

LEGISLATIVE ASSEMBLY OF QUEENSLAND

PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

**A report on an investigation by the
Parliamentary Crime and Misconduct Commissioner
into the actions of the Crime and Misconduct Commission in its handling of
allegations against Ms C M Greer**

Report No. 59

PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

MEMBERSHIP – 50TH PARLIAMENT

CHAIRMAN: Mr Geoff Wilson MP, Member for Ferny Grove

DEPUTY CHAIRMAN: Mr Howard Hobbs MP, Member for Warrego

MEMBERS: Ms Desley Boyle MP, Member for Cairns
Mr Stuart Copeland MP, Member for Cunningham
Mr Bill Flynn MP, Member for Lockyer
Mr Andrew McNamara MP, Member for Hervey Bay
Mr Kerry Shine MP, Member for Toowoomba North

RESEARCH DIRECTOR: Mr Stephen Finnimore

A/PRINCIPAL RESEARCH OFFICER: Mr Luke Passfield

EXECUTIVE ASSISTANT: Ms Andrea Musch

Parliament House
George Street
Brisbane Qld 4000
Phone: 07 3406 7207
Fax: 07 3210 6011
Email: pcmc@parliament.qld.gov.au

CHAIRMAN'S FOREWORD

In early January 2003 concerns were expressed publicly about the actions of the Crime and Misconduct Commission (CMC) in its handling of allegations of fraud and dishonesty against Ms Kate Greer. (Ms Greer was employed by the Queensland Principal Club as the General Manager of its Marketing Department, generally known as the Queensland Winter Racing Carnival.) In particular criticism was made regarding the length of time taken by the CMC to conclude its investigation of the matter. As part of its investigation the CMC examined a total of 93 suspected fraudulent transactions involving public monies and interviewed and obtained statements from a number of witnesses.

The Parliamentary Crime and Misconduct Committee requested the Parliamentary Crime and Misconduct Commissioner, Mr Robert Needham, to investigate and report upon the actions of the CMC in its handling of the allegations against Ms Greer. The Parliamentary Commissioner was asked to examine as part of this investigation, the working relationship between the CMC and the Office of the Director of Public Prosecutions (ODPP) and the sufficiency and timeliness of the CMC's public comments in respect of the matter.

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 that the CMC investigation, while taking some 13 months, was carried out with all due diligence. The investigation took longer than would normally be expected because of the reluctance of many potential witnesses to be interviewed and the fact that the CMC examined, at the request of the ODPP, all suspect transactions.

The Parliamentary Commissioner in his report examines the relationship between the CMC and the ODPP. He notes that where a CMC investigation recommends criminal prosecution, the investigation report is referred by the CMC to the ODPP for consideration of whether criminal charges should be laid. No charges are therefore laid until this advice is provided by the ODPP. The Parliamentary Commissioner observes that this process delays the course of justice. He considers that some matters may not require advice from the ODPP before charges are laid and recommends that the Chairman of the CMC liaise with the Director of Public Prosecutions (DPP), to reach agreement as to which investigation reports should be provided to the DPP for consideration before charges are laid against a subject officer.

The Committee strongly supports this recommendation and notes that the issue of whether the CMC ought to prefer charges in certain cases without prior advice from the DPP is currently before the Committee in its three year review of the Commission.

The Parliamentary Commissioner in his report reiterates his opinion that the media have an important role to perform in public oversight of the CMC. This oversight must, as the Parliamentary Commissioner observes, be exercised with care. In the present matter the Parliamentary Commissioner found that opinions published in the *Courier-Mail* were unsupported and in the circumstances unfair. He observes that publication of these opinions has the potential to undermine public confidence in the CMC.

In its written response to the Mr Needham's report the CMC has advised the Committee of its willingness to implement the recommendations made and in particular to continue to liaise with the ODPP.

Geoff Wilson MP
Chairman

12 August 2003

1. INTRODUCTION

The Committee has resolved to table the report of the Parliamentary Commissioner in the Legislative Assembly. It is the practice of the Committee when tabling such a report to set out by way of background 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

Several allegations were raised, principally in the media, regarding the time taken by the CMC to investigate the allegations against Ms Greer. In particular a *Courier-Mail* article and editorial in early January 2003 criticised the CMC for taking '*an inordinate time to come to a conclusion*'. Reference was also made to the CMC investigation taking 26 months to resolve.

The CMC Chairperson, Mr Brendan Butler, responded to these concerns in a letter to the editor of *The Courier-Mail*, which was published on 9 January 2003. A copy of this letter is annexed to the Parliamentary Commissioner's report.

On 26 February 2003 the Committee requested the Parliamentary Commissioner to investigate and report on the actions of the CMC in its handling of allegations against Ms Greer. The Parliamentary Commissioner was requested to consider the following aspects:

- the timeliness with which the CMC had considered the matter;
- the adequacy of the CMC's consideration of the matter;
- the efficacy of the CMC's assessment process;
- whether the relevant procedures of the CMC are adequate or could be improved, and if so, what improvements are recommended; and
- the adequacy of the CMC's communication of its processes and determinations in the matter to, where relevant:
 - ❖ any complainant;
 - ❖ any person the subject of the complaint; and
 - ❖ the public;
- the working relationship between the CMC and the Office of the Director of Public Prosecutions (ODPP), including where relevant:
 - ❖ any matters of concern; and
 - ❖ recommendations to address such concerns; and
- whether, having regard to the importance of maintaining public confidence in the CMC and any other matter, there was sufficient and timely public comment by the CMC.

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. Submissions were subsequently provided by the CMC.

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 that, contrary to media reports which referred to a twenty-six month investigation by the CMC, the CMC's investigation took thirteen months. The Parliamentary Commissioner, while acknowledging that this is still quite a lengthy investigation, concludes that the investigation took longer than would normally be expected for an investigation of this type for two reasons. The first was the reluctance of many potential witnesses to be interviewed. Secondly, the CMC conducted at the request of the ODPP, an investigation into all the suspect transactions (93 in total).

