and a Commission representative to discuss how the Council's expectations could be better met in future. I expect that what was learnt from that exchange will be applied by the Commission in its communications with other parties the subject of allegations.

The manager also raised an issue of his inability to speak to any appropriate officer of the Commission on 5 September 2002 and a failure to return a telephone call to him on that day. It was that day the press article appeared referring to the allegations against Councillor Mooney.

These matters have been resolved satisfactorily between the Commission and the manager, Legal Services. Briefly they related to the absence of the appropriate officers away from the Commission offices or in meetings and an inability for technical reasons to leave a message on the manager's mobile phone.

The manager also complained that the matter was being tried in the media. This was, of course, a matter beyond the control of the Commission.

I am of the opinion that the Commission's communications with the complainant and the public were adequate.

D. THE CRIME AND MISCONDUCT COMMISSION'S CONSIDERATION OF THE INVESTIGATION, PROSECUTION AND DISCONTINUANCE OF PROCEEDINGS AGAINST SCOTT VOLKERS

It is a matter of public knowledge that in early 2002, high profile swimming coach Mr Scott Volkers was charged with a number of sex offences based on the allegations of three former swimming students. On 25 July 2002 Mr Volkers was committed for trial on seven such charges. However on 18 September 2002 the Office of the Director of Public Prosecutions discontinued all charges against Mr Volkers citing *"aspects of the case which would prevent a jury from being satisfied of guilt beyond reasonable doubt"*. Shortly thereafter the Commission commenced an investigation of matters related to the investigation, prosecution and discontinuance of these charges.

This matter did not form part of the original reference by the Committee to me but arose out of the letter from Mr Horan to the Committee dated 7 October 2002.

In that letter, Mr Horan stated:

> *"The Opposition's concerns in relation to the investigative processes employed by the CMC in relation to the Volkers matter arise as a result of information detailed by the CMC in Media Release dated 27 September 2002 and a letter to me dated 30 September 2002.*
>
> *The Committee will note that in both of these documents the CMC makes reference to obtaining documents from the Queensland Police Service (QPS), the Director of Public Prosecutions (DPP) and solicitors for Mr Volkers. No reference is made to the CMC obtaining any material from any of the complainants.*
>
> *As I stated in a Media Release dated 1 October 2002, I consider this omission to represent a serious gap in the CMC's investigation of this matter.*
>
> *The complainants are in a unique position to provide valuable evidence to the CMC as to what happened during this prosecution. Any failure on the part of the CMC to interview the complainants in this case would completely compromise this inquiry.*
>
> *In the CMC's subsequent Media Release dated 1 October 2002, Mr Butler is quoted as stating that:*
>
> > *'The CMC has not ruled out any possible avenue of inquiry in relation to the Volkers matter and the question of who might or might not be interviewed has not yet arisen.'*
>
> *As an investigate body, the CMC should be mindful of the need for justice not only to be done, but to be seen to be done. I submit that the failure to specifically mention the complainants at the very least adds to the unfortunate public perception of the manner in which the Volkers matters was handled by the DPP."*

Background to the handling of the matter within the Commission

I have reviewed the relevant Commission file and holdings in this matter.

At no stage was any complaint made to the Commission about the Volkers matter by any of the complainants, by Mr Volkers or anyone on his behalf or, indeed, by any other person. The catalyst for the Commission to commence to look at the matter was a combination of Commission officers'

own consideration of comments in the media about the matter and the referral by the Premier to the Commission of a transcript of an interview that he had given concerning the matter.

On 24 September 2002 the Premier's Office sent to the Commission a transcript of a television interview with Mr Beattie held on the 19 September 2002 during which the Premier expressed the opinion that there had been some failure in the Volkers case and that the matter should be looked at by the Commission as part of its general responsibility to monitor the administration of criminal justice.

Between 19 and 24 September 2002 other statements appeared in the media which queried the handling of the matter by the Office of the Director of Public Prosecutions and raised some allegations of political interference in the case.

