
LEGISLATIVE ASSEMBLY OF QUEENSLAND

PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

**A report on an investigation by the
Parliamentary Crime and Misconduct Commissioner
into the Crime and Misconduct Commission's handling of allegations against
Mr Chris Murphy**

Report No. 62

PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

MEMBERSHIP – 50TH PARLIAMENT

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CHAIRMAN'S FOREWORD

The Parliamentary Crime and Misconduct Committee requested the Parliamentary Crime and Misconduct Commissioner, Mr Robert Needham, to investigate and report upon the CMC's handling of allegations against a former officer of Education Queensland, Mr Chris Murphy. In light of suggestions that the CMC's handling of the matter lacked independence and impartiality, the Committee asked the Parliamentary Commissioner to examine whether there was any political interference or political bias in the CMC's handling of the matter and the appropriateness of the CMC's decision to investigate the matter itself, rather than refer it to another agency for investigation.

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 public.

In summary, the Parliamentary Commissioner has found that there was no political interference or political bias in the CMC's handling of allegations against Mr Murphy and further that the CMC's decision to investigate the matter itself rather than refer it to another agency for investigation was appropriate.

Geoff Wilson MP
Chairman

20 November 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

Mr Murphy, a former Education Queensland employee, was investigated by the CMC in relation to dishonestly claiming travel allowance by submitting a forged receipt. Mr Murphy subsequently pleaded guilty to one count of fraud in the Brisbane Magistrates Court on 18 June 2003. On 19 June 2003 Mr Murphy was interviewed on ABC radio. During the interview he was critical of the CMC's investigation, at one point suggesting there may have been some political motive. The following day, 20 June 2003, *The Courier-Mail* published an article and an editorial which criticised the CMC's handling of the allegations against Mr Murphy.

Concerns relating to the CMC's handling of Mr Murphy's matter had also been brought to the Committee's attention by the Queensland Opposition in its submission to the Committee's three year review of the CMC.¹

On 20 June 2003 the Committee requested the CMC provide a report in relation to the CMC's handling of the matter, including a response to the concerns raised by the Opposition. The CMC provided a report to the Committee on 8 July 2003. After consideration of the report, the Committee determined on 22 August 2003 to request the Parliamentary Commissioner to investigate and report to the Committee in relation to:

- whether there was any political interference or political bias in the CMC's handling of allegations against Mr Chris Murphy; and
- the appropriateness of the CMC's decision to investigate the matter itself rather than to refer the matter to another agency for investigation.

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.

3. THE REPORT OF THE PARLIAMENTARY COMMISSIONER

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

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:

- there was no political interference or political bias in the Commission's handling of allegations against Mr Murphy; and
- the CMC's decision to investigate the matter itself rather than to refer the matter to another agency for investigation was appropriate in all the circumstances.

The full reasons are set out in the report of the Parliamentary Commissioner.

¹ Information pertaining to this matter contained in the Opposition's submission was not tabled. At the time of the Committee's tabling of the three year review submissions the matter was the subject of criminal proceedings. Further the Committee determined to deal with the matter in accordance with its normal complaints processes.

APPENDIX A

**REPORT ON THE INVESTIGATION
IN RELATION TO THE
CRIME AND MISCONDUCT COMMISSION'S
HANDLING OF ALLEGATIONS AGAINST
MR CHRIS MURPHY**



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

NOVEMBER 2003

TABLE OF CONTENTS

| | |
|---|-----------|
| INTRODUCTION..... | 1 |
| TERMS OF REFERENCE | 2 |
| RESULTS OF INVESTIGATION | 3 |
| WHETHER THERE WAS ANY POLITICAL INTERFERENCE OR POLITICAL BIAS IN THE COMMISSION’S HANDLING OF ALLEGATIONS AGAINST MR CHRIS MURPHY | 7 |
| THE APPROPRIATENESS OF THE COMMISSION’S DECISION TO INVESTIGATE THIS MATTER ITSELF RATHER THAN TO REFER THE MATTER TO ANOTHER AGENCY FOR INVESTIGATION | 13 |
| CONCLUSION | 16 |

INTRODUCTION

On 18 June 2003 former Education Queensland employee, Mr Christopher Murphy, pleaded guilty to one count of fraud in the Brisbane Magistrates Court. The charge related to Mr Murphy having dishonestly claimed a travel allowance from Education Queensland by submitting a forged receipt for accommodation. The charge resulted from an investigation conducted by the Crime and Misconduct Commission (“the Commission”) following an anonymous complaint initially received by Education Queensland.