The Parliamentary Commissioner concludes that the investigation by the CMC was carried out with all due diligence.

The Parliamentary Commissioner has also found that:

- the CMC's consideration of the matter was totally adequate;
- the CMC's assessment that the CMC itself should undertake the investigation was appropriate and correct; and
- the procedures employed by the CMC in the investigation were adequate.

In accordance with his terms of reference, the Parliamentary Commissioner examined the working relationship between the CMC and the ODPP. He notes that the time taken in obtaining advice from the ODPP before any charges are commenced delays the course of justice. The Parliamentary Commissioner observes that straightforward matters are unlikely to require advice from the ODPP before charges are commenced. He accordingly recommends that the Chairman of the CMC liaise with the DPP, to reach agreement as to which investigation reports should be provided to the DPP for consideration before charges are laid against a subject officer.

In relation to liaison between the CMC and the ODPP as to the course to be followed in an investigation, the Parliamentary Commissioner recommends that any request for advice by the CMC, and any advice provided by the ODPP, should be recorded in writing.

The Committee acknowledges the merit in these recommendations by the Parliamentary Commissioner.

The Parliamentary Commissioner also examined the extent of public comment made by the CMC about the matter. While the Parliamentary Commissioner indicates that it is preferable for the CMC to utilise an opportunity to correct any possible perceived misapprehension on the part of an inquiring journalist, he is reluctant in the circumstances to criticise the CMC for its response provided to enquiries made by a journalist about the matter in January 2003.

In his concluding comments the Parliamentary Commissioner expressed concern about the opinions stated in an article which appeared in *The Courier-Mail* on 18 August 2001. The

Parliamentary Commissioner concludes that given *The Courier-Mail*'s knowledge of the investigation, and in particular the attempts by the Commission to interview and obtain witness statements from a number of the newspaper's journalists, the opinions expressed in the article of 18 August 2001 were unsupportable, and it was unfair for the newspaper to publish those opinions.

4. CMC's RESPONSE

The Committee provided a copy of the Parliamentary Commissioner's report to the Commission and invited its comment on the conclusions reached by Mr Needham.

In its response the CMC advised that it is most willing to continue to liaise with the ODPP in order to achieve an amicable agreement, in relation to which investigations should be referred to the ODPP under section 49(2)(a) of the Act for consideration before charges are laid. The CMC further advised that it will implement in full the Parliamentary Commissioner's recommendation that communications between the CMC and ODPP regarding advice on the course a CMC investigation should be recorded in writing.

APPENDIX A

**REPORT ON THE INVESTIGATION
INTO THE ACTIONS OF THE
CRIME AND MISCONDUCT COMMISSION
IN ITS HANDLING OF ALLEGATIONS AGAINST
Ms C M GREER**



**OFFICE OF THE PARLIAMENTARY CRIME & MISCONDUCT
COMMISSIONER**

JUNE 2003

TABLE OF CONTENTS

INTRODUCTION.....	1
TERMS OF REFERENCE	2
RESULTS OF INVESTIGATION	3
1. TIMELINESS WITH WHICH THE COMMISSION HAS CONSIDERED THE MATTER.	4
2. THE ADEQUACY OF THE COMMISSION’S CONSIDERATION OF THE MATTER.....	6
3. THE EFFICACY OF THE COMMISSION’S ASSESSMENT PROCESS.....	6
4. WHETHER THE RELEVANT PROCEDURES OF THE COMMISSION ARE ADEQUATE OR COULD BE IMPROVED, AND IF SO, WHAT IMPROVEMENTS ARE RECOMMENDED.	7
5. THE ADEQUACY OF THE COMMISSION’S COMMUNICATION OF ITS PROCESSES AND DETERMINATIONS IN THE MATTER TO, WHERE RELEVANT, ANY COMPLAINANT, ANY PERSON THE SUBJECT OF THE COMPLAINT AND THE PUBLIC.....	7
6. THE WORKING RELATIONSHIP BETWEEN THE COMMISSION AND THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS, INCLUDING WHERE RELEVANT, ANY MATTERS OF CONCERN AND RECOMMENDATIONS TO ADDRESS SUCH CONCERNS.	9
7. WHETHER, HAVING REGARD TO THE IMPORTANCE OF MAINTAINING PUBLIC CONFIDENCE IN THE COMMISSION AND ANY OTHER MATTER, THERE WAS SUFFICIENT AND TIMELY PUBLIC COMMENT BY THE COMMISSION.	12
GENERAL COMMENT	14
Annexure A	15
Annexure B	16
Annexure C	17
Annexure D	18

INTRODUCTION

In September 2000 the Criminal Justice Commission¹ was advised of certain allegations made against Ms Catherine Mary Greer, who was employed by the Queensland Principal Club (“QPC”) as the General Manager of its Marketing Department, generally known as the Queensland Winter Racing Carnival (“QWRC”). It was alleged that Ms Greer had dishonestly used her position to improperly authorise and incur expenditure on behalf of the QPC, dishonestly used her position to improperly provide entertainment, accommodation, travel, gifts and hospitality to herself and others and dishonestly made false claims for reimbursement of expenses said to have been incurred by her for and on behalf of the QPC.

The Commission assessed the allegations as giving rise to a reasonable suspicion of official misconduct. Subsequently, the Commission’s Complaints Section commenced an investigation of the allegations.

In October 2001 pursuant to section 33 (2A)(a) of the *Criminal Justice Act 1989*, (“*CJ Act*”) the Commission’s investigation report was provided to the Director of Public Prosecutions (“DPP”) with a view to such prosecution proceedings as the DPP considered warranted. At around the same time Ms Greer’s contract of employment with the QWRC was not renewed.

In December 2002 the DPP advised the Commission that she had exercised her discretion not to pursue any criminal prosecution against Ms Greer. The Commission subsequently advised Ms Greer of the DPP’s decision. The Commission also advised that it would be taking no further action in respect of the matter.