As a result, it was decided within the Commission to commence the process of gathering information with a view to determining whether there was any suspicion of official misconduct by any person. A decision was also made to examine the training, expertise and supervision of police officers investigating sexual offences pursuant to section 52(2)(a) of the *C&M Act*. That sub-section empowered the Commission to undertake research into *"police service methods of operations"*.

Over the next two days, that is 25 and 26 September 2002, the initial process of securing documentation was initiated by making contact with the Office of the Director of Public Prosecutions, the Queensland Police Service and the solicitors for Mr Volkers to obtain from them relevant documentation in their respective possession.

On 27 September 2002 the Premier wrote to the Commission formally referring some questions to the Commission under section 51(1)(c) of the *C&M Act*. That sub-section states that the Commission has the function *"to undertake research into any other matter relating to the administration of criminal justice or relating to misconduct referred to the Commission by the Minister"*. The relevant Minister under the Act is the Premier.

The matters referred by the Premier were:

- *"The adequacy of existing guidelines and procedures for the initiation and discontinuance of the prosecution of sexual offences by police and the Office of the Director of Public Prosecutions, and*
- *The appropriateness of and the circumstances in which the publication of identifying information about a person charged with a sexual offence should be suppressed."*

This referral enabled the Commission's inquiry to be broadened to cover the handling of the matter within the Office of the Director of Public Prosecutions as well as within the Queensland Police Service.

Following this referral and on the same date, that is Friday 27 September 2002, the Commission issued a media release, a copy of which is annexed to this part of the Report as Annexure D.

On 26 September Mr Horan had written to the Commission raising concerns which he suggested should be addressed in any Commission investigation. Mr Butler replied to that letter on Monday 30 September, in terms that largely echoed what was in his media release of the previous Friday.

The next day Tuesday 1 October 2002 Mr Horan issued his media release. A copy of that release is attached as Annexure E.

Later the same day the Commission issued a media release in response to Mr Horan's statement. A copy of that release is annexed as Annexure F.

Discussion

The issues that arise out of the concerns expressed in Mr Horan's letter of 7 October 2002 appear to be:

- Had it been determined within the Commission by the time of the media release on 27 September that the complainants would not be interviewed?
- If it had not, should the Commission nevertheless, for the purpose of ensuring public confidence in its processes, have indicated in its media release that the complainants would be interviewed?

<u>Had the Commission determined not to interview the complainants</u>

On the first issue, the answer appears to be clearly, no.

My review of the Commission files establishes that up to the release of the media release on 27 September 2002, the only steps taken in this matter were as follows:

- the decision to review the Volkers matter with a view to determining whether there was any suspicion of official misconduct by any person and to examine the training, expertise and supervision of police officers investigating sexual offences;
- the decision to secure the relevant records and documentation in the matter;
- pursuant to that decision a phone contact made with and letters written to the Office of the Director of Public Prosecutions, the Queensland Police Service and the solicitors for Mr Volkers and the subsequent receipt of some material; and
- the acceptance of the reference from the Premier to enlarge the scope of the general inquiry.

It was only on the following Monday, 30 September 2002 that a dedicated team, comprised of an executive legal officer and two police investigators, was put together to consider the issue of whether there was any suspicion of official misconduct by any person. Research personnel were also allocated to the general inquiry aspect of the matter.

The Commission file confirms the statement by Mr Butler in his media release of 1 October that, *"the question of who might or might not be interviewed has not arisen"*. There is no formal note anywhere in the file to show that that question had been considered at all by that time.

However, I have interviewed the executive legal officer who was assigned to the Volkers matter on 30 September. He informs me that, prior to hearing about Mr Horan's media release late in the afternoon of 1 October, he and a research officer within the Commission had in fact discussed this question.

At about mid-day on 1 October, one of the complainants in the Volkers matters rang the Commission, obviously in response to its media release of the previous Friday. She was directed to the research officer who had been assigned to the Volkers matters but that research officer was in a meeting. That research officer returned the call to the complainant after coming out of the meeting shortly after 3.00 pm. That officer had a discussion with the complainant which, while not an interview, covered details of the police investigation and the complainant's contacts with the Office of the Director of Public Prosecutions.

