



**LEGISLATIVE ASSEMBLY OF QUEENSLAND**

**PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE**

**A report on an examination by the  
Parliamentary Crime and Misconduct Commissioner  
of the Crime and Misconduct Commission's investigation into an offer made by  
the Premier of Queensland to the Palm Island Aboriginal Council**

**Report No. 67**

**May 2005**

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## **CHAIRMAN'S FOREWORD**

On 24 March 2005 the Crime and Misconduct Commission published its report titled *"Palm Island Bribery Allegation Report of a CMC investigation into an offer made by the Premier of Queensland to the Palm Island Aboriginal Council"*.

On the same day the Leader of the Opposition, Mr Lawrence Springborg MP, wrote to the Committee, raising a number of concerns regarding the actions of the CMC in its investigation of the matter.

As an initial step, the Committee sought from the CMC a response to the matters raised by Mr Springborg.

Following consideration of Mr Springborg's letter and the response received from the CMC, the Committee resolved on 21 April 2005 to refer the matter to the Parliamentary Crime and Misconduct Commissioner for examination and report to the Committee. The full terms of reference, together with the concerns raised by the Leader of the Opposition, are set out in the report of the Parliamentary Commissioner, Mr Alan MacSporran.

The Parliamentary Commissioner has delivered his report to the Committee. In summary, Mr MacSporran has found that he is satisfied, having reviewed all materials of relevance to the investigation and carefully examined the concerns raised by the Leader of the Opposition, that the actions of the CMC were appropriate in all the circumstances.

**Geoff Wilson MP**  
Chairman

25 May 2005

## **1. INTRODUCTION**

The Committee has resolved to table the report of the Parliamentary Crime and Misconduct Commissioner (Parliamentary Commissioner) in the Legislative Assembly. It is the practice of the Committee when tabling such a report to provide some background detail regarding the role and powers of both the Committee and the Parliamentary Commissioner.

The Parliamentary Crime and Misconduct Committee (PCMC or the Committee) monitors and reviews the performance of the functions of the CMC. 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 Commissioner. Mr Alan MacSporran was appointed as the Parliamentary Commissioner in December 2004. Mr MacSporran'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 carrying out the following, 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.

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

## **2. BACKGROUND**

On 24 March 2005 the Crime and Misconduct Commission published its report titled *“Palm Island Bribery Allegation Report of a CMC investigation into an offer made by the Premier of Queensland to the Palm Island Aboriginal Council”*.

On the same day the Leader of the Opposition, Mr Lawrence Springborg MP, wrote to the Committee, raising a number of concerns regarding the actions of the CMC in its investigation of the matter.

As an initial step, the Committee sought from the CMC a response to the matters raised by Mr Springborg.

Following consideration of Mr Springborg's letter and the response received from the CMC, the Committee resolved on 21 April 2005 to refer the matter to the Parliamentary Crime and Misconduct Commissioner for examination and report to the Committee. The full terms of reference, together with the concerns raised by the Leader of the Opposition, are set out in the report of the Parliamentary Commissioner, Mr Alan MacSporran. Mr MacSporran is a barrister of longstanding with considerable experience, particularly at the criminal bar.

## **3. THE REPORT OF THE PARLIAMENTARY COMMISSIONER**

The Parliamentary Commissioner has delivered his report to the Committee. That report, which is not a report of the Committee, speaks for itself.

In summary the Parliamentary Commissioner has found that the actions of the CMC were appropriate in all the circumstances.

## **APPENDIX A**

**REPORT ON THE EXAMINATION  
OF THE  
CRIME AND MISCONDUCT COMMISSION'S  
INVESTIGATION INTO AN OFFER MADE BY  
THE PREMIER OF QUEENSLAND  
TO THE PALM ISLAND ABORIGINAL COUNCIL**



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

**MAY 2005**

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## INTRODUCTION

It is useful to set out in full the basis upon which the CMC ultimately reported. I have taken this version of the facts from section 1 of the CMC report.<sup>1</sup> Those facts are set out as follows:

*On 19<sup>th</sup> November 2004 an Aboriginal man, Mulrunji Doomadgee, died in police custody on Palm Island. The death caused unrest on the island, culminating in a riot on 26 November 2004 during which the Palm Island police station and courthouse and a police residence were burnt down.*