Throughout the course of the Commission’s investigation and the DPP’s consideration of this matter there had been a number of media reports critical of the Commission’s investigation. One highly critical article, headlined “*CJC a waste of time*” appeared in The Courier-Mail of 18 August 2001. As I shall refer to this article later, it is annexed as Annexure A.

In early January 2003 a media report and an editorial expressed concerns about the actions of the Commission in its handling of the allegations against Ms Greer. (Annexures B and C.) In particular, there was criticism that the Commission had “*taken an inordinate time to come to a conclusion*” and further, that “*The CMC investigation took 26 months to resolve... [and] no public explanation was provided by the CMC about its conclusions*”.

The Chairperson of the Commission responded to the articles and the editorial in a letter to the editor of The Courier-Mail which was published (in slightly abridged form) on 9 January 2003. (Annexure D.)

On 26 February 2003 the Parliamentary Crime and Misconduct Committee referred the matter to me under section 295(3) of the *Crime and Misconduct Act 2001* (“*C&M Act*”) to investigate and report to the Committee.

¹ I have throughout referred to the Criminal Justice Commission or the Crime and Misconduct Commission as “the Commission”.

TERMS OF REFERENCE

At a meeting on 26 February 2003, the Parliamentary Crime and Misconduct Committee resolved in accordance with section 295(3) of the *C&M Act*, that:

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

1. *to investigate the actions of the Crime and Misconduct Commission (formerly the Criminal Justice Commission) in its handling of allegations against Ms Kate Greer (“the matter”), such investigation to include but not necessarily be limited to a consideration of the following aspects:*
 - *the timeliness with which the Commission has considered the matter;*
 - *the adequacy of the Commission’s consideration of the matter;*
 - *the efficacy of the Commission’s assessment process;*
 - *whether the relevant procedures of the Commission are adequate or could be improved, and if so, what improvements are recommended; and*
 - *the adequacy of the Commission’s communication of its processes and determinations in the matter to, where relevant:*
 - ❖ *any complainant;*
 - ❖ *any person the subject of the complaint; and*
 - ❖ *the public;*
 - *the working relationship between the Commission and the Office of the Director of Public Prosecutions, including where relevant:*
 - ❖ *any matters of concern; and*
 - ❖ *recommendations to address such concerns; and*
 - *whether, having regard to the importance of maintaining public confidence in the Commission and any other matter, there was sufficient and timely public comment by the Commission; and*
2. *to report to the Committee on the results of such investigation.*

RESULTS OF INVESTIGATION

Background

The Commission was first advised of this matter, in a general way, by correspondence from the Chief Executive Officer of the QPC dated 14 September 2000. A subsequent letter dated 18 September 2000 contained more detailed allegations which had been supplied to the Chief Executive Officer by the informant in the interim. Pursuant to section 37(2) of the *CJ Act*, the Chief Executive Officer was statutorily duty-bound to refer to the Commission all matters that he suspected involved, or may involve official misconduct.

Over 25 and 26 September 2000 the Chief Executive Officer and the informant were interviewed by Commission officers. In particular the Commission officers were advised that the specific allegations raised were not exhaustive, but merely examples of alleged misconduct on the part of Ms Greer. Thereafter the matter was assessed as raising a reasonable suspicion of official misconduct on the part of Ms Greer and a formal investigation was commenced.

On 6 October 2000, Commission officers entered and searched the premises of the QWRC, and inspected and seized records relevant to the investigation pursuant to section 70(1) of the *CJ Act*.

Thereafter a detailed investigation was carried out. This investigation was not limited to the specific allegations raised by the informant, but, on the express advice of a senior officer of the Office of the Director of Public Prosecutions (“ODPP”) with whom the Commission liaised during the investigation, looked more broadly at financial transactions within the QWRC and investigated a large number of these transactions.

A total of 93 transactions were finally investigated in detail.

On the conclusion of the investigation, as required by section 33 of the *CJ Act*, a report of the investigation was made to the Commissioners of the Commission and, with their authority, to the DPP with a view to such prosecution proceedings as the DPP considered warranted. This report was delivered to the DPP on 24 October 2001.

At the same time, Ms Greer and the Chief Executive Officer of the QPC were advised of the delivery of the report to the DPP.

After a small amount of contact between the Commission and the DPP and her office in the intervening period, the DPP advised the Commission on 13 December 2002 that she was exercising her discretion not to prosecute any charges against Ms Greer.

1. TIMELINESS WITH WHICH THE COMMISSION HAS CONSIDERED THE MATTER.

As stated above, the initial complaint about Ms Greer was received from the Chief Executive Officer of the QPC in a letter dated 14 September 2000. The Commission investigator's report was submitted to the Commissioners on 19 October 2001 and the Commission's report pursuant to section 33 (2A)(a) of the *CJ Act* was provided to the DPP on 24 October 2001.

The DPP formally advised the Commission that she had exercised her discretion not to pursue any criminal prosecution against Ms Greer on 13 December 2002. On 19 December 2002 the Commission wrote to Ms Greer advising she would not be charged.

Whilst a number of media reports referred to a 26 month investigation by the Commission, the Commission's investigation actually took thirteen months. The DPP's consideration of whether prosecution proceedings were warranted took a similar period of time.

Nonetheless, thirteen months is still quite a lengthy investigation.

I have examined the Commission files of the investigation including the running sheets. From that material it is obvious that the reasons why the investigation took that period of time are two-fold:

- A. because the procedure adopted was to investigate all suspect transactions within the QWRC, and
- B. because of the length of time it took to interview and obtain statements from many of the relevant witnesses.

I shall address each of these points in more detail.

