



# PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

## REPORT ON ACTIVITIES

### Report No. 63

#### THE COMMITTEE

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

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

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

#### COMMITTEE MEMBERSHIP

Mr Geoff Wilson MP [Chairman]	<i>Member for Ferny Grove</i>
Mr Howard Hobbs MP [Deputy Chairman]	<i>Member for Warrego</i>
Ms Desley Boyle MP	<i>Member for Cairns</i>
Mr Stuart Copeland MP	<i>Member for Cunningham</i>
Mr Bill Flynn MP	<i>Member for Lockyer</i>
Mr Andrew McNamara MP	<i>Member for Hervey Bay</i>
Mr Kerry Shine MP	<i>Member for Toowoomba North</i>

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

## 1. INTRODUCTION

The primary function of the Parliamentary Crime and Misconduct Committee (PCMC or Committee) is to monitor the performance of the Crime and Misconduct Commission (CMC or Commission). The Committee is the principal vehicle through which the Commission is accountable to the Parliament and in turn, the people of Queensland. It is therefore important that the Committee report on its oversight function wherever possible.

This term the Committee has used the following mechanisms to inform the public regarding its oversight activities:

- tabling annual reports in the Parliament, which have included a summary of its more important activities;
- on a number of occasions tabling in the Parliament reports on individual matters that have been considered by the Committee and by the Parliamentary Crime and Misconduct Commissioner; and
- conducting the Three Year Review of the CMC. As part of this review (which is still in progress), the Committee has called for and received submissions from the public and has held public hearings. The review will culminate in the tabling of a comprehensive report examining the Commission and its accountability.

All reports tabled by the Committee are available on its web-site at:

<http://www.parliament.qld.gov.au/Committees/>

Given the nature of its functions, the Committee must consider a large range of issues that arise and affect the CMC. It is neither practical nor desirable – for reasons both of confidentiality and volume – for the Committee to report publicly and comprehensively in relation to every one or even the majority of such issues.

However, the Committee regards it as appropriate that it inform the Parliament, and in turn the people of Queensland, at this time regarding some of the more significant issues that have been considered by the Committee since its appointment in May 2001.

## 2. THE COMMITTEE'S RESPONSIBILITIES

With the introduction of the *Crime and Misconduct Act 2001* (the Act) the former Criminal Justice Commission (CJC) and the former Queensland Crime Commission (QCC) were merged on 1 January 2002 into a new body known as the Crime and Misconduct Commission.

As the Parliamentary Committee having oversight of the former CJC, the then Parliamentary Criminal Justice Committee (PCJC) underwent a name and jurisdictional change as a result of the merger. The PCMC is established under s. 291 of the Act.

The main difference in the Committee's responsibilities is that the body which it oversees now has jurisdiction in relation to major crime including organised crime and paedophilia.

Under the Act the Committee has the following functions:

- to monitor and review the performance of the CMC's functions;
- to report to the Legislative Assembly where appropriate;
- to examine reports of the CMC;
- to participate in the appointment of Commissioners;
- to conduct a review of the activities of the CMC at the end of the Committee's term (the "Three Year Review"); and
- to issue guidelines and give directions to the Commission where appropriate.

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

To enhance the Committee's capacity to effectively monitor and review the CJC, the position of the Parliamentary Criminal Justice Commissioner was created in 1997. Under the Act the position was retitled the Parliamentary Crime and Misconduct Commissioner.

The Parliamentary Commissioner may only undertake a function at the request of the

Committee if a bi-partisan majority of the Committee agrees.

The Committee may request the Parliamentary Commissioner to:

- investigate complaints against the CMC or its officers;
- investigate allegations of possible unauthorised disclosure of confidential information or material;
- conduct audits of the CMC's records and operational files;
- verify the CMC's reasons for withholding information from the Committee;
- verify the accuracy and completeness of reports given to the Committee by the CMC;
- assist the Committee with the preparation of its three year review; and
- otherwise assist the Committee.

### **3. AUDITS BY THE PARLIAMENTARY COMMISSIONER**

Under section 314(2)(a) of the Act one of the roles of the Parliamentary Commissioner is to conduct, at the request of the Committee, an audit of the records of the Commission.