An email on the Commission file confirms that the research officer rang the executive legal officer about this telephone call at 3.36 pm. He was not there but returned her call shortly after and he advises it was during that telephone call, when he was told the details of the call, that he and the research officer discussed the matter and concluded between them that it would be necessary to interview all three complainants.

I have no reason to doubt this officer's account, supported as it is by entries on the Commission file, however I do not feel the need to make a concluded finding as to whether these events did or not did occur.

The material on the Commission file satisfies me that no decision had been made by the time of the issue of the media release not to interview the complainants. I am satisfied that the steps that were taken by the Commission up to that time were reasonable, namely to take immediate steps to secure the documentation in the case. The investigation was at too early a stage for decisions to have been made, let alone even considered, as to which persons would need to be interviewed.

That said, I find it impossible to believe that, once the full investigation and inquiry got under way, the Commission would not have interviewed the complainants. It would appear probable that they would not have been able to provide any material of relevance to the Commission investigation into whether there was any suspicion of official misconduct by any person, however I feel it inevitable that they would have been interviewed in the course of an inquiry into what Mr Butler described in the first paragraph of his media release of 27 September 2002:

> *"The Crime and Misconduct Commission is to inquire into aspects of how the criminal justice system deals with sexual offence matters, in view of concerns that have been raised over the handling of allegations against swimming coach Scott Volkers."*

Should the Commission have indicated in its media release that it would interview the complainants

Mr Horan based this aspect of the matter on the need to allay public concern; on the need to re-assure the public that the Commission would give the complainants the opportunity to have their say.

With respect, I do not consider that the wording of the Commission media release would have raised any public concerns as to whether the complainants would be given the right to be heard.

I can understand how Mr Horan's advisers, when reading carefully the text of the Commission's media release could note the omission of any reference to the complainants.

However, I do not consider that the normal member of the public would read the media release with the same degree of care. I am of the opinion that the average man or woman in the street would accept, upon reading the media release, that the Commission would, as part of its review, hear from all the complainants and from Mr Volkers.

I find that, at the stage the Commission's investigation had reached as at the date of its press release, the Commission's consideration of the matter was adequate and its communication of its determinations to the public was adequate.

2. EXAMINE WHETHER THE COMMISSION HAS IN ANY OF THE FOUR MATTERS AT ANY TIME NOT ACTED INDEPENDENTLY, IMPARTIALLY, AND FAIRLY HAVING REGARD TO THE PURPOSES OF THE ACT AND THE IMPORTANCE OF PROTECTING THE PUBLIC INTEREST

During my investigations into these four matters I found nothing to indicate that the Commission had at any time not acted independently, impartially and fairly having regard to the purposes of the Act and the importance of protecting the public interest.

3. CONSIDER THE ADEQUACY OF THE ACT TO PROPERLY EQUIP THE COMMISSION TO DISCHARGE ITS MISCONDUCT FUNCTION IN RESPECT OF THE FOUR MATTERS

No issue arose in any of the four investigations with respect to the adequacy of the *Crime and Misconduct Act* to properly equip the Commission to discharge its misconduct function.

This issue was raised in The Courier-Mail article *"CMC fighter hits at his own organisation",* in the context of the changes to the misconduct role of the Commission introduced by the *C & M Act*. I address that article in the next section of this report.

Those changes to the misconduct role of the Commission brought about by the *C & M Act* had no effect in these four matters, where three were investigated by the Commission and the fourth was determined by the Commission as requiring no investigation.

I find that the provisions of the Crime and Misconduct Act were adequate to properly equip the Commission to discharge its misconduct function in respect of the four matters.

4. INVESTIGATE ANY OTHER ALLEGATIONS AGAINST THE COMMISSION CONTAINED IN THE THREE ARTICLES REFERRED TO

Among the media articles referred to me by the Committee was The Courier-Mail article of 18 September 2002, headlined *"Staffer attacks crime watchdog power drain"*. This article was one of the statements of public concern which led to the Committee's referral to me. It is attached as Annexure B.

