

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 Magistrate Brian Murray**

Report No. 60

PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

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CHAIRMAN'S FOREWORD

In December 2002 and January 2003 concerns were expressed publicly about the actions of the Crime and Misconduct Commission in its handling of allegations against a Magistrate, subsequently identified as Brian Murray SM. Following the airing of a news item about the matter on 17 December 2002, the Committee wrote to the Commission on 18 December 2002, seeking a report setting out details surrounding the matters canvassed in the news item.

On 24 December 2002 the Committee received a complaint from the shadow Attorney-General and Minister for Justice and now Opposition leader, Mr Lawrence Springborg MP, in which he raised concerns that there had been delay by the CMC in its investigation in the matter. The Committee on that date also sought a response from the CMC to Mr Springborg's complaint.

The Commission responded to both requests from the Committee by letter dated 3 January 2003. After receiving and considering that response, the Committee resolved to refer the matter to the Parliamentary Commissioner for investigation and report to the Committee. The full terms of reference are set out in the report of the Parliamentary Commissioner.

In summary, the Parliamentary Commissioner found that there was undue delay in the matter, which had resulted from a "serious error" within the Commission. Firstly, relevant material received by the Commission was not considered for a period of three months. Secondly, when the material was assessed, an "inappropriate decision" was made to put the file away pending receipt of further material, and not act on the material received. The Parliamentary Commissioner found that the Commission had a procedure in place which, if followed, would have ensured that the material was appropriately assessed. However the procedure was not followed in this instance.

After consideration of the Parliamentary Commissioner's report, the Committee provided a copy to the Commission for its response and invited comment from the Commission on the conclusions reached by Mr Needham. The CMC has provided a response, which is referred to in some detail below.

Geoff Wilson MP
Chairman

12 August 2003

1. INTRODUCTION

The Committee has resolved to table in the Legislative Assembly the report of the Parliamentary Commissioner. It is the practice of the Committee when tabling such a report to set out by way of background some brief details 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 December 2002 and January 2003 concerns were expressed publicly about the actions of the Crime and Misconduct Commission in its handling of allegations against a magistrate (subsequently identified as Mr Brian Murray SM). Following the airing of a news item about the matter on 17 December 2002, the Committee wrote to the Commission on 18 December 2002, seeking a report setting out details surrounding the matters canvassed in the news item.

On 24 December 2002 the Committee received a complaint from the shadow Attorney-General and Minister for Justice and now Opposition leader, Mr Lawrence Springborg MP, in which he expressed concern that there had been delay by the CMC in its handling of the matter. On that same day the Committee also sought a response from the CMC to Mr Springborg's complaint.

The Commission responded to both requests from the Committee by letter dated 3 January 2003. After receiving and considering that response, the Committee resolved to refer the matter to the Parliamentary Commissioner for investigation and report to the Committee. The full terms of reference are set out in the report of the Parliamentary Commissioner.

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 a response from the CMC on the contents of the report. In response, the CMC provided the Committee with a submission.

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:

- A "serious error" occurred at the assessment stage of the Commission's consideration of the matter. Firstly, certain material received by the Commission was not assessed for a period of three months. Secondly, when the material was assessed, an "inappropriate decision" was

made to put the file away pending receipt of further material, and not act on the material already received.

- There was a procedure in place which, if followed, would have ensured that material was appropriately assessed. However the procedure was not followed in the two respects outlined above.
- As a result, delay occurred.
- There was no fault with the actions of the Commission up to receipt of the material.
- Once the Commission became aware of the matter through the subsequent receipt of further material, it carried out “a competent and expeditious investigation which cannot be faulted”.
- Steps have since been taken by the Commission which should assist in ensuring this form of error does not recur.

The Parliamentary Commissioner recommended the Commission use this case as an “instructive example” to its staff of the need for a prompt and careful assessment of material received.

4. THE 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 to the report provided to the Committee, the CMC stated that it did not dispute the final conclusions on page 15 of the Parliamentary Commissioner’s report. It continued:

Although the Parliamentary Commissioner finds a serious error occurred, it should be noted that this was identified and acknowledged by the Commission as soon as inaction on the file was brought to the attention of senior officers by the Chief Justice’s letter on 23 November 2001. The Commission from that time acknowledged that there was a delay in the assessment process which was unacceptable, and acted promptly, both in respect of assessing the material and taking immediate disciplinary action in relation to those individuals whose actions were considered inappropriate in the circumstances.