The Courier-Mail reported Mr Murphy’s court appearance on 19 June. That same day Mr Murphy was interviewed on ABC radio. During the interview Mr Murphy was quite critical of the Commission’s investigation, at one point suggesting there may have been some political motive.

On 20 June 2003 a front page article and an editorial in The Courier-Mail expressed concerns about the actions of the Commission in its handling of the allegations against Mr Murphy. The editorial asked “*What is it about Murphy that prompted the CMC to itself investigate the allegation?*” and called on the Parliamentary Crime and Misconduct Committee (“the Parliamentary Committee”) to “*find out why the CMC occupies itself with what seem to be trivial matters such as that concerning Murphy*”.

These issues had previously come to the attention of the Parliamentary Committee in April in an addendum to the State Opposition’s submission to the Parliamentary Committee’s Three Year Review of the Commission. The Opposition provided details of three Commission investigations, including the investigation of allegations against Mr Murphy, “*about which the gravest doubts exist about the professionalism, impartiality and accuracy of CMC investigations.*”

On 20 June the Parliamentary Committee requested that the Commission provide a report on its handling of the matter and a response to the concerns raised by the Opposition.

The Commission responded to the Parliamentary Committee’s requests by letter dated 8 July together with numerous attachments.

TERMS OF REFERENCE

At a meeting on 22 August 2003, the Parliamentary Committee resolved in accordance with section 295(3) of the *Crime and Misconduct Act 2001* (the *C&M Act*), that:

“The Parliamentary Crime and Misconduct Committee, pursuant to section 295(2)(d) of the Crime and Misconduct Act 2001 (the Act), requests the Parliamentary Crime and Misconduct Commissioner to investigate and report to the Committee in relation to:

- *Whether there was any political interference or political bias in the Commission’s handling of allegations against Mr Chris Murphy; and*
- *The appropriateness of the Commission’s decision to investigate this matter itself rather than to refer the matter to another agency for investigation.”*

The Parliamentary Committee provided for my assistance, copies of the addendum to the Opposition’s submission to the Three Year Review, The Courier-Mail article and editorial of 20 June and the Commission’s letter of 8 July.

RESULTS OF INVESTIGATION

Background

Mr Christopher Murphy was appointed to the position of Manager, Corporate Taxation Unit (Finance Branch), Education Queensland in April 2001. In May 2001 he travelled to Melbourne to attend meetings related to his departmental duties, staying overnight on 14 and 15 May. The department paid Mr Murphy's travel allowance in advance.

On 20 May 2002 the CMC Liaison Officer, Education Queensland, notified the Commission of an anonymous complaint made against Mr Murphy in relation to a suspected false travel expense claim for the Melbourne trip. Since the allegations against Mr Murphy, a person holding an appointment in a unit of public administration, could, if proven, amount to official misconduct, the Director-General was required to notify the Commission of the complaint pursuant to section 38(2) of the *C&M Act*.

Commission records show that on 21 May the Principal Complaints Officer in the Receivals and Assessment Unit discussed the matter with the Director, Misconduct Investigations who recommended that, given the seriousness of the alleged conduct, the seniority of the subject officer and the similarity to a previous matter concerning another unit of public administration which resulted in criminal proceedings, the matter be referred to a Complaints Investigation Team to investigate.

This decision was recorded on the Commission's COMPASS system and conveyed to Education Queensland on 22 May. In accordance with usual practice for matters to be retained for investigation by the Commission, the matter was considered by the Executive Assessment Committee¹ which confirmed the assessment two days later.

It should be noted that the Commission had no intelligence holdings on its IRAS database relating to Mr Murphy at this time.

In June, Mr Murphy took leave without pay from Education Queensland. He commenced employment with the Victims of Crime Association ("VOCA") on or about 24 June.

Preliminary enquiries by both Education Queensland and the Commission established that a receipt for hotel accommodation provided by Mr Murphy in acquittal of his travel allowance was not genuine. The Commission investigators decided to seek access to Mr Murphy's work computer at Education Queensland in order to establish whether the forged receipt had been created on that computer. The computer was obtained on 6 June and analysis of its contents completed by 9 July. No evidence was located linking the work computer to the production or storage of the forged receipt.

According to Commission records, on 11 July members of the Commission investigators made the decision to seek a search warrant for Mr Murphy's residence in order to establish whether the

¹ The Executive Assessment Committee at that time was constituted by the Chairperson, the Assistant Commissioner, Misconduct, the Director, Misconduct Investigations, the Director, Complaints Services and the Director, Research and Prevention.

forged receipt had been created on his home computer. It was also decided that an interview be conducted with Mr Murphy following analysis of his home computer.