A. Decision to examine all suspect transactions

In an investigation of this type there are two possible investigative approaches which can be taken. All suspect transactions can be fully investigated. If evidence is found warranting the preferment of charges, this approach can provide evidence of a large number of allegedly fraudulent transactions from which the prosecuting authority can select a representative sample as charges on an indictment. Evidence of all or most of the remaining transactions can then be led to rebut possible defences, such as, for example, lack of the necessary fraudulent intent. This approach has the advantage of disclosing the full extent of the alleged fraudulent behaviour. On the other hand, it has the disadvantage of the extra time and resources taken up in the investigation and the fact that some at least of the transactions will involve monetary values not sufficiently large as to warrant their prosecution.

The alternative approach is to only fully investigate the more significant of the suspect transactions, leaving aside those matters where, for example, the monetary amount involved is small. This approach has the advantage of a shorter time-frame for the investigation, but can make it harder for the prosecution, where the full extent of the alleged fraudulent conduct is not exposed in the charges, to rebut possible defences.

It appears clear from the file notes on the Commission files that the preference of the officers of the Commission was to only investigate the more significant suspect transactions. However, as the role of the Commission in investigating official misconduct which can amount to a criminal offence is to

forward a report on the investigation to the DPP or the Police Service, and since any charges that resulted would ultimately be prosecuted by the ODPP, Commission officers liaised with a senior officer from the ODPP as to the approach to be adopted to the investigation.

This officer requested that the investigation cover all suspected fraudulent transactions. The Commission complied with this request.

As what was done in this regard was totally consistent with the respective roles of the Commission and the ODPP, vis-à-vis investigations of suspected official misconduct which amounts to a criminal offence, no criticism can be made of the Commission for adopting the course which it did.

B. Time to obtain statements

In an investigation such as conducted in this case many people must be interviewed and, where necessary, statements must be taken from them. For example, if a claim for reimbursement of expenses for a dinner is being investigated, it is necessary for the investigators to interview those named as present at the dinner to check whether they were present; if so, who else was present; what they understood was the purpose of the dinner and who paid the expenses of the dinner.

Even if witnesses are fully co-operative with the investigators, such interviews are time-consuming. Where, however, some of the witnesses are reluctant to be interviewed, the time frame of the investigation can be greatly extended. That occurred in this investigation.

As The Courier-Mail newspaper has been a vocal critic of the time taken to complete this investigation, it is appropriate to instance the time taken to interview and obtain statements from several Courier-Mail journalists to show the effect that this had upon the time taken to complete the investigation.

The investigators considered, quite rightly in my opinion, that they needed to interview six journalists as potential witnesses. The carrying out of these interviews and the taking of any statements would normally be able to be described in terms used in The Courier-Mail article of 18 August 2001 to describe what the author suggested could have been the conduct of the entire investigation, viz, *“could ... be handled by a competent police officer – and it would have all been over in a week or two.”*

Instead of being over in a couple of weeks, the process took just under seven months. One journalist chose to be interviewed when first approached. The other five declined to be interviewed, were represented throughout by The Courier-Mail’s solicitors, were issued with formal Notices to Furnish a Statement of Information under section 69 of the *CJ Act* and, even then, took a further two months to complete the provision of the statements.

These sorts of delays, repeated with respect to many witnesses, were part of the reason why it took longer than would be expected to complete the investigation.

Certainly my perusal of the Commission records discloses that the investigation was diligently pursued throughout by the investigators; there is nothing to suggest any undue delay on the part of Commission officers.

I find that the Commission investigation was carried out with all due diligence. The investigation took longer than would normally be expected for an investigation of this type, the longer period being caused, first, because of the reluctance of many potential witnesses to be interviewed and, secondly because of the request by the representative of the DPP that all suspect transactions be investigated.

2. THE ADEQUACY OF THE COMMISSION'S CONSIDERATION OF THE MATTER.

I consider that the Commission's consideration of this matter was totally adequate.

3. THE EFFICACY OF THE COMMISSION'S ASSESSMENT PROCESS.

The Commission assessed the allegations made to it as raising a reasonable suspicion of official misconduct requiring formal investigation by the Commission.

The alleged conduct, if proven, constituted official misconduct amounting to criminal offences. As such, the matter was not appropriate for investigation within the unit of public administration involved, i.e. the QPC. The only bodies which could possibly investigate the allegations were the Commission or the Queensland Police Service.

As the body specifically set up under the then *Criminal Justice Act* to investigate allegations of official misconduct, the Commission was the appropriate body to carry out this investigation.

The Courier-Mail article of August 2001 (Annexure A) stated:

"It [the Commission] was not established to do the job police could and should be doing, and the QWRC complaint fits squarely into that category. There is not one aspect of the complaint concerning Greer that could not be handled by a competent police officer – and it would have all been over in a week or two."

Insofar as it relates to the QWRC complaint, there is nothing in this statement which is correct.

The then Criminal Justice Commission was specifically given by Parliament the task of investigating allegations of official misconduct. Section 2 of the *CJ Act* stated:

"2. The objects of this Act are—

(a) to provide for the establishment and maintenance of a permanent body—

(v) to investigate complaints of official misconduct referred to the body and to secure the taking of appropriate action in respect of official misconduct;"²

I find that the assessment by the Commission that it should undertake this investigation was appropriate and correct.

² The *Criminal Justice Act* is now replaced by the *Crime and Misconduct Act 2001*. This new Act empowers the Commission to refer, where appropriate, complaints about official misconduct to the police or back to the relevant unit of public administration for investigation. This power was not available under the earlier Act.

4. WHETHER THE RELEVANT PROCEDURES OF THE COMMISSION ARE ADEQUATE OR COULD BE IMPROVED, AND IF SO, WHAT IMPROVEMENTS ARE RECOMMENDED.
--

Accepting, as I do, the correctness of the Commission's decision to adopt the request of the ODPP as to the form of its investigation, **I find that the procedures employed by the Commission in the investigation are adequate.** I do not recommend any changes.