It is true that undue delay occurred in commencing the investigation and that some investigative steps could have been carried out at an earlier time. However, it could not be reasonably concluded that an error made at the assessment stage resulted in any significant delay in finalising the investigation. Until and unless the primary complainant was available for interview there is a strong argument that any investigation would have been unable to be completed in any satisfactory sense. Indeed, the Commissioner agreed that the delay in dealing with this matter was during the assessment process, not the investigation. I am pleased to note that he concludes that the investigation was carried out in a ‘competent and expeditious’ manner ‘which cannot be faulted’.

It should be taken into consideration that in excess of 30,000 documents are registered on complaints files in the Commission each year, approximately 12,000 of which are external documents. This is a case in which Commission officers failed to act appropriately on one such document, albeit an important document.

The Commission advised the Committee that all recommendations in the Parliamentary Commissioner’s report “have or will be actioned”.

The Commission submitted:

The Parliamentary Commissioner acknowledged that the Commission had a procedure in place at the time which, if properly followed, would have ensured that the matter was investigated in a timely fashion. He found that the failure was not in the procedure but was due to human error. When the error came to the attention of senior officers it was properly responded to and managerial action taken against the specific officers responsible.

Furthermore significant additional action has been taken to implement processes to minimise a reoccurrence of such an error. As acknowledged in the Commissioner's report the following remedial action has been taken:

- *adoption of new file covers to minimise the possibility of file entanglement*
- *a tasking list for officers has been incorporated in the COMPASS data management system*
- *a new policy on the handling of sensitive matters.*

APPENDIX A

**REPORT ON THE INVESTIGATION
INTO THE ACTIONS OF THE
CRIME AND MISCONDUCT COMMISSION
IN ITS HANDLING
OF ALLEGATIONS AGAINST
MAGISTRATE MR BRIAN MURRAY**



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

MAY 2003

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INTRODUCTION

In December 2002 and January 2003 a number of media reports expressed concerns about the actions of the Crime and Misconduct Commission (“the Commission”) in its handling of allegations against a magistrate subsequently identified as Mr Brian Murray SM. More than one report included criticism that the investigation had involved unexplained delays.

On 18 December 2002 the Parliamentary Crime and Misconduct Committee (“the Parliamentary Committee”) called on the Commission to advise the details surrounding the matters raised in the media. On 24 December 2002 the Parliamentary Committee also sought the Commission’s response to matters raised in correspondence the Committee had received from the then Shadow Attorney-General and Minister for Justice, Mr Lawrence Springborg MP.

The Commission responded to the Parliamentary Committee’s requests by letter dated 3 January 2003 together with numerous attachments.

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

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 *Crime and Misconduct Act 2001*, 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 magistrate Mr Brian Murray (“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, and whether any action or inaction on the part of the Commission resulted in undue delay in the investigation;*
 - *the adequacy of the Commission’s consideration of the matter;*
 - *the efficacy of the Commission’s assessment process; and*
 - *whether the record keeping and other procedures of the Commission are adequate or could be improved, and if so, what improvements are recommended.*
2. *to report to the Committee on the results of such investigation.*

RESULTS OF INVESTIGATION

Background

The Commission was first advised of this matter by correspondence from Dr K S Levy, Director-General of the Department of Justice and Attorney-General (“the department”) dated 8 January 2001 and received at the Commission on 11 January 2001. Dr Levy advised of “*a matter that may constitute official misconduct*” following allegations made by a staff member of the Brisbane Magistrates Court.¹ Dr Levy’s letter stated that in November 2000, the complainant had raised allegations of sexual harassment against a Magistrate going back to 1997. The Magistrate was not named in the correspondence.

Dr Levy further advised that “*The Department has tried on several occasions to instigate an investigation but [the complainant] has been unwilling to provide any information due to her current state of health. Mr Paul Witzerman, Psychologist, has been appointed by WorkCover to investigate [the complainant’s] claim ... he has advised [the complainant] to contact the Human Resource Branch [within the department] to discuss the allegations when she is better able to cope with the situation.*”

Commission records show that the matter was received in its Receptions and Assessment Unit on 15 January 2001. On 16 January 2001 the Commission advised Dr Levy that an investigator had been assigned to contact the department’s acting Director of Support Services with a view to determining whether the Commission could interview the complainant about her allegations.