*The Queensland Police Service (QPS) later arrested a number of Indigenous Palm Island residents and charged them with offences relating to the riot. The CMC received several complaints concerning the police response.*

*On 28 November 2004, the Honourable Peter Beattie MP, Premier and Minister for Trade, travelled to Palm Island to offer the Palm Island Aboriginal Council a five-point plan to improve life for the people of Palm Island. He also flagged his intention to return to the island on 17 February 2005 to meet with the Doomadgee family and to open the newly constructed Community Youth Centre to be run by the Police Citizens Youth Club (PCYC).*

*It was against this background that the Premier returned to Palm Island on 17 February 2005, despite having been told by the council in the interim that he was not welcome. According to the council, the community was still grieving over Mr Doomadgee's death and, furthermore, the coronial inquest was scheduled to commence on 28 February 2005 in the Community Youth Centre. The council indicated that it did not support the opening of the centre at that time, and would not attend the opening ceremony.*

*The Premier resolved to proceed with the opening of the centre. Before doing so he attended two meetings with the council. At the first meeting he allegedly offered to provide government funds to relieve the council of an \$800,000 debt, but only on the condition that council members attend the opening of the centre that day. There is considerable dispute as to the terms of the offer the Premier made at the meeting. Although it has been widely reported that the meeting was tape-recorded, no such recording exists.*

*Whatever the terms of the offer, it is clear that some members of the council were offended by what they described as attempted blackmail. The discussions between the Premier and the council quickly gained widespread notoriety.*

*By letter dated 23 February 2005 the Premier informed the CMC that it had been suggested to him that some of the councillors who were present at the meeting had concluded that his remarks amounted to an inducement linked to the potential relief of a council debt of \$800,000. He went on to write 'I strongly and unequivocally deny making any inducement of any kind and reject any such allegations'. He concluded that it would be appropriate and desirable for the CMC to review this issue 'as a matter of urgency'.*

*Also on 23 February 2005 the Premier made a ministerial statement in parliament; considerable debate followed.*

*On 24 February 2005 the Courier-Mail carried a front-page report entitled 'Beattie battles bribe claim by councillors' in which it was reported that the Premier allegedly offered to pay off an \$800,000 debt using departmental funds in exchange for a public show of support by the Palm Island Council.*

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<sup>1</sup> CMC Report March 2005 page 4.

*That day the Premier again wrote to the CMC enclosing certain documents and a copy of the ministerial statement he had made in parliament the day before. He also stated that he 'rejected the proposition that I improperly made inducements to the Palm Island Council during my meeting with them on 17 February 2005'. He added, 'In any event, a payment of the sort, the subject of the allegations, is not mine to approve under the Financial Administration and Audit Act 1977; it is that of the director-general of my department, who is the accountable officer under that Act. Furthermore, a payment would be referred to the Cabinet Budget Review Committee for prior approval.'*

*Upon consideration of the available information, the CMC decided to conduct urgent inquiries into the matter.*

Interviews with all persons present at the meeting were commenced on 24 February and concluded on 1 March. In addition to the interviews, the CMC took possession of notes, made by several of these witnesses, of conversations which had taken place at the meeting.

The CMC provided copies of the report on the "*Palm Island Bribery Allegation*" to concerned parties and published the report on its website on 24 March 2005.

By letter to the Parliamentary Crime and Misconduct Committee dated 24 March 2005, the Leader of the Opposition, Mr Lawrence Springborg MP, raised a number of concerns regarding the actions of the CMC in its investigation of this matter.

## TERMS OF REFERENCE

At a meeting on 21 April 2005, the Parliamentary Crime and Misconduct Committee resolved that:

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

1. *examine the report of the Crime and Misconduct Commission investigation into an offer made by the Premier of Queensland to the Palm Island Aboriginal Council, having regard to:*
  - (a) the concerns raised by the Leader of the Opposition in his letter dated 24 March 2005*
  - (b) the response by the Crime and Misconduct Commission in its letter dated 5 April 2005; and*
2. *report to the Committee, advising whether, in respect of the concerns raised by the Leader of the Opposition, the actions of the Commission were appropriate in all the circumstances.*

To assist in my consideration of the matter the Committee provided the following materials:

- the CMC's public report in the matter (which includes the opinion of Mr Gotterson QC);
- the opinion from the Solicitor-General, Mr Walter Sofronoff QC;
- the opinion from Ms Elizabeth Fullerton SC;
- the letter from the Leader of the Opposition, Mr Lawrence Springborg MP, dated 24 March 2005; and
- a letter from the CMC to the Committee dated 5 April 2005.