5. THE ADEQUACY OF THE COMMISSION'S COMMUNICATION OF ITS PROCESSES AND DETERMINATIONS IN THE MATTER TO, WHERE RELEVANT, ANY COMPLAINANT, ANY PERSON THE SUBJECT OF THE COMPLAINT AND THE PUBLIC.

The Complainant

The Commission kept in constant contact with the complainant, the Chief Executive Officer of the QPC, throughout the entire course of the investigation. The Commission provided both regular updates of the estimated time-frame to complete the investigation and advice, when sought, as to the QPC's rights and obligations during the course of the investigation.

Once the investigation was completed, pursuant to its obligations under section 33(4) of the *CJ Act*, the Commission advised the complainant that the Commissioners had authorised the referral of a report to the DPP. The Commission also provided the QPC with a copy of the investigation report outlining the allegations and supporting evidence which had been referred to the DPP.

Once the DPP had made her decision to exercise her discretion not to pursue any criminal prosecution against Ms Greer, the Commission wrote to the Department of Tourism, Racing and Fair Trade advising of that decision³.

The Subject Officer

The Commission also kept in regular contact with Ms Greer through her legal representatives during the course of the investigation.

The Commission provided regular updates of the estimated time to complete the investigation. As the investigation neared completion, the Commission so advised Ms Greer's legal representatives and invited Ms Greer's responses to specific instances of alleged fraudulent transactions, a list of which was supplied.

Once the investigation was completed, the Commission advised Ms Greer's legal representatives that the Commissioners had authorised the referral of a report to the DPP. Ms Greer's responses to the specific instances of alleged fraudulent transactions were provided to the DPP with the investigation report. The Commission also sought and abided by Ms Greer's views on the issue of whether the QPC should be provided with a copy of her responses.

³ The QPC's control of the Queensland thoroughbred racing industry had been affected by the Government's Review of the Governance Structure of the Thoroughbred Code.

On 13 December 2002 the DPP advised the Commission that she had exercised her discretion not to pursue any criminal prosecution against Ms Greer. On 19 December 2002 the Commission wrote to Ms Greer advising that she would not be charged and that the Commission intended taking no further action in relation to the matter.

The Public

I will address this topic during my discussion of Term of Reference No. 7.

6. THE WORKING RELATIONSHIP BETWEEN THE COMMISSION AND THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS, INCLUDING WHERE RELEVANT, ANY MATTERS OF CONCERN AND RECOMMENDATIONS TO ADDRESS SUCH CONCERNS.

Various recent events, in particular the Commission's public report in the Volkers matter, have had the potential to strain the working relationship between the Commission and the ODPP. I have discussed this with both the Chairman of the Commission Mr Brendan Butler SC and the DPP Ms Leanne Clare.

Both are very professional officers and, I am confident, will work hard to ensure the continuation of a good working relationship between their respective organisations.

Respective roles of the Commission and the Office of the Director of Public Prosecutions

I shall limit my comments here to the Commission exercising its misconduct functions. Within the Commission's major crime function, alleged offenders are usually arrested in raids carried out at the conclusion of an investigation, with prosecutions proceeding as for normal police arrests.

In relation to criminal charges, the Commission has no role as a prosecuting agency. Any criminal charges arising out of a Commission investigation will be prosecuted by the ODPP in the superior courts. At the committal proceedings, the prosecution will be conducted by the ODPP if the committal is heard in Brisbane and at certain major centres and by the police service if outside those centres.

A qualification on this is that all committals of charges against police officers are conducted by the ODPP, wherever they occur within the State.

If, at the conclusion of the misconduct investigation it is determined that prosecution proceedings should be considered, the Commission, under section 49 of the *C&M Act*, "*may report on the investigation to ... the DPP or other appropriate prosecuting agency for the purposes of any prosecution proceedings the DPP or other authority considers warranted.*"

The normal "*other appropriate prosecuting agency*" would be the Queensland Police Service (QPS), though in an appropriate case it could be another authority such as the Commonwealth DPP or the DPP of another State.

It is relevant that section 49 uses the term "*the Commission may*". This term gives a discretion to the Commission as to whether or not to refer the investigation report to the DPP or the QPS. Instead of referring the matter under section 49, the Commission could determine that in the circumstances no charges should be laid. Alternatively the Commission could request a police officer seconded to the Commission to proffer any necessary charges,⁴ and then forward the brief to the DPP or QPS for prosecuting.

The issue of which matters should be forwarded to the DPP and which should be sent to the police service for the institution of proceedings was the subject of meetings between the then Chairman of

⁴ A police officer seconded to the Commission retains the rights and powers that accrue to his/her office: section 257(3) of *C&M Act* and section 10 *Police Powers and Responsibilities Act 2000*. The police officer would have to exercise his/her own independent discretion to proffer charges and not act under the direction of the Commission.

the CJC, Mr Rob O'Reagan QC and the then DPP, Mr Royce Miller QC in 1993. Those meetings resulted in an agreement, put in writing in a letter by Mr O'Reagan dated 18 May 1993. Under that agreement, where there was prima facie evidence to support a criminal charge and the matter was straight forward, the report of the Commission's investigation would not be forwarded to the ODPP but instead the prosecution proceedings would be instituted by police.

Reports would only be forwarded to the DPP where the matter reported upon was:—

- “
- *complex;*
 - *likely to attract considerable public interest;*
 - *particularly serious;*
 - *one where the circumstances may warrant your (the DPP) exercising your discretion not to prosecute although sufficient evidence exists;*
 - *one on which the Commission seeks your advice for any reason.”*

Mr Butler advises me that he does not consider the arrangements in that 1993 letter to be currently binding upon the Commission, though he does say that, with the change over time in the seriousness of matters retained by the Commission for investigation, it is unlikely that any matter now referred to the DPP would not fall under the heads nominated in Mr O'Reagan's letter.

Ms Clare, in my discussions with her, expressed some concern about the number of investigation reports sent to her office by the Commission under section 49 for consideration of what prosecution proceedings her office considered warranted. She indicated that such consideration required the taking of a prosecutor “off-line” from normal work to consider the Commission material.