On 23 January 2001 the Commission investigator had a conversation with the department’s Acting Senior Human Resource Consultant about this matter. The Consultant advised that the complainant was then on indefinite sick leave. He had made attempts to approach her for an interview but she had produced medical certificates from her doctor stating that she was not well enough to be interviewed. Since the complainant had not been interviewed, he was unsure exactly what her allegations were. He further stated that he felt it was imperative that Commission officers not try to contact the complainant because of her state of health and he declined to provide her contact details. He said that departmental officers were trying to build a rapport with the complainant in an effort to obtain a statement from her detailing all her allegations.

The Commission investigator concluded that “*In view of the above information, I feel that no attempts should be made to interview [the complainant] given her current medical condition.*”

The matter was then raised at a meeting of the Commission’s Executive Assessment Committee where it was assessed as not reasonably raising a suspicion of official misconduct. On 2 February 2001 the matter was endorsed as follows:

“On the basis of the information to hand, there is insufficient to reasonably raise a suspicion of official misconduct, and in view of the alleged “victim’s” situation at this time the matter is not capable of productive investigation; however advise the department that it should continue with their attempts to obtain details of the complaint at an appropriate time and advise the CJC if raises a suspicion of official misconduct.”

¹ For the purposes of this report I will use the term “the complainant” for this staff member whilst acknowledging that she did not actually make the complaint to the Commission.

On 5 February 2001 the file was formally closed and the Chief Officer, Complaints Section wrote to so advise the department in terms similar to the above endorsement.

On 20 March 2001 the Commission received further correspondence from the department stating:

“As previously advised, the Department has attempted to commence an investigation into [the complainant’s] allegations but has been unable to speak to [her] due to her state of health.

WorkCover Queensland advised the Department of the acceptance of [the complainant’s] claim on 5 March 2001. A copy of the reasons for the WorkCover decision is attached.

The Department is seeking to investigate the allegations as a matter of urgency and is liaising with [the complainant, her] doctor and WorkCover’s investigating psychologist to organise this.”

In fact, a copy of the reasons for WorkCover’s decision was not attached to the above correspondence but was subsequently provided on 9 April 2001. The reasons for WorkCover’s decision provided no specific details of the complainant’s allegations.

More significantly, on 17 April 2001 the department forwarded to the Commission a copy of documents pertaining to the investigation of the complainant’s compensation claim undertaken by WorkCover Queensland. Those documents included the following:

- statement of the complainant- dated 06.2.01- signed 26.3.01 (24 pages)
- statement of the complainant- dated 23.2.01- signed 27.2.01 (4 pages) plus attachments referred to as addendum statements (20 pages)
- Psychological Report re complainant- dated 23.2.01 (8 pages)
- statement of former Registrar of Brisbane Magistrates Court- dated 22.2.01 (4 pages)
- statement of serving Magistrate- dated 07.2.01 (2 pages)
- statement of former Registrar of Brisbane Magistrates Court- dated 31.1.01 (4 pages)
- statement of Chief Magistrate- dated 31.1.01 (5 pages)
- Psychiatric Assessment Report re complainant- dated 15.1.01 (8 pages)

Those documents were received at the Commission on 20 April 2001 under a covering letter which stated that *“The Department has endeavoured to contact [the complainant], however, she still feels unable to be interviewed in relation to the matter.”* Notwithstanding that the department had not interviewed the complainant, the WorkCover appointed psychologist had, and the WorkCover documents provided sufficient detailed information concerning the complainant’s allegations to reasonably raise a suspicion of official misconduct.

The covering letter and attached documents were marked to the attention of the Principal Complaints Officer who happened to be on recreation leave at the time. A number of factors discussed below, resulted in the attached documents remaining unconsidered until 28 November 2001.

On 28 November 2001 the Commission received a letter from the Chief Justice of the Supreme Court, attaching an anonymous letter the Chief Justice had received in the mail on 23 November 2001. The anonymous letter referred to “*a case of appalling sexual harassment between a Magistrate Mr Brian F Murray...*” and the complainant, who was named, and asked the Chief Justice to “*look into this*”.