The purposes of such an audit are set out in the Act. The Parliamentary Crime and Misconduct Commissioner has, at the request of the Committee, carried out such an audit and reported to the Committee. The Parliamentary Commissioner was asked to decide the following:

- (i) whether the Commission has exercised [its statutory] power in an appropriate way;*
- (ii) whether matters under investigation are appropriate for investigation by the entity investigating or are more appropriately the responsibility of another entity;*
- (iii) whether registers are up to date and complete and all required documentation is on the file and correctly noted on the registers;*
- (iv) whether required authorisations for the exercise of power have been obtained; and*

- (v) whether any policy or procedural guidelines set by the Commission have been strictly complied with.*

The Parliamentary Commissioner reported in two stages, firstly, in relation to records of the former CJC for the year 2001 (that is, prior to the merger with the QCC on 1 January 2002), and secondly, in relation to records for the activities of the CMC for the year to 30 June 2003.

In his report on stage one, the Parliamentary Commissioner, whilst finding some non-compliance with statutory requirements in minor respects and making some recommendations for improvement of Commission processes, reported in positive terms.

The Parliamentary Commissioner also reported cooperation from Commission officers in the audit process. It is pleasing that the Commission has provided the Parliamentary Commissioner with full access to all its policy and procedures manuals. The Parliamentary Commissioner described these manuals as very detailed and as constituting “*a good set of systems and procedures for ensuring that the Commission's role is carried out in an appropriate way*”.

The Parliamentary Commissioner observed that there is in the Commission a “good culture” of acting appropriately and in compliance with the systems in place. The Parliamentary Commissioner also commented favourably on *COMPASS*, an electronic case management system developed in-house by the Commission.

The Committee provided a copy of the Parliamentary Commissioner's report to the Commission for its response and discussed the report with the Commissioners at a joint meeting.

The Commission responded positively to the recommendations made by the Parliamentary Commissioner in his report and agreed to implement changes to give full effect to those recommendations. The Committee is confident that these changes will improve the Commission's already very good performance in this area.

The report on the second stage of the Parliamentary Commissioner's audit also was in favourable terms, with the Parliamentary Commissioner finding no instances where the Commission had exercised its statutory power in

an inappropriate way. It was also pleasing to see that the Parliamentary Commissioner reported that generally the time taken by the Commission to complete its investigations had “improved considerably”.

The Parliamentary Commissioner expressed some reservations regarding relatively minor matters, and made some recommendations for improvement.

The Commission has responded positively to those recommendations.

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## **4. INDIVIDUAL MATTERS**

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### **4.1. REPORTS FROM THE PARLIAMENTARY CRIME AND MISCONDUCT COMMISSIONER**

The Committee has considered tabling a number of reports from the Parliamentary Crime and Misconduct Commissioner in relation to matters referred to him by the Committee. When considering whether or not to table such reports, the Committee has to carefully weigh up a number of competing considerations.

There is a clear public interest in the public being informed as fully as possible of the activities of the Parliamentary Commissioner and of the Committee. Equally, it is in the public interest that the performance of the CMC, which is funded by the public and which has been given a wide range of coercive and sometimes highly intrusive powers, is open to public scrutiny.

At the same time, much of the material considered by the Commission, and in turn by the Committee and the Parliamentary Commissioner, is highly confidential, and needs to remain that way so as not to jeopardise the effectiveness of Commission investigations and operations.

Sometimes the interests of third parties are also involved, and such interests might be unfairly affected if a report were to be publicly tabled. The Committee is thus often faced with the difficult task of balancing competing public interests - and sometimes private interests.

Because it has not been appropriate to table a number of reports from the Parliamentary Commissioner, or to table full details of other matters considered by the Committee, the

Committee has looked to other means of reporting on those of its activities which are not able to be fully publicised.

Sometimes where a matter of complaint against the Commission raised by an individual has been referred to the Parliamentary Commissioner, the Committee has found it not necessary to table a report, but has reported back to the complainant summarising the findings of the Parliamentary Commissioner and, where relevant, any steps taken by the Commission to improve its procedures or otherwise address any areas of concern.

### **4.2. COMPLAINT MATTERS**

Considering complaints from the public about the Commission and its officers assists the Committee in its oversight role by providing an invaluable insight into the Commission’s operations and activities. The Committee examines complaints to assess whether the Commission or any of its officers has acted inappropriately.

The Committee has considered a number of complaints against the Commission. In the vast majority of cases, the complaints have been found to be unsubstantiated. However, on occasion the Committee has identified procedural or systemic deficiencies in the way the Commission has handled a particular matter. Some of those are detailed below, together with any action taken by the Commission in response.