The article refers to a speech given by Mr Russell Pearce, an executive legal officer within the Commission, to a group of justice studies students at the Queensland University of Technology. The headline, the caption under the photo and the first seven paragraphs of the article appear clearly to suggest that Mr Pearce held serious concerns about changes that had occurred in the role of the Commission. In fact, a reading of Mr Pearce's speech makes it clear that this would be an incorrect interpretation of the speech.

I have obtained a copy of the written speech prepared by Mr Pearce and I was advised that he indicates that his presentation followed the written speech fairly closely.

As background to the speech, it is relevant to look at some legislative changes to the role of the Commission affected by the *Crime and Misconduct Act,* which came into effect in January 2002.

One of the features of this Act was a change to the role of the Commission with respect to allegations of misconduct. Under the previous *Criminal Justice Act 1989* the then Criminal Justice Commission was required to investigate every complaint it received of misconduct within a unit of public administration which gave rise to a suspicion of such misconduct.

Under the new *Crime and Misconduct Act*, the Commission is required to assist units of public administration to deal with allegations of misconduct within those units. The Commission is required to itself only investigate those allegations where either the nature and seriousness of the allegations or the maintenance of public confidence requires it or the unit of public administration does not itself have the capacity to deal with the matter.

This change took up a large part of Mr Pearce's speech. He outlined what the changes were and set out for his student audience the arguments which could be presented in favour of the changes and those against.

Early in his speech Mr Pearce said:

> *"I am not for one moment questioning the bona fides of those responsible for the Crime and Misconduct Act – they are undoubtedly the 'well intentioned'. Equally, not criticising the changes – yet! it is too early to judge."*

After setting out the arguments for and against the changes Mr Pearce concluded:

> *"However, the ultimate acceptance or rejection of the new direction in policy will fall to be determined by public confidence in the years to come."*

In short, Mr Pearce's speech on this aspect was, in effect, a discussion paper, in which no conclusion was expressed.

The speech should not have been a cause for public concern.

CONCLUSION

Out of the four matters referred to me, I have found no cause for concern in three, namely, the Berri and Mr Arthur Beattie matter, the Cutting Edge matter and the press release in the Volkers matter.

In the fourth matter, ie the allegations concerning the Cleveland Palms development, I have found that the Commission should have commenced an investigation into the bribery allegations in October 2001, though later investigations carried out with respect to other allegations disclosed that the bribery allegations were unfounded.

My review of these matters has confirmed my opinion that politicians, both on the Government side and in Opposition, and the media all have an important role to perform in public oversight of the Commission. However such oversight must be exercised with care.

When issues are raised appropriately, it will enhance public confidence in the Commission. When raised inappropriately or prematurely however, public confidence may be unnecessarily or erroneously shaken.

A second consideration concerns the individual, organisation or company under investigation by the Commission. If inappropriate publicity occurs during the course of an investigation there is the potential for damage to the individual's, the organisation's or the company's reputation and economic bottom line. If the allegations under investigation are later found to be baseless, such damage often cannot be fully repaired.

ANNEXURE A

SATURDAY, SEPTEMBER 14, 2002 THE COURIER-MAIL — 27+

Watchdog asleep on the job

WHEN you need a good watchdog, you don't buy a chihuahua.

Recent events have cast doubt over whether Queensland's Crime and Misconduct Commission is up to the task of promptly responding to allegations of political corruption. On several recent occasions its investigations into serious matters of accountability appear to have been reactive, superficial and possibly incomplete.

The CMC, named the Criminal Justice Commission until the start of this year, was created in 1989 after the landmark Fitzgerald inquiry exposed Queensland as a cesspit of police corruption and political non-accountability.

Commissioner Tony Fitzgerald designed it as a "standing royal commission with full coercive and investigative powers which would act as a deterrent to crooks and a comfort for citizens fed up with institutionalised corruption. This has always been a difficult role.

Matthew Franklin
STATE POLITICAL EDITOR

Political parties routinely try to misuse the commission for political ends and many people make false complaints to damage enemies. Generally speaking though, the commission has performed well over its lifetime. However, disturbing signs are emerging. Take the following recent example.