The receipt of the Chief Justice’s letter brought the inaction on the file to the attention of senior officers within the Commission. The WorkCover documents were promptly assessed as reasonably raising a suspicion of official misconduct and whilst the Chief Officer, Complaints investigated the causes of the inaction, the investigation of the substantive complaint was commenced in accordance with the provisions of section 29(4) of the *Criminal Justice Act 1989* which stated:

“To the extent that an investigation by the division² is, or would be, in relation to the conduct of a judge of, or other person holding judicial office in, a court of the State, the authority of the division to conduct the investigation-

- (a) is limited to investigating misconduct such as, if established, would warrant his or her removal from office;*
- (b) shall be exercised by the commission constituted by the chairperson;*
- (c) shall be exercised in accordance with appropriate conditions and procedures settled in continuing consultations between the chairperson and the Chief Justice of the State.*

To that end, on 3 December 2001 the Chairperson provided the Chief Justice with a detailed personal briefing on the Commission’s current assessment of the matter and the proposed investigative steps. The Chief Justice was also provided with a copy of the WorkCover documents listed above. The Chairperson sought the approval of the Chief Justice to conduct the proposed “first phase” investigative step, namely to seek to interview the complainant and obtain from her a detailed statement and any material which supported her claim. If the complainant did not participate in an interview, the Chief Justice’s approval was sought in relation to the “second phase investigative steps” which included conducting interviews with a number of other witnesses and obtaining documentary evidence.

The following day the Chief Justice gave his written approval to the proposed investigative steps.

On 6 December 2001 the Deputy Director, Investigations contacted the complainant with a view to conducting an interview with her in respect of her allegations. The complainant indicated that she wished to consult her doctor before she would agree to be interviewed. She also said that the reason she had prepared a detailed statement (that contained on the WorkCover file) was for the purpose of an investigation by the Commission.

Later that day the complainant advised that she would prefer to sign a sworn statement rather than participate in an interview. The Deputy Director, Investigations replied that this was acceptable and that at that stage he did not require a sworn statement since the Commission already had the statements from the WorkCover file. He said that if it became necessary to obtain a sworn statement, it could be arranged at a later stage.

Thereafter, the Commission embarked upon the “second phase investigative steps”. A number of witnesses were interviewed and efforts were made to identify and obtain supporting documentary evidence. The WorkCover documents had also disclosed information which indicated that further

² The Official Misconduct Division of the then Criminal Justice Commission

allegations had been made against the Magistrate by other Magistrates Court staff. After first obtaining the approval of the Chief Justice, the Commission expanded the investigation to include a consideration of these further allegations.

The Commission finalised what I consider to be a careful and comprehensive investigation into the allegations against Mr Murray in June 2002. After forming the view that disciplinary action should be considered against Mr Murray, a report pursuant to section 49(2)(e) of the *Crime and Misconduct Act 2001* was forwarded to the Chief Magistrate on 12 June 2002.

Pursuant to section 10(8) of the *Magistrates Act 1991* the Chief Magistrate may discipline a Magistrate by way of reprimand if satisfied that the Magistrate is guilty of misconduct. The Chief Magistrate has no power to terminate a Magistrate's services.³

After receiving the Commission's report, the Chief Magistrate consulted with the Attorney-General and it was decided that "*the matter raised issues of such gravity that it should not be dealt with by the Chief Magistrate alone.*"⁴ Accordingly, the Attorney-General instructed the Crown Solicitor to obtain such evidence as was available to enable consideration of action pursuant to section 15 of the *Magistrates Act*.

Section 15 of the *Magistrates Act* sets out the procedure for the suspension and removal from office of a Magistrate. It relevantly provides:

(1) The Governor in Council may suspend a Magistrate from office.

...

(3) A Magistrate must not be suspended from office unless a Supreme Court Judge, on the application of the Attorney-General without notice to any person, has determined that there are reasonable grounds for believing that proper cause for removal of the Magistrate exists.

(4) There is proper cause to remove the Magistrate if the Magistrate-...

(d) is guilty of proved misbehaviour.

(5) If a Magistrate is suspended from office, the Attorney-General must, as soon as practicable, apply to the Supreme Court for a determination whether proper cause exists to remove the Magistrate.