There does not appear to have been any urgency or priority attached to this investigation because, although the decision to seek a search warrant was made in July, there was little activity noted on the file until late August.² At that time it was thought necessary to undertake certain preliminary inquiries before making the application for the search warrant. The results of those inquiries were received on or about 17 September.

The paperwork for the search warrant was drafted on 23 September but had to be settled by senior legal staff of the Commission so that it was not until 14 October that the search warrant for Mr Murphy's residence was eventually obtained. The search warrant was executed on Mr Murphy's residence on 17 October. Computer equipment and certain documents were seized pursuant to the warrant.

During the course of the search, Mr Murphy readily agreed to participate in an electronically recorded interview. He admitted that the receipt for accommodation at the Astoria Travel Inn which he had provided in acquittal of his travel allowance was not genuine; that it was a document that he created on his home computer. However, he did not accept that there was any fraud involved because he claimed to have actually paid in cash for a second night's accommodation at another hotel. He said that he had since lost the receipt for the second night's accommodation and could not recall the name of the second hotel but he described its location to the investigating officers. He denied having stayed overnight with his mother or any other family or friends.

Mr Murphy claimed that he had created the forged receipt on a computer which he had since sold and that he had only had his present computer for a few weeks.

Later on 17 October, after the completion of the search, the Complaints Investigation Team met to discuss further investigative steps. In view of the further information supplied by Mr Murphy in his interview and documents located during the search, the team decided that further inquiries would need to be undertaken in Melbourne. The investigator's memorandum requesting authorisation for travel to Melbourne lists these inquiries as:

- Interview on tape the reservations manager at the Astoria Travel Inn to confirm the information previously provided in relation to Christopher Murphy's accommodation. Have the reservations manager identify documents obtained during the course of the investigation. Obtain a signed statement from the reservations manager attesting to the above information.
- Inquiries with a hire car company from which Mr Murphy hired a car whilst in Melbourne. (A receipt for the car hire was located during the search of Mr Murphy's residence.) Obtain a statement from a representative of that company.
- Attend the residence of Mr Murphy's mother to establish whether Mr Murphy did or did not stay with her or another relative on 15 May 2001.
- Door knock hotels, motels and boarding houses in the location described by Mr Murphy to establish whether he did stay at a second motel on the night of 15 May 2001 as he claimed in his interview. If so, obtain a statement from an authorised person confirming Mr Murphy's stay.

² At this time the Complaints Investigation Team were also involved, inter alia, in a large and complex investigation which did have party political connotations and seems to have been prioritised. This would account for the lower level of activity on the investigation of the allegations against Mr Murphy at this time.

Further, the investigator's memorandum stated that, *"It is also acknowledged that these further inquiries in Melbourne may provide further evidence to support the version of events as provided by Christopher Murphy."*

On 13 November Mr Murphy wrote to the Commission advising that he had resigned from his position with Education Queensland and entered into a contract of ongoing employment with VOCA. He also sought to clarify a number of matters arising from his interview. He reiterated that he had not stayed with his mother on the second night in Melbourne but he could not recall the name or the exact location of the hotel at which he claimed to have stayed.

In his letter Mr Murphy, for the first time, revealed to investigators that he had visited his mother and taken her to dinner and shopping on the afternoon or early evening of 15 May 2001. (Although, it must be said, in his interview, Mr Murphy had only been asked whether he stayed with his mother – not whether he had visited her.) This explanation would account for the receipt for car hire in Melbourne which, Mr Murphy knew, had been located during the search. Mr Murphy also provided further details concerning his submitting of the false accommodation receipt, naming various staff of Education Queensland as having exerted pressure on him to do so.

On 20 November Commission investigators travelled to Melbourne to conduct the inquiries mentioned above. Despite their efforts to check hotels, motels and boarding houses in the location described by Mr Murphy, the Commission investigators were unable to find the hotel at which Mr Murphy claimed to have stayed on the night of 15 May 2001.

Interviews with officers from Education Queensland, including those officers nominated by Mr Murphy as having exerted pressure on him to submit the false accommodation receipt, commenced on 26 November. Five Education Queensland officers were interviewed in late November/early December. However, another officer nominated in Mr Murphy's letter of 13 November was overseas on leave until 3 February 2003 so the interviews were not finalised until that time. It may be said that generally the evidence of the six Education Queensland officers did not support Mr Murphy's version of events concerning his submitting of the forged Astoria Travel Inn receipt.