#### ***4.2.1. Apology to a complainant***

One complainant (an employee of the Queensland Police Service) had raised, late in the term of our predecessor Committee, concerns regarding the wording of a letter the then CJC had sent to a third party. Consideration of this complaint was continued by the present Committee, which ultimately found the complaint substantiated in part. Whilst there was no evidence of wrongdoing found on the part of the complainant to the Committee, the CJC’s letter was worded in a manner which implied he had engaged in conduct which was appropriate for managerial correction by his employer. The Committee suggested to the Commission that it apologise to the complainant. The Commission accepted this suggestion and

wrote a letter of apology to the person concerned and a letter to the third party clarifying the true position.

#### **4.2.2. Recording of telephone calls**

In its Three Year Review, the 4<sup>th</sup> PCJC (this Committee's immediate predecessor) expressed concern at aspects of the practice of the then CJC in taping telephone calls between Commission officers and complainants or potential witnesses. That Committee and the present Committee also considered a complaint which concerned officers of the Commission taping telephone conversations with witnesses or complainants without their knowledge.

As a result of correspondence between the Committee and the Commission, the Commission reviewed its practices, and developed formal policies about the circumstances in which it is appropriate to tape telephone calls. The principal rule in the new policies was that, other than in limited circumstances, a Commission officer is required to advise a complainant or witness when a telephone call is being recorded. The Committee considered the policy and made some suggestions to improve the policy. The Commission incorporated the Committee's suggestions into the final policy.

#### **4.2.3. Wrongful naming of a police officer**

In a media release issued in 2001, the then CJC had inadvertently wrongly named a police officer facing certain charges, in circumstances where the naming of the officer was prohibited by law (specifically, the *Criminal Law (Sexual Offences) Act 1978*). Upon realising its error, the Commission took rectification action. The Commission issued a correction notice, notified the Attorney General, and also wrote to the officer's solicitors advising that the naming was an oversight and "a regrettable mistake".

The Commission also immediately reported the matter to the Committee, and subsequently (within a week) advised the Committee of systems which would be implemented to limit the possibility that such an error might happen again.

The Committee considered the matter and made suggestions to the Commission for further changes to its proposed systems. The

Commission accepted those suggestions. The Commission subsequently audited compliance with and assessed the new systems to ensure that the new procedures were working. The audit results were provided to and considered by the Committee.

#### **4.2.4. Record keeping issues**

In most cases considered by the Committee, the substantial allegation against the Commission is not found to be established. However, the Committee, and on occasion the Parliamentary Commissioner (and his predecessor) have made recommendations for improvement in documentation and or internal processes at the Commission. In some cases, the reasons for decisions taken by the Commissioners or by Commission officers had not been adequately documented. This can result in matters being difficult to follow when being considered subsequently. Also, the oversight task of both the Committee and the Parliamentary Commissioner can be hampered if the reasons for particular decisions have not been documented or adequately documented and after time cannot be recalled.

The Commission has reacted positively to suggestions made both by the Committee and by the Parliamentary Commissioner for improved record keeping at the Commission. The Commission has resolved to develop Investigation Standards to include "*a commitment to effective case management and records management procedures*".

#### **4.2.5. Improper filming by Commission surveillance officers**

In late 2001, allegations came to light that an officer of the Commission, conducting surveillance activities, had videotaped members of the public (who were not targets of any operation), on private property. Another officer had taken still photographs of members of the public in recreational areas. The matter was reported to the Committee by the Commission Chairperson as required by section 329 of the Act.

The Committee was deeply concerned by the allegations. The Committee considered the

allegations and directed they be investigated by the Commission. The investigation found the allegations to be substantiated. Managerial guidance was administered by way of counselling to officers involved and the Commission put in place a number of steps to prevent a recurrence of this sort of behaviour. Following subsequent discussions with the Commission, the Committee determined that it was satisfied with the new procedures.

#### ***4.2.6. Incomplete reporting***

When the Committee receives a complaint from the public regarding the Commission, the Commission is normally asked to provide a report to the Committee in relation to the matter. In one matter, after receiving such a report, the Committee referred the complaint to the then Parliamentary Criminal Justice Commissioner for investigation and report to the Committee.

In an interim report to the Committee, the Parliamentary Commissioner, who had examined the Commission's files in relation to the matter, advised the Committee that it appeared that the report did not contain any reference to certain legal advice given to the Commission which was relevant to the Committee's consideration of the complaint. The Committee raised a number of issues with the Commission regarding the adequacy of its reporting to the Committee in the matter.