Ms Clare would obviously prefer that, in the more straight forward cases, the necessary charges be laid by police in the usual way with the briefs subsequently coming to her office for prosecution.

Mr Butler advises that over the past five years the number of briefs referred to the DPP each year under section 49 has usually only been about a dozen, with eighteen the highest number in any one year.

This would appear consistent with my perusal of reported matters in the Commission's bi-monthly report to the Parliamentary Committee for the months of March and April 2003, where I noted some twenty-one referrals to the DPP over a period of approximately sixteen months. I did note from that report that referral to the DPP appears to be the normal course where the investigation results in a recommendation for criminal prosecution, irrespective of the degree of complexity of the matter.

The additional time taken in obtaining advice from the DPP before charges are commenced means the course of justice is delayed. In straight forward matters there appears to be no reason why that advice is required. By reducing the number of referrals, the time taken to deal with those where referral is necessary may hopefully be decreased.

I recommend that the Chairman of the Commission liaise with the Director of Public Prosecutions to reach agreement as to which investigations should be referred to the DPP under section 49(2)(a) of the C& M Act.

A further matter of concern arising from this investigation with respect to the working relationship between the Commission and the ODPP is in regard to consultations between those organisations during the course of a Commission investigation.

I referred above, at pages 4 and 5, to the liaison which occurred in this case between the Commission investigators and an ODPP officer during the course of the investigation. The verbal advice given by the ODPP officer resulted in the comprehensive investigation which was carried out by the Commission.

This appears to have been contrary to the inclination of Commission officers and, indeed, the magnitude of that comprehensive investigation was one of the reasons cited by the DPP for her exercise of discretion not to prosecute Ms Greer.

I do not intend any criticism of the advice given by the ODPP officer, as any lawyer will understand the difficulty faced by one who is asked to advise on a complex legal matter at a verbal briefing. The question is what lesson should be learnt from what occurred in this case.

I consider it is reasonable in appropriate instances for the Commission to liaise with the ODPP as to the course to be followed in an investigation. The ODPP will, after all, have the task of prosecuting in the superior courts any criminal charges that eventuate from the investigation and section 49(4) of the *C&M Act* envisages that the DPP may require the Commission to make further investigations or supply further information relevant to a prosecution, whether started or not.

However, **I recommend that any request for advice from the ODPP as to the course a Commission investigation should follow should be recorded in writing and written advice should be requested.**

<p>7. WHETHER, HAVING REGARD TO THE IMPORTANCE OF MAINTAINING PUBLIC CONFIDENCE IN THE COMMISSION AND ANY OTHER MATTER, THERE WAS SUFFICIENT AND TIMELY PUBLIC COMMENT BY THE COMMISSION.</p>
--

The Commission did not make any public announcement of the fact that it had commenced an investigation into the allegations against Ms Greer. That was in accordance with its usual practice and was the proper course to adopt.

However the commencement of the investigation, in particular the search of the offices of the QWRC, was the subject of some media articles. Those articles did not warrant, and did not receive, any reply from the Commission.

The next media article of note was that of 18 August 2001, Annexure A. This article is under the by-line of Mr Koch, noted as the news editor.

Although this article was written in emotive language and contained several inaccurate and unwarranted statements the Commission made no public comment in reply.

I consider this was the correct course and the only one realistically open to the Commission. The emotive claims made in the article did not warrant a reply. To make any logically argued response to the balance of the article would have required the Commission to embark on a public discussion of details of the investigation. This could not be done.

The Commission made no public announcement at the time its investigation report was forwarded to the DPP. Again this was in accordance with its usual practice and was the proper course to adopt.

However, when as occurred here the DPP takes a long period to finalise her decision whether to prosecute, the incorrect impression can arise during that time that the Commission still has not completed its investigation. That occurred in this case.

An article appeared in The Courier-Mail of 3 January 2003 referring to the fact that Ms Greer had stated that she would not face any charges. That article did not refer to the length of the investigation.

That same day another Courier-Mail journalist was making inquiries, apparently with a view to a follow-up article. She rang the Commission seeking answers to several questions, including "*why the investigation took 26 months?*".

The response recorded in the Commission's media log as given to this journalist was that the Commission had advised Ms Greer that she would not face charges, the matter was finished as far as the Commission was concerned and no further comment would be given.

The journalist rang the Commission twice more that same day but received no further comment.

The next day, the article (Annexure B) appeared, speaking of a 26 month investigation.

Reference to the investigation taking 26 months also appeared in The Courier-Mail editorial of 7 January (Annexure C).

Mr Butler, as Chair of the Commission, then corrected this misapprehension in a letter to the editor published 9 January (Annexure D).

In hindsight, it is easy to say that the reference in the article of 4 January and in the editorial to the 26 month investigation could have been avoided if the Commission had explained to the journalist what had occurred, in answer to her specific query about the length of the investigation.

However I am reluctant to criticise the Commission in this regard. Even the response that was given to the journalist was, in my opinion, inaccurately reported. She quotes a spokeswoman as saying the Commission “*had finalised its 26-month investigation*”. I have no hesitation in accepting the Commission media log and concluding that the Commission spokeswoman did not refer to a “*26-month investigation*”.⁵

I consider it is preferable for the Commission to utilize an opportunity to correct a perceived possible misapprehension on the part of an inquiring journalist but I decline to make a general recommendation that this should always be done, as the individual circumstances can vary greatly.

⁵ Officials at The Courier-Mail, when given the opportunity to comment on my report in its draft form, stated that “The 26-month reference was not made in quotes attributed to a Commission spokeswoman. It was used in a widely accepted way to describe the length of the investigation”. I accept that the journalist did not intend to mislead but I consider that the normal reader of the article would take the words in the relevant paragraph after “said” to be a statement, in indirect speech, of what the spokeswoman had in fact said.