The brief of evidence was completed by 13 February 2003. At their meeting on 21 February the Commissioners considered the material and resolved, pursuant to section 49(2)(a) of the *C&M Act*, to forward the Commission report on the investigation to the Director of Public Prosecutions for the purposes of any prosecution proceedings the Director considered warranted. The brief of evidence was forwarded to the Director of Public Prosecutions on 25 February. Mr Murphy and Education Queensland were notified of this fact.

In a letter dated 21 March, Mr Murphy's solicitor made a submission to the Director of Public Prosecutions that the prosecution of Mr Murphy was unwarranted on public interest considerations. The letter referred to Mr Murphy's claim to Commission investigators that he had paid for the second night's accommodation in Melbourne, and continued *"That position is not maintained; he now accepts that he did not incur any commercial liability for his accommodation that night."*

On 23 May, the Director of Public Prosecutions advised the Commission that the evidence was sufficient to support an offence of fraud as set out in the draft charge.

On 5 June Mr Murphy was served with a Notice to Appear in respect of one charge of fraud.

On 18 June Mr Murphy pleaded guilty in the Brisbane Magistrates Court to having dishonestly gained a benefit, namely the payment of travel allowance from Education Queensland (ie fraud). The charge was of an aggravated nature in that Mr Murphy was an employee of Education Queensland at the time of the offence. Mr Murphy's plea of guilty may be taken as an acknowledgement of his guilt to all the elements of the offence.

From his plea of guilty and the admission in his solicitor's submission to the Director of Public Prosecutions, it is clear that Mr Murphy lied to the Commission investigators in his interview of 17 October 2002 and in his letter of 13 November 2002, when he claimed that he had stayed in a hotel on his second night in Melbourne.

**WHETHER THERE WAS ANY POLITICAL INTERFERENCE OR
POLITICAL BIAS IN THE COMMISSION'S HANDLING OF
ALLEGATIONS AGAINST MR CHRIS MURPHY**

Mr Murphy's Claim

Mr Murphy was interviewed on ABC radio on 19 June 2003 – the day after he had pleaded guilty to the charge of fraud in the Brisbane Magistrates Court. During the interview Mr Murphy was asked whether he believed there was another agenda behind the Commission's investigation of him. He said that he didn't know but he went on to refer to documents he had obtained from Education Queensland pursuant to a Freedom of Information request.

In particular, Mr Murphy referred to a briefing note dated 22 September 2002 which had been prepared by the Director of Finance for the Director-General. The briefing note was prepared in response to the Opposition's tabling in Parliament on 18 September of a fringe benefits tax advice from Deloitte Touche Tohmatsu ("Deloittes") addressed to a member of the Finance Branch. Following the tabling of the document, the department made inquiries to establish who may have provided the document to the Opposition. The briefing note concluded that the investigation was not able to clearly identify the responsible party.

However, as Mr Murphy stated during his radio interview, the briefing note mentions him a number of times. In fact the briefing note states that *"Mr Murphy was apparently in the habit of working from home, and would e-mail work to his home or take work home on disc. It is therefore possible that he may have distributed the information from his home."*

The radio interviewer asked Mr Murphy whether he thought that in conducting the search of his residence, the Commission were looking for departmental documentation or discs that he may have taken home.

Mr Murphy replied, *"It was only a short time after that [the briefing note] that my home was subjected to the raid. Now, I'm not making any allegations, it's just that it's hard not to draw an inference between ...an official briefing going to the Director-General and the Minister saying that it's possible that I had some confidential information on my home computer and then a couple of weeks later I'm getting raided and my home computer is being taken."*

An article in The Courier-Mail on 20 June 2003, also referred to a comment by Mr Murphy that *"he found it strange that soon after the document was tabled his home was raided and his computer records taken."*

For a number of reasons I am satisfied that the decision to execute a search warrant on Mr Murphy's residence had nothing whatsoever to do with the matters raised in the briefing note of 22 September 2002. These reasons include the following matters.

- There is no evidence to suggest that any person at the Commission was even aware of the matters mentioned in the briefing note. In its response to the Parliamentary Committee, the Commission claims to have been unaware of the Opposition's tabling in Parliament of the Deloittes tax advice to Education Queensland or of the departmental briefing note until the matters were raised by Mr Murphy in his ABC radio interview. My detailed inspection of the

Commission's investigation files revealed nothing which would cause me to doubt this assertion.