The Committee asked that I finalise this matter and report as a matter of high priority.

## RESULTS OF INVESTIGATION

### The CMC's Investigation

Shortly after the commencement of inquiries, Mr Gotterson QC was briefed by the CMC to advise whether the conduct alleged against the Premier gave rise to a reasonable suspicion of official misconduct. If it did, Mr Gotterson QC was asked to advise on three specific issues, namely — the nature of the investigation to be conducted by the CMC; whether such an investigation should include a public hearing; and if he was of the view that a public hearing should be held, the terms of reference for such a hearing.

In his advice of 7 March 2005, Mr Gotterson QC considered that the conduct alleged against the Premier in the allegations referred to the Commission did raise a reasonable suspicion of official misconduct. He went on to advise that, in light of the different versions of events given by the various witnesses who were present at the meetings, the investigation should be conducted from that point forward by the usual forensic process of examination and cross-examination at an investigative hearing. His view was that such a hearing should be conducted in public and he set out the terms of reference.

On 14 March 2005 the CMC was provided with a copy of an advice by the Solicitor-General, Mr Sofronoff QC. This advice focused on a slightly different section of the Criminal Code (section 87(1)(b) as opposed to section 87(1)(a) of the Gotterson advice). The Solicitor-General's advice was clear in expressing the view that there was no "official misconduct" in relation to the conduct of the Premier.

The advice stated:

*I am unable to see that the offer made by the Premier was made for a purpose which would render his conduct 'corrupt'. The evident purpose was to persuade the council, by the financial inducement constituted by forgiveness of the debt, to change its policy of opposition into one of cooperation. That there might be an incidental benefit gained by such an objective is entirely beside the point.*

*The offering of an inducement of that kind in such circumstances is, in my opinion, far from the notions which the Courts have found are inherent in the term "corruption" or "corruptly". Forgiveness of the debt was not only desired by the Council; it had been suggested by the Council itself as part of a set of quid pro quos in its action plan of 18 February 2005. The Premier's proposal was not different in its essential character: an offer to exercise an aspect of State power in exchange for an exercise of Local Government power.<sup>2</sup>*

The CMC also had the advice of Ms Fullerton SC of 22 February 2005. That advice relevantly contained the following:

*"11. I am firmly of the view that the facts, as I understand them, do not give rise to any breach of s.87(1)(b). I am not satisfied that the Premier's offer or promise was made such as to render that offer a crime as I am not satisfied that the Council (or a quorum of the same in attendance at the meeting) was "a person employed in the public service, a person*

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<sup>2</sup> Advice of Mr Sofronoff QC of 24 February 2005 page 6.

being the holder of any public office, or any other person". Even if it be the fact that the council as constituted is "a person" under s.32D of the Interpretation Act 1955 because it is constituted as "a Corporation" under its founding Act, I am not satisfied that the offer made to Council (namely to join with the Premier in walking to the centre and participating in the opening ceremony) could be fairly interpreted as an offer made to Council acting in discharge of its duties or functions since I do not understand that the Council had any official responsibilities or duties in respect of the management, administration or staffing of the centre or any responsibilities in respect of operations of the Centre generally.

12. The same issues do not arise where a breach of s.87(1)(a) is considered. For that section to be breached it is sufficient that the Premier, as the holder of public office and charged with the performance of his duties in that office, corruptly asked for a benefit for himself (or another person) on account of the discharge of his duties as Premier in officially opening the Centre.

13. I am not in doubt that the Premier's offer to waive the debt in exchange for Council's participation in the opening ceremony was itself a corrupt request. The only question that remains is whether or not on the facts there is an identifiable benefit of a relevant kind sought in exchange for the waiving of the debt. I note that the annotations to the Act refer to R v Smith [1993] 1 QR 541 at 560 where it was held "property or benefit of any kind" should be construed by reference to the ordinary meaning given to each of those terms that neither is a specification of the class into which the other needs to fall and neither limits the other. The "benefit" in that case was not read as limited to a proprietary benefit and included the (benefit) of the provision of sexual services by a prostitute without payment.