GENERAL COMMENT

In an earlier report, tabled as Report No 58, March 2003, I expressed the opinion that “ ... politicians ... and the media all have an important role to perform in public oversight of the Commission. However such oversight must be exercised with care.”

Holding this opinion, I find it disappointing that The Courier-Mail published what I consider to be the unfair article of 18 August 2001 (Annexure A).

I have referred above, at page 6, to the time taken during the investigation to obtain the statements from Courier-Mail journalists.

The then Editor and Managing Editor of The Courier-Mail were aware of the circumstances surrounding the taking of these statements. In May 2001 both these gentlemen attended with The Courier-Mail solicitor on the Chairman of the Commission to express their concerns about Courier-Mail journalists being interviewed as part of the Commission’s investigation.

Material on the Commission file shows that in August 2001 the Managing Editor was still closely involved in the collation of the information required for the finalisation of the journalists’ statements.

I am not suggesting that there was anything wrong in the approach taken by The Courier-Mail or the journalists with respect to the taking of the statements. The paper and the journalists were merely exercising their rights with respect to being interviewed. Their approach was not surprising, given the traditionally strong aversion of journalists to discussing their relationship with their sources.

However this not unexpected approach of the paper and the journalists showed the opinions expressed in the article of 18 August 2001 to be unsupportable and for The Courier-Mail to then publish those opinions was unfair.

The article had grave potential to lower public confidence in the Commission on the part of any member of the public who gave it any credence. Responsible people at The Courier-Mail should have known that the Commission could not defend itself from this unfair attack, as to attempt to do so would have involved a public discussion of a current investigation.

ANNEXURE A

The Courier-Mail

Saturday 18 August 2001

CJC a waste of time

CJC a waste of time



Tony Koch
news editor

ON OCTOBER 6 last year, seven officers from the Criminal Justice Commission "raided" the City offices of the Queensland Winter Racing Carnival.

In typical, dramatic overkill, the CJC ordered the women employees out into the corridor while they searched desks for files and records. They then took away the material, including computer files and detailed accounts, to be examined.

This action followed a complaint from a disgruntled former employee who alleged that the carnival's general manager, lawyer Kate Greer, had misspent public money that was at her disposal to promote the state's premier thoroughbred horse racing carnival.

At the time, Greer was told the CJC investigation centred on complaints that she improperly authorised expenditure, provided entertainment, gifts and accommodation outside her charter, and also that she had made false expense claims.

In the intervening 10 months, several dozen people have been inter-

viewed. They have been questioned on matters as trivial as whether they attended functions put on by the QWRC; whether they had been entertained by Greer, or even whether she had bought them any kind of gift.

Despite the cloud of doubt and uncertainty hanging over the entire racing industry, the CJC has persisted with its trademark snail-like investigation. Greer has, quite unfairly, been subjected to almost a year of innuendo and accusation, without any finality.

In that time she and her organisation have run another winter racing carnival, apparently quite successfully.

It is appalling that the CJC so arrogantly continues on its merry way, oblivious to the constant criticism that its investigators could not track a wounded elephant through snow — unless they had a couple of years to do it and there was someone they could appoint from outside to head the expedition.

The CJC has an annual budget of \$23 million, a staff complement of 250 which includes 30 lawyers and 80

police, and was set up in the wake of the Fitzgerald inquiry to oversee any instances of corruption in the public service and police.

It was not established to do the job police could and should be doing, and the QWRC complaint fits squarely into that category. There is not one aspect of the complaint concerning Greer that could not be handled by a competent police officer — and it would have all been over in a week or two.

Most curiously, the CJC takes on jobs like this yet sidesteps its statutory responsibility when it comes to conducting public inquiries, such as those handled by former judge Jack Kimmins into pedophilia and, more recently, former judge Tom Shepherdson's inquiry into electoral roting concerning Labor Party and Australian Workers Unioniminaries. Perhaps the Parliamentary Criminal Justice Committee could, when this issue is finally resolved, cast an eye over the total cost in money and manpower incurred in the QWRC investigation. It has been predicted by lawyers involved that the cost will far exceed the total

amount of the money allegedly "mis-spent" — and whether any funds were, in fact, misspent is greatly in dispute.

In the case in question, one of Greer's tasks was to attract sponsorship for the carnival, and then to attract the appropriate racing and social journalists to promote the events.

No guidelines existed, and to all intents and purposes, where and how the promotion money was spent was up to her judgment — with the actual costs approved by more senior officials.

The CJC and its chairman, Brendan Butler, have to take a look at themselves and question just how effective they really are. The public is entitled to be cynical when it is reported that the commission is "investigating" anything, because the obvious corollary is that the matter will be bogged down in the bowels of their City office for months or years.

Quite simply, it is incredible that this organisation is so appallingly inept. There can be little argument that the police under CJC control would be much better used if put back into the mainstream police service.

And as for the 30 lawyers — what on earth do they do? What do they achieve that could not be handled by already-established government instrumentalities?

They could not track a wounded elephant through snow

For all I know, the Queensland Winter Racing Carnival could be the most ineptly run and extravagant organisation on the face of the earth. I do not seek to defend it or any of its personnel in any way.

However, it is cruel for the CJC to dangle the threat of prosecution in front of Greer or anyone else for more than 10 months. Multiple mur-

der cases are dealt with in much less time than it takes this lot to look into the books of a tiny organisation that may or may not have used funds to buy something it should not have.

The case should be finalised as soon as possible so that the racing industry, the Queensland Principal Club and the Queensland Winter Racing Carnival know where they stand.

As well, Greer should receive proper justice — and that means justice delivered expeditiously, not justice delayed.

Finally, the Parliament of Queensland should look long and hard at the CJC and ask whether this organisation provides genuine return for the taxpayer dollar, or whether it has been allowed to become a cumbersome, unaccountable bureaucracy that is more a laughing stock than a genuinely feared watchdog.