- As mentioned above, Commission records establish that it was 11 July 2002, more than two months prior to the briefing note, that the decision was made to seek a search warrant for Mr Murphy's residence in order to establish whether the forged accommodation receipt had been created on his home computer. The Commission records also show that during August and September, prior to the tabling of the Deloittes advice in Parliament, a number of preparatory steps were taken towards the final obtaining of the search warrant.

I have no hesitation in accepting these records because they show precisely what I would have expected to see in this investigation. The false hotel receipt produced to the department was, in this computer age, obviously produced on a computer. The Commission investigators carried out the initial, expected step in the investigation, the forensic examination of Mr. Murphy's work computer for any record of the false receipt. When that examination gave negative results, the next obvious step was to obtain and execute a search warrant to enable the forensic examination of Mr. Murphy's home computer.

- Mr Murphy infers that the "raid" on his house and the taking of his computer was designed to allow his computer to be examined for any evidence linking him with the leaking of the Deloittes advice to the Opposition. The records surrounding the seizure and search of the computer do not support that inference.

Prior to the raid the Commission investigators requested the assistance of a forensic computer analyst from the Forensic Computing section of the Commission. The request was for the analyst to accompany the investigators during the execution of the search warrant. The official Commission form requesting this assistance states that "*[The] same examination of computer equipment seized at residence is to be conducted as was done on subject person's work computer.*" The examination conducted on the work computer was to determine whether it was utilised to create or store the forged document.

It was the same forensic computer analyst who examined Mr Murphy's work computer who attended at the execution of the search warrant, took possession of and subsequently examined Mr Murphy's home computer. His examination disclosed that the forged accommodation receipt was stored on the home computer. There is simply no mention in any of the Commission records of conducting a search for confidential departmental documents.

- Lastly, contrary to what Mr Murphy apparently told the Opposition, the Commission investigators did interview Mr Murphy at his home at the time of the execution of the search warrant.³ This interview, which was tape recorded, was concerned only with the issue of the travel claim; no questions were asked of Mr. Murphy about any leaking of departmental material.

³ The addendum to the Opposition submission states, at page 5, "*One would guess that he [another person mentioned in the addendum to the submission] was interviewed for the CMC to reach that conclusion. Yet, Mr Murphy was not. The Opposition understands that Murphy was the one asking the police officers questions when they raided his house.*" The tape recording of the interview clearly demonstrates that any such assertion made by Mr Murphy was false.

Matter raised in the Commission's letter to the Parliamentary Committee

In its response to the Parliamentary Committee, the Commission mentioned another matter, possibly involving Mr Murphy, which was referred to the Commission by Education Queensland.

On 5 December 2002, the Opposition's education spokesperson Mr K. Lingard MP tabled in Parliament a copy of a Parliamentary briefing paper prepared for the Minister for Education by her department. By letter dated 19 December 2002 the department's CMC Liaison Officer advised the Commission that an external investigation had been commenced by independent consultants to determine how the briefing paper had been leaked. The letter advised that initial investigations suggested that a Senior Finance Officer from the department had been providing confidential departmental information to Mr Murphy.

By the time of that notification, 19 December 2002, the investigation of the fraud allegations against Mr Murphy's was virtually complete, there only remained outstanding the interview of the departmental officer who was overseas. The Commission's knowledge of Mr Murphy's suspected involvement in this leak of confidential departmental information cannot be said to have influenced the Commission's handling of the fraud allegations.

It is of interest to note that the Commission did not assume responsibility for this investigation. The department was permitted to continue its investigations through independent consultants. On 13 January 2003 the department advised the Commission of the subject Senior Finance Officer's resignation and shortly thereafter the Commission closed its file.

Opposition's concerns of political bias

In the addendum to its submission to the Parliamentary Committee's Three Year Review of the Commission, the Opposition referred to the investigation of Mr Murphy as an example of the Commission *"showing ...unreasonable harshness against those who may be considered Government adversaries."* It is later asserted that the Commission is *"being used as some sort of secret police when it comes to potential Government adversaries."*

It is not particularly clear upon what basis the Commission might have considered Mr Murphy to be a Government adversary. The addendum to the Opposition's submission does say that Mr Murphy had visited the Opposition on numerous occasions to detail what legislative changes needed to be made to improve victims' services. However, being the CEO of VOCA, such visits would be unremarkable and one would assume that Mr Murphy would have visited the Government for the same reason on numerous occasions. It should also be noted that the decision that the Commission investigate the matter itself was made more than a month prior to Mr Murphy commencing his employment with VOCA. There is absolutely nothing to suggest that the officers responsible for that decision were aware at that time of any connection between Mr Murphy and VOCA.