14. It is clear from a fair reading of what the Premier said to the Council in the meeting, and in the wider political context in which his visit to the Island occurred, that he wanted Council to be associated with the opening of the Centre to either avoid his political embarrassment in having no community or Council support for his publicly declared intention to open the centre that day or, conversely, to ensure Council attended so as to give the appearance of a resolution of political tensions between the community and himself in his capacity as Premier of the State of Queensland, again to his political advantage.<sup>3</sup>

The CMC report details the process of analysis of the evidence and the applicable law before ultimately coming to the findings expressed. A summary of those findings is contained in the introductory section of the report as follows:

*The evidence, at its worst for the Premier, discloses that he offered to relieve the council of a significant and crippling debt — a debt in effect born by the Palm Island Aboriginal Community — in exchange for their appearing with him at the opening of a community youth centre.*

*In the CMC's view, for the conduct to be corrupt it must go beyond the limits imposed by the criminal law on the extent to which politicians may, in our democratic system, seek to secure influence, to strike compromise and to gain advantage for themselves and others. The Premier's conduct did not do so. To determine otherwise would be to, as Finn J wrote, 'run the risk of demanding standards of our elected officials which are beyond their reach and which also may be prejudicial to the very public purposes we ask them to serve for our benefit'.*

*Hence, the CMC has come to the conclusion that the conduct in question was not corrupt and therefore the Premier's conduct could not amount to official misconduct.<sup>4</sup>*

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<sup>3</sup> Advice of Ms Fullerton SC pages 4 – 6 inclusive.

<sup>4</sup> CMC Report Summary and Major Findings page 2

### **The concerns raised by the Leader of the Opposition**

The concerns raised by the Leader of the Opposition, Mr Springborg MP, are set out at pages 2 and 3 of his letter of 24 March 2005 as follows:

*The decision of the CMC on this matter is open to strong adverse criticism on the following grounds.*

- 1. It rejects the specific advice of respected independent counsel employed by the Crime and Misconduct Commission to provide it with advice which specifically finds that a real potential exists that official misconduct or criminal activity has taken place.*
- 2. The decision ignores issues surrounding the alleged tape-recording of meeting from which the bribery allegation arose.*
- 3. The decision ignores issues arising from the recollection of participants and variations in those recollections as outlined by the Commission itself from interviews that it conducted. By way of example, the CMC itself did not further explore the matter with the Chair of the Palm Island Aboriginal Council. (See page 20).*
- 4. The CMC has in considering the matter confined itself purely to reports in the Courier-Mail, the accuracy of which has not been subject to any process of independent testing.*

### **The appropriateness of the actions of the Commission in light of all of the circumstances referred to above**

It is convenient to approach the issues of concern raised by the Leader of the Opposition in reverse order.

Dealing with the fourth concern, the CMC opted to analyse the materials on the basis of the worse case scenario for the Premier in terms of what the evidence revealed of his remarks and the context in which they were made. This was done only after the CMC had interviewed all witnesses who had been present at the meeting (including Mr Boe) and confirmed that the version of events as reported in The Courier-Mail was consistent with that referred to by some of the witnesses and confirmed by Mr Boe's own recollection as recorded in his notes. It was only then that the Commission accepted, for the purposes of its final analysis, the accuracy of the report which had appeared in The Courier-Mail on 24 February 2005. This in turn made it unnecessary for the CMC to resolve the conflicts in the versions given by the various witnesses.

Upon taking that view of the material it was unnecessary to hold an investigative hearing to determine which version of events most accurately reflected the words used by the Premier at the meeting. The entire investigation proceeded on the basis that the Premier had said the words attributed to him in The Courier-Mail article mentioned earlier. There was therefore no need for any "independent testing" of such a version.

In respect of the third concern, it is clear as mentioned above, that the investigation proceeded on the basis of the words contained within The Courier-Mail of 24 February 2005. On this basis it was unnecessary for the CMC to test the reliability of witnesses in a hearing. Furthermore it is clear from the material that the CMC pursued the matter as far as they legitimately could with the Chair of the Palm Island Aboriginal Council. The Chair refused to answer further questions at some point during the interview with CMC staff. There was no point in pursuing that issue any further in light of the attitude expressed by the Chair in her interview.

The second concern expressed by the Leader of the Opposition is that the decision ignores issues surrounding the alleged tape-recording of the meeting from which the bribery allegation arose.