On Wednesday of last week, as State Parliament met in Townsville, Opposition frontbencher Lawrence Springborg revealed allegations by Townsville man Alan Sheret Jr that he had been required to pay $1500 to Townsville Mayor Tony Mooney in return for favourable treatment on a land deal. Springborg tabled a huge pile of documents to support the claims, which Mooney denied in the strongest terms. Inquiries by *The Courier-Mail* revealed that the CMC already had all but finalised an investigation into the affair and was only two days from informing all parties of its assessments.

The only problem: CMC investigators had not interviewed Sheret, the man making the allegations. A thorough examination? Hardly. There is something wrong when journalists with telephones and notebooks can find out more in a few hours than an organisation with compulsive powers and a $20 million-a-year budget.

The state Opposition is also worried. Earlier this year it revealed that the State Government had used video production company Cutting Edge Post to help produce its advertising for the 2001 election campaign, and also had given it a taxpayer-funded grant to expand its activities. It also alleged in Parliament that a Cutting Edge director had been jailed several years ago for paying kickbacks to bureaucrats. The CMC began investigating.

But when the Opposition later passed to it claims by Cutting Edge's competitors that the company charged mate's rates to the Labor Party, the investigators said they were not interested. Given that the Government will hand out $64 million of public money in grants to businesses this year (up from $8 million five years ago), the Opposition's claims should not have been tossed aside so lightly.

At one level, you can understand CMC investigators telling Opposition staffers to mind their own business and let them conduct investigations without political interference. It is not up to politicians or newspaper columnists to tell trained investigators how to do their jobs. But the CMC seems to have forgotten its most important function – protecting community confidence. It exists partly so that people know that where corruption emerges, it will be identified and eliminated.

When investigators brush aside allegations and take a once-over-lightly approach to serious claims, community confidence must surely suffer.

The CMC's worst failure in recent years was its refusal in August 2000 to investigate claims by jailed Labor Party forger Karen Ehrmann that electoral rorting was rife in the Labor Party. The commission initially did nothing, its leaders arguing there was nothing in Ehrmann's claims to enliven their jurisdiction. When the commission finally acted, the resulting inquiry proved Ehrmann was correct and ended the careers of three Labor MPs, one of them the then deputy premier Jim Elder.

In such circumstances, people have a right to be concerned about the CMC's current direction and the fact that its policy of keeping a low profile means its officers seldom explain to the public the reasons for decisions which, as in the cases above, seem strange.

An organisation created as part of the process of delivering accountability must itself be accountable. State Parliament's all-party Parliamentary Crime and Misconduct Committee – the Parliament's watchdog over the commission – should investigate such decisions to satisfy itself that the CMC has not strayed off-course.

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ANNEXURE B

Staffer attacks crime watchdog power drain

Rory Callinan

QUEENSLAND'S showpiece corruption-fighting body was no longer "an ever-vigilant oversight agency" and had been reduced to a tool for political one-upmanship, according to one of its most senior legal officers.

In an extraordinarily frank speech, the executive legal officer of the Crime and Misconduct Commission, Russell Pearce, said the CMC had suffered a "dramatic change of emphasis" away from investigating corruption to preventative programs.

In a lecture to a group of justice studies students at Queensland University of Technology, he said: "No longer do we have the CJC (the Criminal Justice Commission, predecessor to the CMC) acting as an ever-vigilant oversight agency and investigating a large proportion of complaints of misconduct.

"The making of a complaint to the CMC can no longer carry with it the expectation it did previously, namely, that if reasonable suspicion of misconduct existed, the CJC would conduct its own investigation.

"Now it is more likely than not that the complaint will be immediately referred back to the QPS (Queensland Police Service) or subject department."

Courier Mail 18.9.02 First page

NO holds barred . . . Russell Pearce, Crime and Misconduct Commission's executive legal officer. Picture: Jim McEwan

Mr Pearce, who had been involved in high-profile CJC investigations including misconduct at the highest levels of government, said the commission's weakened role had been justified by the maturing of Queensland's institutional culture since the Fitzgerald inquiry.

However Mr Pearce said: "The cynic might suggest it is the product of complacency – a belief that the QPS is now capable of doing what, for generations it was incapable of doing . . ."