The Opposition also seems to suggest that Mr Murphy might be considered a Government adversary because *"[h]is name also happened to be on a number of documents the Opposition obtained under Freedom of Information through Education Queensland."* I presume that the Opposition were referring to the Deloitte tax advice and the briefing note of 22 September and perhaps some connection to the Parliamentary briefing paper tabled in December.

As explained above, those documents could not have influenced the Commission investigators' decision to seek a search warrant on Mr Murphy's residence. Nor did those documents influence the decision to send Commission investigators to Melbourne which appears to be advanced as an example of over zealousness or unreasonable harshness on the part of the Commission. There were a number of legitimate inquiries to be conducted in Melbourne including the possibility of finding independent evidence to support Mr Murphy's then claimed version of events.

Indeed it was the lies of Mr Murphy to the investigators, repeated apparently to the Opposition, about staying the second night in a hotel which necessitated the expense of the trip to Melbourne. If Mr Murphy had admitted at that time that he had not stayed in a hotel the second night, the trip would not have been necessary.

A basic test of the Opposition's submissions with regard to this matter is whether the Commission's investigation showed "unreasonable harshness". I do not believe that it did.

The areas within the investigation referred to by the Opposition and/or Mr Murphy which could possibly be said to demonstrate this "unreasonable harshness" are:

- the conduct of the investigation by the Commission rather than the matter being handled internally within the Department, particularly considering the principles of devolution of investigations to UPA's, the amount of money involved in the alleged fraud and the cost of a Commission investigation;
- the "raid" on Mr Murphy's house; and
- the "trip" to Melbourne.

I will discuss the decision of the Commission to investigate this matter itself in detail under the second term of reference. Suffice it to say for the purposes of the present discussion that I consider this decision of the Commission was reasonably open to it to make in the circumstances and is not one I would criticize. I do not consider it demonstrates any harshness in the investigation.

I have already indicated above to the effect that the obtaining and execution of a search warrant on Mr Murphy's residence was an obvious step that I would have expected any competent investigator to have taken in this investigation. Accordingly the "raid" itself does not demonstrate unreasonable harshness in the investigation. Mr Murphy however seemed to suggest, in his interview with ABC Radio, that the manner in which it was conducted was unnecessarily harsh. He said:

"... the first I knew about it was a dawn raid on the house. Now they, they searched the house. They took my home computer. They went through all our paperwork. They went through all our clothes. They went through the kids' rooms. They took, I think, a large number of floppy discs; a lot of which were the kids' games and it was extremely traumatic for myself and my wife".

The warrant was executed at approximately 6.00 am. Being October, it would have been light. The time itself is not unusual. Many years of experience with police matters have demonstrated to me that early morning is the normal time for police to execute search warrants, presumably before the residents have left for work.

The general atmosphere during the search can be gleaned from two extracts from the tape recordings made during the search.

After the initial formalities and the reading of the search warrant by a female police officer (whom I shall refer to as PO1) to Mr Murphy, the following exchange occurred:

*“**2nd police officer [PO2]:** [PO1] has basically explained to you, as I said earlier on, if there is anything in the house, any documentation which shows that what we are talking about, I mean any forging of any documents that you wish to declare it now, that’s fine - otherwise we are going to search. So the option is yours. Um, we don’t intend to search your child’s room. We don’t intend to do that kind of search, right, but what [PO1] asked you about is an office. That’s what we hope to restrict it to and we are not going through your kitchen cupboards and things, okay.”*

***Mr Murphy [CM]:** Uh huh.*

***PO2:** We are not here to do that kind of search. The opportunity is yours. As [PO1] has warned you, you don’t have to answer any of our questions and I will warn you too, you don’t have to provide us with any of this information freely. So the option is yours.*

***PO1:** So if you wish to direct us to the office, then we can start. Um, what we would ask is that you remain with us at all times okay.*

***PO2:** The purpose of that basically is what we search and, if we do find anything we can actually show you straight away and basically it’s just protection for us as well so we don’t have any allegations that we have done anything which we haven’t done. Do you understand that?*

