



# PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

## ANNUAL REPORT 2005/2006

### REPORT NO. 72

#### 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 2001*.

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 Chairperson 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.

#### CONTACTING THE PCMC

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#### MEMBERSHIP



Mr Paul Hoolihan MP, Member for Keppel (Chairman)



Mr Howard Hobbs MP, Member for Warrego  
(Deputy Chairman)



Mr Jack Dempsey MP, Member for Bundaberg



Mr Simon Finn MP, Member for Yeerongpilly



Mrs Liz Cunningham MP, Member for Gladstone



Mrs Christine Smith MP, Member for Burleigh



Hon Dean Wells MP, Member for Murrumba

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Copies of this report and other PCMC publications are available on the Queensland Parliament's website at:

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

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## INTRODUCTION

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### THE PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

The Parliamentary Crime and Misconduct Committee (PCMC) is established under section 291 of the *Crime and Misconduct Act 2001* as the Parliamentary Committee having oversight of the Crime and Misconduct Commission. [The PCMC is the successor to the Parliamentary Criminal Justice Committee, established in 1990.]

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 (see below).

The Committee's discharge of its functions has been assisted by the co-operative and responsive approach adopted by the CMC.

The 51<sup>st</sup> Parliament was dissolved on 15 August 2006, and a general election held on 9 September 2006. The Parliamentary Crime and Misconduct Committee of the new Parliament – the 52<sup>nd</sup> Parliament – was appointed on 11 October 2006, and the membership of that Committee appears on the front of this report.

It is important to note that the reporting year, and therefore this report, cover the activities of the 6<sup>th</sup> Parliamentary Crime and Misconduct Committee – the PCMC of the 51<sup>st</sup> Parliament – the membership of which during the reporting period was as follows:

- Mr Geoff Wilson MP, Member for Ferny Grove (Chairman)
- Mr Howard Hobbs MP, Member for Warrego (Deputy Chairman)
- Mr Michael Choi MP, Member for Capalaba
- Mr Stuart Copeland MP, Member for Cunningham
- Mrs Liz Cunningham MP, Member for Gladstone
- Mr John English MP, Member for Redlands
- Ms Cate Molloy MP, Member for Noosa

### CRIME AND MISCONDUCT COMMISSION

This reporting year has seen the continued operation of the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001* which commenced on 1 January 2002. That Act merged the former Criminal Justice Commission (CJC) and the former

Queensland Crime Commission (QCC) into a new body known as the Crime and Misconduct Commission (CMC).

The CJC was established in 1990 in fulfilment of a major recommendation of the Fitzgerald Inquiry into police and public sector corruption. The QCC commenced operation in 1998.

The key responsibilities of the CMC are:

- to combat and reduce the incidence of major crime (organised crime, criminal paedophilia and other serious crime); and
- to continuously improve the integrity of, and to reduce the incidence of misconduct in, the public sector.

The CMC also undertakes a number of other functions in the areas of research and prevention, intelligence, witness protection, and the civil confiscation of proceeds of crime.

The CMC has a number of coercive powers, including power to:

- conduct hearings at which persons can be compelled to provide evidence;
- compel persons to provide information;
- compel the production of records and things;
- enter and conduct searches of premises (including covert searches);
- seize evidence; and
- use surveillance devices.

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## THE COMMITTEE'S RESPONSIBILITIES

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Under the *Crime and Misconduct Act 2001* 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 be aware regarding the conduct or activities of the CMC or an officer or former officer of the CMC.

### **MONITORING AND REVIEWING THE CMC**

The Committee utilises a range of mechanisms to “monitor and review” the Commission. These mechanisms include:

- holding regular Committee meetings;
- considering confidential bi-monthly reports from the CMC in relation to its activities;
- considering confidential minutes of meetings of the Commission and its executive;
- holding bi-monthly in camera meetings with the Chairperson, Commissioners, and Assistant Commissioners of the CMC;
- receiving and considering complaints against the CMC and its officers;
- reviewing CMC reports;
- requesting reports from the CMC on matters which arise (via complaints, the media or other means);
- conducting inquiries into specific or general matters relating to the CMC;
- conducting (either itself or through the Parliamentary Crime and Misconduct Commissioner) audits of various registers and files kept by the CMC concerning the use of its powers;
- seeking independent legal advice to assist the Committee where a particular skill or expertise is necessary;
- examining the appropriateness of the CMC’s performance measures; and
- examining the CMC’s performance against its performance measures.

### **REPORTING TO THE LEGISLATIVE ASSEMBLY**

During the year the Committee considered the tabling of a number of reports by the Parliamentary Crime and Misconduct Commissioner on investigations carried out by him at the request of the Committee.

The Committee tabled one such report in the reporting year.<sup>1</sup>

In the other matters reported upon by the Parliamentary Commissioner, the Committee determined not to table the reports as they generally contained material that was confidential and considered inappropriate for tabling and it was not in the public interest to table the reports.

From time to time, the Committee has, for the information of the Legislative Assembly and the public, tabled publications produced by the CMC.

### **EXAMINING REPORTS OF THE CMC**

Section 69 of the *Crime and Misconduct Act 2001* contains a mechanism for certain CMC reports to be tabled in the Parliament. The Committee is required to direct that the report be given to the Speaker of the Legislative Assembly in order for it to be tabled.

During the reporting year, there were no such directions given by the Committee.

### **PARTICIPATING IN THE APPOINTMENT OF COMMISSIONERS**

The CMC is comprised of a Chairperson and four part-time Commissioners. In any appointment or reappointment of the Chairperson or a part-time Commissioner, the responsible Minister (during the reporting period, the Attorney-General and Minister for Justice) must consult with the Committee. Any nomination by the Attorney-General and Minister for Justice requires the bi-partisan support of the Committee before the nominee can be appointed.