#### ***4.2.7. Breaches of condition of a warrant for a listening device***

In one instance, it was a term of a listening device warrant issued to the Commission by the Supreme Court that a particular device be used only when the officers monitoring the device had reasonable cause to believe that the target of the operation was in the relevant premises. However, the device was used to monitor and record conversations at times when it was not possible for the monitoring officers to have such a belief. The monitoring officers were all mainstream Queensland Police Service officers. (They were officers of the Commission only by virtue of an authorisation under section 272(2) of the Act.)

The matter also raised questions regarding the adequacy of briefings given to those officers by

Commission officers, and the adequacy of checking by Commission officers for compliance after the event. The Committee directed that the issue of any breaches of the warrant be investigated by the Commission, and requested the Parliamentary Commissioner to oversee that investigation.

One outcome of the investigation was the recommendation of managerial guidance by way of counselling for a number of QPS and Commission officers. Importantly, the Commission had also moved quickly to implement a wide range of procedural and policy changes to avoid a repetition of the breaches in future operations. Those policies and procedures were scrutinised by the Committee and the Parliamentary Commissioner to ensure their adequacy.

#### ***4.2.8. Further investigative action by CMC following complaint to the Committee.***

In one particular complaint matter (first raised late in the term of our predecessor Committee and continued by the present Committee), following receipt of material from the complainant, a report regarding the matter was requested from the Commission. With this request the Committee forwarded to the Commission a copy of the material provided by the complainant. Following receipt of the request and this material, the Commission reviewed its initial determination and undertook further enquiries regarding the complainant's allegations (which related to actions of certain officers of the Queensland Police Service.)

In the result, evidence was referred by the Commission to the Office of the Director of Public Prosecutions. Subsequently, disciplinary action was recommended against the officers.

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## **5. ANNUAL INTELLIGENCE REVIEW**

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Under section 320 of the Act the Parliamentary Commissioner is required to conduct an annual review of the intelligence data of the Commission and of the Queensland Police Service. The section states the purpose of the review as being to consider whether:

- a) *intelligence data held by each agency is appropriately held by the agency having regard to the agency's functions;*
- b) *there is any unnecessary duplication of intelligence data;*
- c) *the agencies are working cooperatively as partners to achieve optimal use of –*
  - (i) *available intelligence data; and*
  - (ii) *the resources used to collect, collate or record the data; and*
- d) *an agency is placing inappropriate restrictions on access to intelligence data by the other agency.*

The Act requires the Parliamentary Commissioner to provide a report on his review to the Commissioner of Police and to the CMC Chairperson, as well as to the Committee.

In his reports on his intelligence reviews, the Parliamentary Commissioner has reported favourably. He reported having received full co-operation from both the CMC and the Queensland Police Service.

The Parliamentary Commissioner has found that:

- All items of data reviewed at the Commission were appropriately held by the Commission having regard to its functions.
- There is no evidence of unnecessary duplication of intelligence data held by the CMC and the Queensland Police Service. The report observes that as both agencies use the Australian Criminal Intelligence Database ('ACID'), there are limited circumstances in which the possibility of the agencies duplicating intelligence holdings can arise. Further, there are mechanisms in place aimed at reducing this duplication.
- Since both the Commission and the Police Service store their criminal intelligence on ACID, it may be said that they are working cooperatively as partners to achieve optimal use of the available data and of the resources used to record the data. The Parliamentary Commissioner was impressed at the high levels of cooperation between the agencies.
- Neither agency is placing inappropriate restrictions on access to intelligence data by the other agency.

The Parliamentary Commissioner made some minor recommendations for changes in procedures and the CMC has responded positively to those suggestions.

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## 6. OTHER MATTERS

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In early 2003 the Committee made a submission to the Standing Committee of Attorneys-General and Australasian Police Ministers' Joint Working Group on National Investigation Powers. The submission drew attention to the effective and valuable role the Public Interest Monitor plays in the Queensland system.

[The Leaders' Summit on Terrorism and Multi-Jurisdictional Crime on 5 April 2002 agreed to introduce model laws for all jurisdictions and mutual recognition for cross-border investigations covering controlled operations, assumed identities, electronic surveillance devices and witness anonymity. The purpose of the laws is to facilitate criminal investigations across State and Territory borders and overcome the need to obtain separate authorities in each jurisdiction. At present this can result in delays, loss of evidence and other impediments to effective investigation.

The working group is yet to publish its final draft legislative scheme.]