***CM:** Yes, I understand.*

***PO2:** If you wish to make any telephone calls to any person or any solicitor or whatever...*

***PO1:** However, that will not stop the search being conducted.*

***CM:** (Unintelligible)*

***PO1:** Do you just want to direct us...?*

***CM:** Can I just get a glass of water (unintelligible)?*

***PO1:** Yes. Sure.*

***CM:** Do you want to get [name of child] up?*

***Unknown person, probably Mrs Murphy [MM]:** No, she is right for the moment (unintelligible).*

***PO1:** How old is she?*

***CM:** Four.*

***PO1:** Okay, well we will try our best not to wake her.” [Emphasis added.]*

At the very end of the search, the following exchange occurred:

***“PO1:** Okay. Is there anything else that you wish to say Mr Murphy? Again, you don’t have to if you...”*

***CM:** No, no. Just, um, with any further matters in relation to this, please feel free to ring me, no matter what they may be, and I’m happy to come to you and discuss it. Um.*

***PO1:** Are you happy with the way that the search has been conducted by the Crime and Misconduct Commission officers today?*

CM: Yes, I am.

POI: Have you got any complaints that you wish to make at this stage?

CM: No, I haven't.

POI: Mrs Murphy, is there anything that you wish to say or any complaints that you have?

MM: No."

Listening to the tape recordings, it is clear that the search warrant was executed in a courteous, non-aggressive manner.

Finally, the "trip" to Melbourne does not, in my opinion, demonstrate unreasonable harshness in the way the investigation was carried out. It was unfortunate that the offender, Mr Murphy, chose to compound his original dishonesty by lying to the investigators. This lying necessitated the visit to Melbourne.

Other matters which indicate lack of political interference or bias

In a number of other respects too, the Commission's handling of allegations against Mr Murphy does not support the notion of political interference or political bias. Firstly, it is quite apparent from the running sheet, the status history report and the case management plan that there was no particular urgency attached to this investigation. It does not appear to have been given any sort of priority or dealt with in anything other than the usual manner.

Commission records indicate that all significant decisions effecting the course of the investigation (eg to obtain and execute a search warrant on Mr Murphy's residence, to travel to Melbourne to interview witnesses etc) were made solely by Commission investigators rather than by officers at a higher level. There is nothing to suggest that when those decisions were made, any of the investigators (nor indeed, any other Commission officer) had knowledge of Mr Murphy's political allegiance.

Had the investigation of the allegations against Mr Murphy been motivated by a political agenda on the part of senior Commission officers, one would expect those senior officers to have been provided with regular briefings on the progress of the investigation by the investigators. There is no evidence that the investigators provided such briefings to senior Commission officers. Indeed from the Commission records, this matter presents as a relatively simple, run-of-the-mill investigation.

Lastly, the Commission was not sufficiently interested in Mr Murphy as to itself investigate allegations that he was implicated in the leaking of confidential information obtained from Education Queensland to members of the Opposition. That matter was referred back to Education Queensland to investigate.

I find there was no political interference or political bias in the Commission's handling of allegations against Mr Murphy.

THE APPROPRIATENESS OF THE COMMISSION'S DECISION TO INVESTIGATE THIS MATTER ITSELF RATHER THAN TO REFER THE MATTER TO ANOTHER AGENCY FOR INVESTIGATION

Having received a complaint of allegations which, if proved would amount to official misconduct, Education Queensland had no alternative but to refer the allegations to the Commission, a duty in this regard is imposed upon the Chief Executive Officer by section 38 of the *C&M Act*.

As set out in the factual background at the beginning of this report, the decision to retain the matter within the Commission for investigation was made by the Principal Complaints Officer, after discussing the matter with and receiving the recommendation of the Director, Misconduct Investigations. This decision was confirmed by the Executive Assessment Committee two days later. This process meant that the decision that the Commission should retain the investigation had the concurrence of the Chairman and every senior officer in the misconduct division of the Commission from the Assistant Commissioner, Misconduct down to the Principal Complaints Officer.