In support of an application pursuant to section 15(3) of the *Magistrates Act 1991*, the Crown Law Office prepared a number of affidavits based on witnesses' statements obtained by the Commission. On 16 December 2002, the Crown Law Office sought the assistance of the Commission to have the affidavits signed by deponents. The affidavits were subsequently filed and proceedings were commenced in the Supreme Court with a view to Mr Murray's suspension and removal from office. Mr Murray was suspended from office in January 2003 and has since resigned.

³ If the Chief Magistrate reprimands a Magistrate, the matter will come to the attention of the Attorney-General because section 10(10) of the *Magistrates Act* requires that the Chief Magistrate immediately submit a written report to the Minister.

⁴ From a media release by The Honourable Rod Welford MP, Attorney-General and Minister for Justice, dated 24 December 2002.

Material considered

I have had access to the Commission's file on this investigation. A review of this file left a number of matters unclear in my mind as to what occurred during the period from the receipt of the WorkCover documents with the department's letter of 17 April 2001 through to the receipt of the letter from the Chief Justice in late November 2001.

Accordingly I sought further information from the Commission, including responses from three Commission officers, being a senior complaints officer and two complaints officers to specific questions. I subsequently met with those officers and others to further clarify matters of fact. I have taken all the information provided and responses given into account in my assessment of the handling of this matter within the Commission.

Discussion of the Commission's handling of the complaint

From the time of the receipt of the Chief Justice's letter on 28 November 2001 the Commission carried out a competent and expeditious investigation which cannot be faulted.

The report on the Commission investigation was forwarded to the Chief Magistrate on 12 June 2002 and from that date the further steps to be taken on the report were in the hands of others. Delay, if in fact there was any, after that time was beyond the control of the Commission.

Up to the receipt of the department's letter of 17 April 2001 I find no fault. On the state of the material then available, the Commission's assessment on 2 February 2001 that there was insufficient material to reasonably raise a suspicion of official misconduct was correct. It was also appropriate that the Commission not attempt to interview the complainant, but request the department to continue with its efforts to obtain details and to advise the Commission if a suspicion of official misconduct was raised.

It is the Commission's handling of the complaint during the seven-month period from the receipt of the department's letter of 17 April, enclosing the WorkCover documents up to the receipt of the Chief Justice's letter which raises issues of concern.

The officer appointed as responsible for this file was a senior complaints officer (SCO)⁵. In April this officer was on recreation leave and a complaints officer (CO1) was acting in the position.

SCO returned from his recreation leave on 1 May but was "*off-lined*" for the rest of the month to work on some particular projects. CO1 continued acting in SCO's position for that month.

SCO returned to his customary position on 1 June 2001. He later went on sick leave from 4 July to 10 August 2001.

At the beginning of this period, CO1 was also on recreation leave so another complaints officer (CO2) acted in SCO's position. On CO1's return, she resumed acting in SCO's position from 18 July until SCO returned to duty.

After 18 July, CO2 was delegated a role of dealing with a backlog of files which had built up from a combination of the receipt of a larger than normal number of complaints and SCO's and other

⁵ Full names were included in the confidential report provided to the Parliamentary Committee. Identifying information has been removed for the purposes of this public report.

officers' recreation leave. As I shall discuss below, CO2 had contact with the subject file in this role.

Dealings with the file

The letter of 17 April was placed on the file by the Commission's Support Officer, Complaints on 23 April. She marked the file to SCO.

The Support Officer advises me that she has no specific recollection of handling this letter and file but her usual process would be to hand deliver the file to the in-tray in SCO's office. There was a locked cabinet just outside his office which was sometimes used by SCO to hold files with a high security classification. The Support Officer advises that she had no access to that locked cabinet and definitely did not place the file in it.

As indicated, CO1 was then acting in SCO's position, continuing as such until the end of May. She advises that she "*had no involvement with the file*" in April/May. In interview, CO1 was adamant that she did not see this file in April/May, that she was not even aware of the locked cabinet outside SCO's office and therefore did not put the file in that cabinet and that it was not the case that the file could have sat in SCO's office during April/May without being seen by her. In other words, on her version the file could not have been in SCO's office.

As noted, SCO resumed his customary role for all of June. In his response to me he has indicated that he had no involvement with this file at all during that period.