The statements yesterday sparked a vigorous denials. CMC chief Brendan Butler said: "New legislation has strengthened the ability of the CMC to monitor and oversight public sector agencies and the police."

Parliamentary Crime and Misconduct committee chairman Geoff Wilson said: "Across the board, following all the examinations about the conduct of the CMC that we have undertaken, it's proving overall to be a very effective and vital part of the Queensland criminal justice system".

Continued Page 4

ANNEXURE B (CONTINUED)

Staffer attacks crime fighter's power drain

From Page 1

And after *The Courier-Mail* contacted Mr Butler for comment, Mr Pearce distanced himself from his speech, saying references to it failing to be "ever-vigilant" had been "taken out of context and fails to reflect the overall balance of the paper". He did not elaborate.

The $30 million taxpayer-funded CMC started operations on January 1 this year after a merger of the CJC and the Queensland Crime Commission.

It has come under fire in the past three years from the State Opposition for failing to investigate a series of allegations relating to political impropriety.

But Mr Pearce in his *Watchdogs: Warriors, Wimps and Witch-hunts* lecture on August 19 said it was "almost impossible" for the CMC to investigate politicians.

"Despite the frequent referral of allegations, it is almost impossible to enliven the CMC's jurisdiction in the case of a parliamentarian and we are still no closer than we were at the time of Fitzgerald (inquiry into corruption) to an enforceable code of conduct covering members of Parliament," he said during the lecture at the Queensland University of Technology.

He said members of Parliament were using the CMC for "grandstanding".

"Time and time again politicians will refer allegations against each other in the full knowledge that the matter simply cannot enliven the CMC's jurisdiction," he said.

"What follows is grandstanding, firstly in respect of the referral of the matter, followed either by claims that the CMC is playing politics by not investigating and/or claims of vindication from the politician who has, in fact not been investigated at all."

Mr Pearce, who indicated before the lecture that the opinions were his own and not the commission's, said there was no doubt the change in emphasis had allowed for a "more effective use of funds and investigative resources".

"And to keep perspective, it is anticipated in the current year the CMC will conduct approximately 160 investigations," he said.

He also queried the effects the Crime and Misconduct Act on the commission and went on to say that the fact the CMC's role was being undermined had been envisaged by founder Tony Fitzgerald.

Man of many roles

RUSSELL Pearce is no stranger to controversy. After he joined the CJC in 1993, he played a major role in a series of investigations including probes into foxtail palm smuggling, pedophile cover-ups and Operation Wallah – checking defence contract irregularities and prostitution allegedly involving Labor Cabinet Minister Senator Graham Richardson.

During the foxtail palm inquiry, Mr Pearce, as part of the CJC team, was called on to investigate senior staff working for former premier Wayne Goss over their role in a probe into a plant smuggling racket on Cape York in 1994. The staffers were cleared.

He was also involved in the Kimmins inquiry into the alleged failure of police to properly investigate pedophilia complaints.

But it was during Operation Wallah that Mr Pearce came to prominence after an inquiry was launched into leaks of sensitive documents detailing the investigation and role of the Australian Federal Police. No CJC staff were found to have leaked information.

He also was called on to appear before the then Coalition government-inspired Connolly Ryan inquiry into the CJC's effectiveness in 1996.

Mr Pearce is also a major in the Army Reserve and was a barrister at the Townsville Bar.

ANNEXURE C

P.12

C.M. THURSDAY, SEPTEMBER 19, 2002

Nats lose faith in management of crime-fighter

Matthew Franklin
STATE POLITICAL EDITOR

ANTI-CRIME watchdog the Crime and Misconduct Commission is close to losing State Opposition support.

Opposition Leader Mike Horan, *pictured,* said yesterday he would meet CMC head Brendan Butler this week to ask why the commission had not followed through with full investigations of recent corruption allegations.

His comments came as Premier Peter Beattie accused the Opposition of misusing the commission by making baseless complaints to score political points.

But Mr Beattie also called on the parliamentary crime and misconduct committee, Parliament's watchdog over the CMC, to examine recent CMC investigations and satisfy itself that the commission was doing its job.