ANNEXURE B

The Courier-Mail

Saturday 4 January 2003

Crime inquiry took 'too long' to clear race boss

Crime inquiry took 'too long' to clear race boss

BYLINE DELETED

QUEENSLAND'S crime watchdog has come under fire for taking more than two years to investigate allegations of misspent taxpayer money.

The Crime and Misconduct Commission yesterday confirmed it would not press charges against retired Winter Racing Carnival organiser Kate Greer over claims she misused public money on entertainment and gifts.

A CMC spokeswoman yesterday said it had finalised its 26-month investigation into Ms Greer and would not be pursuing the matter any further.

But the CMC refused to comment on whether Ms Greer would be required to repay any money or why it had taken more than two years to complete the investigation.

Acting Opposition leader Vaughan Johnson demanded the CMC provide a full explanation about the case.

"This is another example of the CMC taking an excessively long time to complete an investigation — 26 months isn't an investigation, it's *War and Peace*," he said. "These investi-



NO case to answer . . . Kate Greer will not be charged.

gations need to be conducted diligently and efficiently.

"With \$30 million in annual funding, the CMC can hardly claim that a lack of resources is causing delays."

The woman at the centre of the case also questioned the apparent delay.

"The real question is how much taxpayer money was wasted on this," Ms Greer said.

"My life has really been on hold for two years."

But Ms Greer, a lawyer and former restaurateur, also

declined to comment on whether she was required to repay any money, referring the question to her lawyer, who is on leave.

The winter carnival controversy began after a staff member accused Ms Greer of improperly spending taxpayers' funds on entertainment and gifts for sponsors, officials and journalists, and of false expenses claims.

In June 2000, officers from the Criminal Justice Commission (which later became the CMC) raided the carnival's office.

It examined 68 transactions — 27 courier accounts totalling \$232.08, two car hires, 12 taxi fares totalling \$167.90, nine free airfares and 18 gifts.

It sought legal advice from the Director of Public Prosecutions in October 2001.

Ms Greer received a letter from the CMC just before Christmas saying she would not face charges.

The CMC refused to answer *The Courier-Mail's* questions yesterday. Its media office was unstaffed from 4.10pm.

A spokeswoman for CMC chairman Brendan Butler said he had "no comment to make".

ANNEXURE C

The Courier-Mail

Tuesday January 7 2003

CMC's tardiness must be explained

Tuesday, January 7, 2003

CMC's tardiness must be explained

THE Parliamentary Crime and Misconduct Committee has asked the Crime and Misconduct Commission to explain why it took more than a year to investigate allegations a magistrate had exposed himself to a clerk in his chambers. It did so at the request of the Opposition's shadow attorney-general, Lawrence Springborg. The Parliamentary Committee's response was probably appropriate, given the politics-driven demand for the CMC to explain itself. But the Parliamentary Committee should go much further than merely writing a letter to the CMC. There are several other high profile cases where the CMC has taken an inordinate time to come to a conclusion about the guilt (or in two particular cases, the innocence) of people.

The complaint that the magistrate had indulged in lewd behaviour was made two years ago, but it took the CMC (and its predecessor, the CJC) about 18 months to investigate. Only the CMC knows whether it was appropriate throughout that period that the magistrate should have continued to sit on the bench, judging the criminal behaviour of others. The fact an allegation of misconduct has been made and is being investigated is not itself a reason for requiring a magistrate or other official to stand down. Complaints can be made maliciously

and without due cause. But there is a clear public interest in resolving any such complaint as quickly as possible.

A second case where the CMC needs to explain its tardiness concerns Townsville Mayor Tony Mooney. In October 2001 Mr Springborg raised with the CMC allegations that in 1994 Cr Mooney had sought payments from developers for the favourable treatment by his council of a development on Alligator Creek. The allegations were made public during the 2001 election campaign. It was not, however, until last month that the CMC cleared Cr Mooney. While it obtained evidence from at least 30 people, this does not explain why its investigation took so long, particularly as it concluded that the only evidence was hearsay. The third case concerns allegations against former organiser of the winter racing carnival, lawyer Kate Greer. The CMC investigation took 26 months to resolve. In her case, unlike that of Cr Mooney, no public explanation was provided by the CMC about its conclusions.

The Parliamentary Committee should conduct a public inquiry into both the general policy the CMC adopts when it undertakes these investigations, as well as the specific reasons why these particular cases took so long to resolve. Public confidence in the performance of the CMC is crucial.

ANNEXURE D

The Courier-Mail

Thursday 9 January 2003

Opinion & Letters

Public confidence crucial

Opinion & letters

Public confidence crucial

YOU are right to say that public confidence in the performance of the Crime and Misconduct Commission is crucial (Editorial, Jan. 7). The CMC is committed to effectively and expeditiously identifying and investigating allegations of official misconduct in the public sector.

Many factors contribute to the length of time it takes for allegations to be resolved, including factors outside the CMC's control.

In relation to criminal allegations, the CMC's statutory role is limited to investigating and reporting to the Director of Public Prosecutions. The DPP, not the CMC, makes the decision whether a person will be charged with an offence.

This is what occurred in the matter involving Kate Greer. The CMC investigation concluded after 12 months with the presentation of its report to the DPP on October 24, 2001. The detailed examination of allegations involving a large

number of transactions justified the time taken in this case.

Of the many investigations completed by the CMC each year only a few attract any criticism. Given the complexity and sensitivity of much of our work, it is not surprising some matters do attract criticism.

The CMC is not averse to public scrutiny. Indeed, of the three cases mentioned in the editorial, one is the subject of investigation by the Parliamentary Crime and Misconduct Commissioner and the other two are the subject of oversight by the Parliamentary Crime and Misconduct Committee. That is as it should be.

We seek to be accountable and transparent in what we do and welcome oversight. We endeavour to strike the balance between informing the public and ensuring fair and just treatment of individuals. — Brendan Butler SC, chairman, Crime and Misconduct Commission, Brisbane.

January 7