He is able to be adamant, and to give good reason for being so, that he never read the attachments to the letter of 17 April until after the time of the receipt of the letter from the Chief Justice in November.

As noted, CO2 took over acting in SCO's position from 4 July to 17 July and thereafter was delegated the role of assisting to clear up the backlog of files.

During this time she made the following notation on the original letter of 17 April in the file:

*"...-TUV [SCO - took up with]⁶
Noted. Interim
Report. Await
further info."*

CO2 signed that note and dated it 25 July 2001.

She explains this as being her note of a phone call to SCO at his home where he was recuperating from surgery he underwent in early July, during which she discussed this file with him. She indicates that she has no recollection of ever reading the attached WorkCover documents. From her telephone discussion with SCO it was determined that this was an interim report from the department and the file should not be re-opened, pending receipt of further information from the department about its attempts to interview the complainant.

This discussion and decision is explicable on the basis of a discussion purely of the letter, as the letter does refer to the fact that the department had endeavoured to contact the complainant however she still felt unable to be interviewed.

⁶ Initials of SCO deleted

CO2 did not record a bring-up on the file as the file was closed and she did not consider it required re-opening.

Two issues of concern arise from these facts, first the letter and the attached WorkCover documents were not considered by a Complaints Officer until 25 July 2001, some three months after they were received within the Commission, and secondly, when these documents were finally considered an inappropriate decision was made with respect to them.

Three months delay

I have been unable to determine the reason why the letter and annexures were not considered for three months. Indeed I have been unable to determine conclusively where the file was during this period.

I am satisfied that the Support Officer delivered it to SCO's office.

At the other end of the three months period we know it was physically in the possession of CO2. Her recollection is that she found the file in the locked cabinet just outside SCO's office, whilst she was looking for another higher security classification file (the red file) in July 2001.

I am satisfied on the evidence that the only person who would have put the red file in that locked cabinet was SCO. He indicates that he did not deliberately put this file in the locked cabinet, but that it is possible that while he was putting the red file in that cabinet this file was either already entangled or became entangled with the red file and was accidentally locked in with the red file. All officers agreed that it does occasionally happen that the system of clips on the top left hand corner binding the files together results in the entanglement of one file with another. SCO says that the time when he put the file(s) in the locked cabinet was in June or even in May, whilst he was "off-line" from his normal position.

For this to have happened, this file must have been in SCO's office prior to its accidental placement in the locked cabinet. At first glance this does not fit with CO1's statement that if the file had been in SCO's office in April/May she would have seen it. The only logical way it could fit with her claim is if this file became entangled with the red file before or immediately after the Support Officer placed this file in SCO's office.

All of this sounds an unlikely series of events, however it is possible that it did occur and there is no evidence which would enable me to find to the contrary of this scenario.

It is disturbing that a file could go "missing" in this way for three months and I shall discuss this issue under term of reference four.

Inappropriate decision

As indicated, CO2 indicates that she has no recollection of having read the WorkCover documents prior to seeing them subsequent to the receipt of the letter from the Chief Justice in November 2001.

I note that in his letter to the Chief Justice of 3 December 2001, and repeated in his letter to the Parliamentary Committee of 3 January 2003, the Chairman of the Commission stated that the documents "*were not read at the time of receipt and an inappropriate decision was made by an officer of the Complaints Section to put the file away pending further advice from the Department.*"

I would concur in this assessment of what occurred.

CO2's lack of recollection of having read the WorkCover documents would make it appear more likely to me that she did not read those documents in July 2001 but, whether she read them or not at that stage, her assessment of the action required was inadequate.

If she did not read them then to assess the action required on the basis of only reading the letter without the attachments was clearly inadequate.

If she read them at that time, it is difficult to conceive how she would not have realised their significance. Even a cursory glance at those documents would have revealed that they contained sufficient material to raise a reasonable suspicion of official misconduct warranting the commencement of an investigation by the Commission.

1. THE TIMELINESS WITH WHICH THE COMMISSION HAS CONSIDERED THE MATTER, AND WHETHER ANY ACTION OR INACTION ON THE PART OF THE COMMISSION RESULTED IN UNDUE DELAY IN THE INVESTIGATION.