Yesterday *The Courier-Mail* reported that CMC legal officer Russell Pearce had said in a recent speech that the CMC was no longer "an ever-vigilant oversight agency" and had suffered a dramatic shift in emphasis

away from investigating corruption and toward conducting corruption prevention programs.

And in State Parliament earlier this month the Opposition questioned the CMC's performance in failing to interview a man who, according to documents it tabled in Parliament, claimed he had made donations to Townsville Mayor Tony Mooney in return for favourable treatment on land deals. Cr Mooney denied the allegations.

Yesterday Mr Horan said the PCMC should thoroughly examine the CMC. "We're slowly losing confidence," Mr Horan said.

"We believe there's a couple of major issues now where there's quite obvious avenues of investigation, where reasonable suspicion occurred, and that the CMC had an obligation under the Act to follow those through.

"It now behoves that parliamentary committee to follow through so we can have confidence that that committee is achieving (the overseeing) of the CMC."

Mr Beattie said Mr Butler was performing well and was fair to both sides of politics.

But he said: "Those issues in *The Courier-Mail* should, by virtue of their publication, be taken up by the (parliamentary) CMC committee.

"They should examine them ... and they should report to the Parliament if there are matters of concern."

Mr Beattie said that if the committee found deficiencies in CMC performance or legislation covering its operations, the Government would act immediately.

PCMC chairman Geoff Wilson last night said recent complaints against the CMC were being seriously considered by the all-party committee but members were yet to decide what action they would take over the claims.

Mr Wilson said the committee had asked for some preliminary information from the CMC.

"The allegations raised in *The Courier-Mail* are serious and warrant proper consideration," he said.

ANNEXURE D

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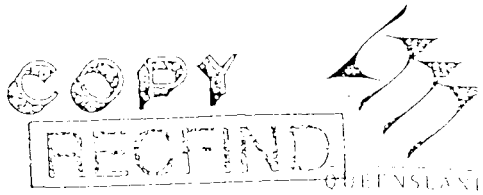

MEDIA RELEASE

DATE: 27 September 2002

The Crime and Misconduct Commission is to inquire into aspects of how the criminal justice system deals with sexual offence matters, in view of concerns that have been raised over the handling of allegations against swimming coach Scott Volkers.

Following the expression of recent public concerns, the CMC has sought relevant information in relation to the investigation, prosecution and the discontinuance of the prosecution of Mr Volkers.

The CMC has obtained documentary material from the Queensland Police Service, Office of the Director of Public Prosecutions and the solicitors for Mr Volkers, who have all cooperated by voluntarily providing material in their possession.

The CMC is reviewing all that material to determine if it raises any suspicion of criminal or disciplinary breaches by any public officer. That process will continue.

Commission Chairperson Mr Brendan Butler SC said that as well as looking at the issues of possible misconduct by any public officer the CMC will look at a number of systemic issues of considerable public concern that have been raised.

"The CMC is the appropriate body to conduct such an inquiry and a reference has been obtained from the Premier to allow the CMC to examine issues concerning the administration of the criminal justice system.

The CMC will conduct a public inquiry which will examine and report on the following Terms of Reference:

- The training, expertise and supervision of police officers investigating sexual offences,
- The adequacy of existing guidelines and procedures for the initiation and discontinuance of the prosecution of sexual offences by the police and the Office of the Director of Public Prosecutions; and
- The appropriateness of and the circumstances in which the publication of identifying information about a person charged with a sexual offence should be suppressed.

The CMC will first publish a discussion paper calling for submissions from all concerned parties including key representatives of the criminal justice system.

This will be followed by public hearings over two days when key stakeholders will have the opportunity to present their submissions.

"I will preside over these hearings on dates to be announced," he said.

Mr Butler emphasised the public hearings would be examining systemic issues relating to the general handling of sexual offences – it would not be investigating the guilt or innocence of any party in a specific case.

"Following the examination of these issues, the CMC will publish a public report that will make recommendations with a view to improving the processes relating to the investigation and the prosecution of sexual offences in Queensland," Mr Butler said.