Section 34 of the *C&M Act* states Parliament's intention that the Commission apply a number of important principles when performing its misconduct function. In particular, the principle of devolution requires that "*action to prevent and deal with misconduct in a unit of public administration should generally happen within the unit.*" However, that principle is expressly made subject to the public interest principle which states that:

- *The commission has an overriding responsibility to promote public confidence -*
 - *in the integrity of units of public administration and*
 - *if misconduct does happen within a unit of public administration, in the way it is dealt with*
- *the commission should exercise its power to deal with particular cases of misconduct when it is appropriate having primary regard to the following –*
 - *the **capacity** of, and the resources available to, a unit of public administration to effectively deal with the misconduct*
 - *the **nature and seriousness** of the misconduct, particularly if there is reason to believe that misconduct is **prevalent** or systemic within a unit of public administration*
 - *any likely **increase in public confidence** in having the misconduct dealt with by the commission directly. (Emphasis added)*

The Commission, in its response letter of 8 July 2003 to the Parliamentary Committee, addressed this issue in the following way:

The decision to investigate

You would be aware that in recent times the CMC's primary investigatory focus has been on the more serious, sensitive and complex matters. However, the CMC also investigates other allegations which are less serious but appear to be prevalent, such as assaults by police, false claims for reimbursement by public servants, and improper releases of confidential information. It is important that the CMC is seen to be continuing to investigate a number of

these relatively less serious matters, due to the need for effective deterrence. If it were known that the CMC did not investigate such matters because they were perceived to be at the lower end of the range of misconduct, public officers may believe that they could engage in these types of activities with impunity. However, even in these less serious matters special factors would normally exist.

Mr Murphy's case is an example of one of these relatively less serious matters which did warrant investigation by the CMC. The special factors which acted upon the minds of the Misconduct Assessment Committee were:

- The seniority of the officer (AO7), who held a management position in the Finance Section of a major department where large sums of money were dealt with. In this regard the case was similar to another case which had been earlier investigated by the CMC where false travel claims were made by a Crown Prosecutor, a person also in a position of considerable trust.*
- The allegation, albeit in relation to a small amount of money, suggested the calculated and premeditated use of a forged document created by the senior officer in support of the false claim. This took the alleged conduct beyond that normally associated with false claims for remuneration.*

Who was to conduct the investigation?

Apart from the clear value of the deterrence aspect associated with an investigation by the CMC into such a matter there were sound reasons why it was not appropriate to refer the matter to the Department or the QPS. It would have been very difficult for the Department to investigate. It would not have had the capacity to search premises and would therefore have not been able to obtain the evidence of the false receipt on Mr Murphy's home computer. The possibility of enquiries needing to be made outside Queensland also made it inappropriate to refer it back to the Department. While it was a matter which could have been sent to the Queensland Police Service, there was a real possibility that the QPS would not have given it the priority that it was considered the matter warranted. Different factors determine priorities in the QPS. If the CMC walked away from such clear cases of deliberate criminal conduct by a senior officer, simply because the amount in question was small, it would eventually send the message to the public sector that misconduct and fraud of this nature was tolerated.

Cost of the investigation

Much has been made of the cost of the investigation by comparison to the amount of money involved in the fraud. The fact of the matter is that fraud investigations by investigative bodies are not cost recovery exercises. Many investigations cost more than the amount of the fraud, and most cost more than any money recovered from the perpetrator. To determine purely on a cost basis whether to investigate would ignore the importance of deterrence in preventing misconduct of this nature.

All of the factors referred to in the Commission letters were appropriate matters for the Commission to take into account in reaching the decision that it did to retain this investigation itself. I consider that decision was reasonably open to the Commission on the facts of this case. I would go further and say that in my opinion it was the only decision open to the Commission.

There may be minor cases of allegations of conduct which would amount to a criminal offence which could be sent back to a unit of public administration for it to investigate and deal with as a disciplinary matter. This was not such a matter. If the allegations were able to be proved this matter was always going to have to be referred to the DPP for consideration as to whether to proffer a criminal charge. In those circumstances, Education Queensland did not have the capacity to investigate the allegations and the only alternatives were an investigation by the Commission itself or a referral to the Queensland Police Service.

Of the latter possibility, I agree with the Commission's comments that there was a real possibility that the QPS would not have given it the priority that the matter warranted.

I also agree with the Commission's comments with respect to the cost of the investigation. Agreeing, as I do, with the appropriateness of the Commission's decision to investigate the matter itself, the appropriateness of the expenditure on the investigation automatically follows.

I find that the Commission's decision to investigate this matter itself rather than to refer the matter to another agency for investigation was appropriate in the all the circumstances.

CONCLUSION

- *Whether there was any political interference or political bias in the Commission's handling of allegations against Mr Chris Murphy; and*

I find there was no political interference or political bias in the Commission's handling of allegations against Mr Murphy.

- *The appropriateness of the Commission's decision to investigate this matter itself rather than to refer the matter to another agency for investigation.*

I find that the Commission's decision to investigate this matter itself rather than to refer the matter to another agency for investigation was appropriate in the all the circumstances.