As indicated in my discussion above, the Commission's initial assessment of this matter in February 2001 was carried out in a timely manner and its investigation, following the receipt of the letter from the Chief Justice, was carried out efficiently and expeditiously.

However, the delay in considering and the subsequent lack of proper consideration given to the WorkCover documents received with the department's letter of 17 April 2001 resulted in undue delay in the investigation.

In his letter of reply to the Chief Justice, the Chairman of the Commission advised the Chief Justice of the error that had been made within the Commission in the assessment of the WorkCover documents. He continued:

"Fortuitously, the failure to act on the information received on 20 April had no practical effect as the CJC was advised that at the time [the complainant] was not able to be interviewed because of her ill health, and shortly thereafter went overseas, returning to Australia in mid-November. The CJC has been recently advised by the Senior Human Resources consultant of the Department that he spoke with [the complainant] one or two weeks ago in relation to paper work for WorkCover."

The letter continued with details that would suggest that the complainant was still not in a position to be interviewed.

Whilst I have no difficulty in accepting that comment as a genuine expression of opinion held at that time, subsequent events showed that at least some of the investigation could have been carried out at an earlier time.

The complainant was not able to be interviewed for some little time after November 2001 yet the investigation was able to be fruitfully commenced and carried out to a considerable degree without the need to interview the complainant further. A great deal of information was provided in the WorkCover documents which required investigation and that investigation could have commenced up to seven months earlier if the WorkCover documents had been properly assessed upon their receipt.

Indeed if the complainant had never been able to be interviewed a worthwhile investigation could still have been carried out and a report of the investigation provided to the Chief Magistrate.

I find that both the delay in considering the department's letter of 17 April 2001 and the attached WorkCover documents and the subsequent inappropriate decision made with respect to them resulted in undue delay in the investigation.

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

For the reasons that I have set out above, **I find that the Commission's consideration of the WorkCover documents received with the department's letter of 17 April 2001 was inadequate.**

I find that the assessment of the fresh material provided by way of the WorkCover documents was totally ineffectual. That material required assessment as reasonably raising a suspicion of official misconduct, necessitating the commencement of an investigation.

3. THE EFFICACY OF THE COMMISSION'S ASSESSMENT PROCESS

A process is efficacious if it produces the desired result. That did not occur in this case.

There was at that time within the Commission a written procedure setting out how further material, such as the WorkCover documents in this case, within the Commission was to be dealt with. I shall discuss that procedure under the next term of reference, but suffice it to say that if that procedure had been properly followed, the proper assessment would have resulted. It was the failure in this case to follow that written procedure which led to the inappropriate decision being made.

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

The aspects of this investigation surrounding the assessment, or lack thereof, of the WorkCover documents raise a number of issues with regard to the adequacy of procedures and record keeping within the Commission.

Failure to consider the matter for three months

Any procedure that allows new material received within the Commission to sit for three months before being considered is obviously unsatisfactory. This is especially so for material of a sensitive nature.

The letter and the WorkCover documents were marked, together with the file, to SCO on 23 April 2001. They were not considered until CO2's notation of 25 July, a period of three months from their receipt. Three months is an unacceptable length of time before these documents were considered.

As I have indicated above at page 9 I have not been able to determine conclusively where the file was during that time with the only possible suggested explanation being that this file became physically entangled with another file and thereby was overlooked.

Any system which allows such entanglement must be altered. I am advised that, because of instances of entanglement of files occurring, the physical method of securing together the various

documents into files is being altered with a view to ensuring that such entanglement does not occur. New file covers which will minimise entanglements have been ordered and on their receipt all new files will utilize them and all older active files will be progressively rebound into them.

Further, in its response to my request for information, the Commission advised:

“The Commission now has in place processes by which all matters are task allocated to responsible officers on COMPASS⁷. When a person is relieving in someone else’s position, they have access to that person’s task list, and would be alerted to the fact that they needed to take action in respect of the files.”

This procedure should overcome the risk of a matter being overlooked because the file is “missing”. However, at first sight, it gave me no confidence that the matter would be looked at promptly. Accordingly I discussed the process with the Acting Director, Complaints Services, who advised me that the tasks are allocated by a senior officer, who also enters into the computer the time within which the task should be completed. If the task is not completed within the allotted time this shows up on both the senior officer’s and the task officer’s computer screens and the matter can be reviewed. This system should assist greatly in ensuring that no further material received in the Commission can sit for three months without being looked at.