There was a detailed assessment of the use and provenance of a tape-recording thought to have been made during the course of the relevant meetings. The report includes the following:

*The cassette tape provided to the CMC by Mr Boe was sent to the QPS Electronic Recording Section (ERS) for analysis. The ERS opined that the cassette tape was a 'virgin' tape; that is, there was no evidence of any recording on it. Furthermore, there was no evidence of any tampering with the tape.*

*The CMC obtained the tape-recorder used by Mr Davies and it also was sent to the ERS for testing. The results of that testing are that the tape-recorder was in perfect working order. It was also considered that, if the volume control were turned down, it was possible for play mode to be mistaken for record mode, with the only visual difference being that the record button would not physically be latched in.*

*The CMC has conducted an exhaustive investigation into whether or not the meeting was successfully tape-recorded, but the evidence is such that no conclusion can be confidently drawn. Suffice it to say that the cassette tape said to have been used to record the meeting is blank, and no-one to whom the CMC has spoken admitted to hearing a tape-recording of the first meeting between the Premier and the council on 17 February 2005.<sup>5</sup>*

On my behalf my Principal Legal Officer has reviewed files held by the CMC which reveal that on 28 February 2005 the tape was lodged at the QPS Electronic Recording Section. It was requested that the ERS examine the tape to establish whether any recording on the tape had been interfered with in any manner. The ERS section reported on its examination and analysis on 3 March 2005. That report indicates that the tape was subjected to physical, aural, waveform, comparative and magnetic analysis. The view of the expert was that there was no evidence of recording found throughout sides A or B of the tape. In summary the expert was very clear in finding that the tape contained no recorded sound at all.

I turn then to the first matter of concern raised by the Leader of the Opposition namely that the decision rejects the specific advice of respected independent counsel employed by the CMC to provide it with advice which advice specifically finds that a real potential exists that official misconduct or criminal activity has taken place.

This requires some further analysis of the materials and the approach taken by the CMC.

The starting point is a consideration of the advice provided by Mr Gotterson QC on 7 March 2005. Importantly, although the advice ultimately concluded that there arose from the conduct alleged against the Premier, a reasonable suspicion of official misconduct on his part, that opinion was heavily qualified. Relevantly, the advice contained the following:

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<sup>5</sup> CMC Report page 13

*Guided by the observations of Willes J., I understand corruptly in the context of s.87(1)(a) to mean purposely, intending that the personal benefit sought be provided on account of what is to be done by the official in that capacity.*

*A perplexing aspect of the matter is that by a combination of the very broad definition of benefit and this meaning of corruptly, s.87(1)(a) is capable of applying to things that many would regard as part of practical politics in Australia, and not corruption. Specifically, this is so where, as here, the benefit sought is political in nature though also of personal advantage, but not pecuniary or proprietary. A comparison may be made with Greiner where the conduct found to have been engaged in by Mr Greiner was described by two judges as not corrupt in any ordinary sense of the word, although it may have satisfied a statutory definition of “corrupt conduct”: see per Mahoney JA at p.150, Priestly JA at p.180.*

*It is very difficult to draw the line. I am inclined to think that, technically, it would be open to a tribunal of fact to find that what was sought here, was sought corruptly. But it is a rather weak case and one which a tribunal of fact might very well reject.<sup>6</sup>*

The advice had exhaustively considered the two critical issues:

- whether the conduct could legitimately be described as corrupt; and
- whether the benefit (the presence of the Councillors at the opening of the Centre, providing the Premier with a positive media image and avoidance of political embarrassment) could be characterized as coming within the terms of “*property or benefit of any kind*” within the terms of section 87(1)(a) of the *Criminal Code*.

The advice of Ms Fullerton SC, whilst expressing a view that the Premier’s offer was itself a corrupt request, failed to reveal the process of reasoning which lead to that conclusion. The views of Ms Fullerton SC that there could be a benefit to the Premier in the circumstances discussed coincided with the views of Mr Gotterson QC.<sup>7</sup>

Additionally, it is unclear whether Ms Fullerton SC’s instructions included the history of correspondence between the Premier and the Councillors wherein the question of the waiver of the debt by the Government had been canvassed months prior to the meeting of 17 February 2005.

The advice of the Solicitor-General, Mr Sofronoff QC was equally emphatic that the Premier’s conduct did not reveal any evidence of corruption on his part.<sup>8</sup>

Significantly perhaps, Mr Sofronoff QC’s advice placed weight upon the background of dealings between the Councillors and the Premier concerning proposals to waive the debt.