ANNEXURE E

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MIKE HORAN MP
Leader of the Opposition
Leader of the Queensland Nationals
Member for Toowoomba South

1 October 2002

Gaps in CMC Volkers inquiry

The Opposition is very concerned that the Crime and Misconduct Commission will not interview the complainants and their representatives as part of the Volkers inquiry, Opposition Leader Mike Horan said today.

"The CMC has advised me that it has obtained documents from Queensland Police Service (QPS), the Director of Public Prosecutions (DPP) and solicitors for Mr Volkers. But, no mention has been made of interviewing the complainants and getting their side of the story. This is a serious gap in the CMC's investigation and I want it closed," Mr Horan said.

"I will be highlighting this gap in the CMC's inquiry in the Opposition's submission to the Parliamentary Crime and Misconduct Committee's inquiry into the CMC.

"There has been a disturbing trend in recent times for the CMC's investigative processes to be less than thorough. It is imperative that the CMC leaves no stone unturned in attempting to discover the truth of exactly what went on in this case," Mr Horan said.

"The complainants are in a unique position to provide valuable evidence to the CMC as to what happened during this prosecution. Why would the CMC not interview them? This case involves more than just the trauma suffered by Mr Volkers. It also involves the pain and anguish suffered by the complainants and their families.

"Any failure on the part of the CMC to interview the complainants in this case would completely compromise this inquiry," Mr Horan said.

"There are too many mysteries and anomalies with this case. I am very afraid that the precedent set by this case will undermine the integrity of our criminal justice system. Queensland's criminal justice system should never be hijacked by 'lawyers' agreements'.

"The public must be able to have confidence in the fact that criminal prosecutions are conducted thoroughly and that any decisions made not to proceed, especially after a defendant has been committed for trial, are based upon a complete examination of all relevant evidence," Mr Horan said.

"For that reason, I want the CMC to ensure it interviews all relevant parties and that its investigation into this case is exhaustive and scrupulously detailed."

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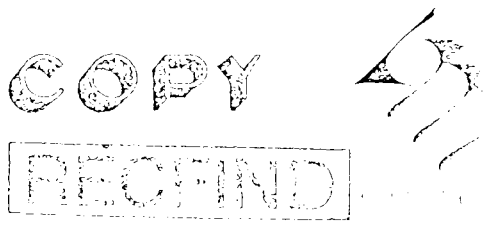

MEDIA RELEASE

DATE: 01 October 2002

No Decision on Interviews in Volkers Matter Says CMC Chair

The CMC Chairperson, Mr Brendan Butler SC, has dismissed a suggestion that a decision has been made not to interview any particular person in relation to the Volkers matter.

Mr Butler said, "The CMC has not ruled out any possible avenue of investigation in relation to the Volkers matter and the question of who might or might not be interviewed has not as yet arisen."

On Friday 27 September Mr Butler issued a media release announcing what the CMC is doing.

The media release said:

Following the expression of recent public concerns, the CMC has sought relevant information in relation to the investigation, prosecution and the discontinuance of the prosecution of Mr Volkers.

The CMC has obtained documentary material from the Queensland Police Service, Office of the Director of Public Prosecutions and the solicitors for Mr Volkers, who have all cooperated by voluntarily providing material in their possession.

The CMC is reviewing all that material to determine if it raises any suspicion of criminal or disciplinary breaches by any public officer. That process will continue.

Mr Butler said no avenue of potential investigation has been closed off.

He said although a number of public figures have expressed concern about the Volkers matter, they have made no specific allegation of criminal behaviour or official misconduct.

"A specially constituted CMC team is right now examining all the documentary material to determine if it raises a suspicion of criminal or disciplinary breaches requiring investigation. The Commission is determined to investigate thoroughly any matter raised which is within its statutory jurisdiction."

In addition to the steps examining the investigation and prosecution of Mr Volkers, on Friday Mr Butler also announced a separate public inquiry into a number of systemic issues of considerable public concern that have been raised.

That public inquiry will receive written submissions on terms of reference concerning the general handling of sexual offences by the criminal justice system and allow oral submissions to be made to a public hearing.