In the Commission response to me I was further advised that a new procedure for handling the receipt of information “*of a sensitive nature*” has been instituted. Without elaborating the details of that procedure, I am satisfied that it will assist to ensure that sensitive information received is promptly and properly considered.

Lack of proper consideration

There was at the relevant time within the Commission an existing “Complaints Services Procedure” in relation to “*Assessment of further material received in relation to an existing matter in Complaints Services*”. This procedure required that when material was received in relation to an existing matter, whether the relevant file was closed or open, that material was to be considered with a view to whether any further action was required by the Commission. It required the material to be immediately attached to the relevant file and delivered to the officer recorded as the responsible officer within Complaints Services. The procedure further required that “*the material ... must be read and an assessment made as to whether any further action is required*” (my underlining). The procedure concluded that if the material provided new information, consideration should be given to whether the original assessment of how to deal with the matter is still appropriate and, if necessary, the file should be re-opened.

This procedure was applicable in the present case and if it had been carried out properly would have ensured that this matter was investigated in a timely fashion.

The failure in this regard was not in the “*Complaints Services Procedure*” but in its execution, i.e. human error. Human error is difficult to eradicate and, in circumstances like the present, the potential for it can only be minimised by the regular bringing to the attention of the relevant officers the undesirable consequences of such error.

⁷ The Commission’s computerised Case Management System.

To this end, I recommend that all present and future Complaints Officers and others involved in making assessments of material within the Commission be appraised of this matter, as an instructive example of the need for a prompt and careful assessment of material received.

I appreciate that doing this may be embarrassing to the particular officers involved in this case, even though their names need not be used, but in my view the importance of emphasising the need for great care when assessing material received must take precedence.

Relieving duties

CO1 relieved in SCO's position for the months of April and May 2001. In interview she told me that she was not aware at that time that the locked cabinet just outside SCO's office was used to store any files in relation to SCO's duties. Her lack of knowledge was corroborated by SCO.

It is not a satisfactory position for an officer to relieve in higher duties without being appraised of all matters relevant to that position, such as, for example, the storage location of the more confidential files.

Apparently SCO's use of this locked cabinet was on an ad hoc basis, arising initially from one occasion when he needed to secure a confidential file and the only lockable cabinet within his own room was inoperable.

I am advised that SCO now carries out his duties from another room and that there is in that room a secure repository for confidential files, but **insofar as this circumstance has not been rectified, I would recommend that a process be put in place whereby all officers dealing with files that require securing under lock and key be provided with appropriate storage facilities and that any officer relieving in that position be advised of that system.**

Internal review and disciplinary procedures

Following the receipt of the letter from the Chief Justice and the realisation of what was in the WorkCover documents, an internal review was commenced within the Commission of the processes and procedures in place.

This review revealed that an appropriate procedure was in place but was not followed. The "*Complaints Services Procedure*" was re-issued to remind all officers of their obligation.

SCO and CO2 were disciplined by way of informal counselling, with a record of the counselling being placed on each of the officers' personal files.

I consider that this action taken with respect to SCO and CO2 was appropriate in the circumstances.

However the report of the review only addressed the failure to follow the established process that was in place and did not address the question of why the material was not considered for a period of three months.

I consider that the review should have looked at that delay and the reasons for it.

CONCLUSION

In this case, a serious error occurred within the Commission in its assessment of material received.

There was a managerial procedure in place which, if followed properly, would have ensured that the material received was appropriately assessed.

That procedure was not followed in two respects.

First, undue delay occurred in the matter being considered. I have been unable to determine conclusively the reason for this delay. It is possible that it occurred because the relevant file became entangled with another file and was misplaced. Steps have now been taken which should lessen the risks of files becoming entangled and a computerised “task list” process is now in place which should ensure that a task is not overlooked because a file has gone “missing”.

Secondly when the matter was finally considered, only the covering letter was read and not the annexures. This led to a totally incorrect assessment being made of the material causing subsequent undue delay in the investigation, which only recommenced after the fortuitous receipt of an anonymous letter by the Chief Justice. New procedures have since been implemented within the Commission which should assist in ensuring that this form of error does not recur. I have made a recommendation concerning the use of this instance of error as an instructive example.