Whilst Mr Sofronoff QC’s advice proceeded upon a consideration of section 87(1)(b) rather than section 87(1)(a), his analysis of whether the conduct amounted to “corrupt conduct” is still apposite.

What these advices reveal most strikingly is that respected senior practitioners genuinely held differing views concerning the net legal affect of the Premier’s conduct.

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<sup>6</sup> CMC Report at page 52.

<sup>7</sup> Advice of Ms Fullerton SC para 13.

<sup>8</sup> Advice of Mr Sofronoff QC at page 6.



This is the context in which the CMC was required to form its own view as to how to deal with the allegations.

As Mr Needham correctly points out<sup>9</sup>, the CMC, like any other client, is not obliged to accept its legal advice without question. In this case, the analysis of the critical question of whether the Premier's conduct could amount to a criminal offence was extremely thorough.<sup>10</sup>

In addition to the advice provided by Mr Gotterson QC, Mr Sofronoff QC and Ms Fullerton SC, the CMC had regard to an earlier joint advice provided by Mr Gotterson QC and Mr Butler SC concerning the question of whether there was sufficient evidence of a "benefit" to the Premier.

That advice, dating back to 1996, had been obtained following the public hearings conducted by the Honourable Kenneth Carruthers QC into the circumstances surrounding the signing of a memorandum of understanding and an agreement between the ALP and the Sporting Shooters Association.<sup>11</sup>

The CMC report referred to that advice, accepted and acted upon by the CJC in 1996, as having in turn attracted favourable comment from an acknowledged expert in government law and practice, Professor Colin Hughes.<sup>12</sup>

The analysis looked to policy considerations to assist in carrying out the balancing exercise required in making a judgement as to whether the conduct could be said to be corrupt within the meaning of section 87(1)(a). In this context the remarks of His Honour Mr Justice Finn carried significant weight:

*This brings one back to the question of role, and to the modern nature of a Parliamentarian's trusteeship. It is right that we should be unrelenting in our insistence upon probity in government and in public administration. But equally we should not forget, as a media-driven Australian public opinion seems in danger of doing, that the processes of the democratic, representative and party-based system to which we have committed ourselves, are based, in part at least, upon the striking of compromises, upon securing and using influence, upon obtaining advantages for constituents, for constituencies, and — let it not be gainsaid — for Members of Parliament and for Ministers. Necessarily, limits, and strict ones at that, must be placed upon the compromises and the like we are prepared to countenance in allowing our systems of government to function. But unless we recognise in the roles we have given our politicians and in the laws that bind them, that in some degree and for some purposes, compromise, the use of influence, and advantage seeking and taking are tolerable if not necessary features of our public life, we run the risk of demanding standards of our elected officials which are beyond their reach and which also may be prejudicial to the very public purposes we ask them to serve for our benefit.<sup>13</sup>*

It should be noted that the above constitutes a brief summary of the very detailed analysis carried out by the CMC in the final report.

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<sup>9</sup> Letter from CMC to PCMC of 5 April 2005.

<sup>10</sup> CMC Report Section 5 pages 36 - 43 inclusive.

<sup>11</sup> Report on an investigation into a Memorandum of Understanding between the Coalition and the QPUE and an investigation into an alleged deal between the ALP and the SSAA. CJC December 1996.

<sup>12</sup> CMC Report Section 5 page 37.

<sup>13</sup> CMC Report Section 5 page 39.

## CONCLUSION

In my view, after looking carefully at the concerns raised by the Leader of the Opposition, the actions of the Commission were appropriate in all the circumstances.

The CMC clearly took a robust view of the legal affect of the Premier's conduct. Whilst some would disagree with that approach by the Commission, it cannot in my view be said that such a view was not open.

The process of reasoning in the report is transparent, including as it does what would otherwise be privileged legal advice obtained by the Commission.

It is perhaps useful to bear in mind what may have occurred if the CMC had decided that the evidence was capable of establishing that the Premier may have committed an offence pursuant to section 87(1)(a). In those circumstances, the matter presumably would have been referred to the Director of Public Prosecutions where a decision to prosecute such a case would inevitably have faced the insurmountable barrier of a lack of any reasonable prospect of success.