During the reporting period, the Committee considered and supported the nomination of one part-time Commissioner.

### **ISSUING GUIDELINES AND GIVING DIRECTIONS TO THE CMC**

The Committee did not issue any guidelines or give any directions to the Commission in the reporting year.

<sup>1</sup> Report 70: A report on a review by the Parliamentary Crime and Misconduct Commissioner of the actions of the Crime and Misconduct Commission in its investigation into allegations concerning the Honourable Gordon Nuttall MP – tabled 9 May 2006.

## COMPLAINTS

Complaints about the CMC or its officers usually come to the Committee in two ways – directly from members of the public or from the Commission itself.

Considering complaints about the Commission and its officers assists the Committee in its oversight role by providing a valuable insight into the Commission's operations and activities. The Committee does not have jurisdiction over any organisation other than the CMC and so cannot itself consider original allegations of official or police misconduct. Further, the Committee is not able to substitute its own decision for that of the CMC in a particular matter.

The Committee examines complaints to assess whether the Commission or any of its officers has acted inappropriately. The Committee will, where appropriate, make recommendations to the CMC. Analysis of complaints, even where specific allegations against the Commission are not substantiated, can assist the Committee to identify procedural or systemic deficiencies and to take action to have the Commission deal with problem areas.

### *Complaints from members of the public*

Most complaints come to the Committee directly from members of the public. The PCMC only accepts complaints in writing in order to efficiently identify and consider complaint matters and to prevent misunderstanding or misinterpretation as to the relevant facts or circumstances.

### *Other complaints about the Commission*

Under the *Crime and Misconduct Act 2001* the Chairperson of the CMC is obliged to advise the PCMC of conduct by officers of the CMC, where the Chairperson suspects that the conduct may involve "improper conduct".<sup>2</sup> Knowledge of such conduct might come to the Chairperson via a complaint made to the Commission about a Commission officer. At present, the Committee receives frank and prompt advice from the CMC Chairperson concerning conduct of Commission officers which the Chairperson suspects may involve "improper conduct".

### *Complaints considered 2005-2006*

In the reporting year the Committee received 45 complaints against the Commission or Commission officers, including matters referred by the Commission itself.

In most cases, the Committee determined that the complaints made against specific officers were not substantiated or that it was not satisfied that the Commission had acted inappropriately. In several cases the Committee requested further information from the Commission, asked the Commission to review or amend its practices and procedures, or sought comment on particular aspects of a matter.

In considering complaints the Committee takes into account material and submissions provided by the complainant, any reports and other material provided by the Commission and, if the matter has been referred to the Parliamentary Commissioner by the PCMC, any reports from the Parliamentary Commissioner.

General issues that the Committee considers in determining whether or not the Commission has acted inappropriately can include:

- timeliness in the handling of complaints and investigations;
- whether the Commission has made appropriate inquiries before determining not to pursue a matter;
- whether the Commission has considered all relevant facts and material;
- whether a determination by the Commission to refer a matter back to the relevant public sector agency to deal with was appropriate;
- whether the Commission has acted without bias in making its determinations;
- whether the Commission has been responsive and timely in its communications with complainants and with subject officers;
- whether the Commission's conclusions and determinations are appropriate; and
- whether the Commission has acted within its legislative powers.

## MISCONDUCT TRIBUNAL VACANCIES

The Misconduct Tribunals are established to determine disciplinary charges of official misconduct brought against certain prescribed persons – broadly, police officers and public officers.

Under section 7 of the *Misconduct Tribunals Act 1997* the bi-partisan support of the Committee is required before the responsible Minister (which during the reporting period was the Attorney-General and Minister for Justice) can appoint a person (nominated

<sup>2</sup> Section 329 of the *Crime and Misconduct Act 2001*.

by the Minister) to the Misconduct Tribunal. During the reporting year the Committee considered and gave its support to two nominations for appointment and three nominations for reappointment.

## **MECHANISMS AVAILABLE TO THE COMMITTEE**

### **POWERS OF THE COMMITTEE**

Under section 293 of the *Crime and Misconduct Act 2001* the Committee has the power to:

- call for persons, documents or other things;
- administer oaths to witnesses; and
- examine witnesses on oath.

### **PARLIAMENTARY CRIME AND MISCONDUCT COMMISSIONER**

The former position of the Parliamentary Criminal Justice Commissioner was altered with the commencement of the *Crime and Misconduct Act 2001*. The title of the position was changed and importantly the new legislation made it clear that the Parliamentary Commissioner acts as the agent of the Committee.

Mr Alan MacSporran SC commenced in the role of Parliamentary Commissioner on 13 December 2004, on a part-time basis and for a period of two years. A person can only be appointed as Parliamentary Commissioner with the bipartisan support of the Committee.

#### ***Role and functions of the Parliamentary Commissioner***

Under the *Crime and Misconduct Act 2001* the PCMC may require the Parliamentary Commissioner to:

- audit records and operational files of the CMC;
- investigate complaints against the CMC and its officers;
- investigate allegations of a possible unauthorised disclosure of confidential information;
- verify the CMC's reasons for withholding information from the PCMC;
- verify the accuracy and completeness of CMC reports to the PCMC; and
- perform other functions that the Committee considers necessary or desirable.

The Parliamentary Commissioner can conduct hearings only with the authorisation of the PCMC.

#### ***Assistance provided by the Parliamentary Commissioner in the reporting period***

The Committee referred issues involving the CMC's actions in three matters to the Parliamentary Commissioner for investigation during the reporting period.

In November 2005, the Parliamentary Commissioner reported to the Committee on an audit of CMC records for the 2004-2005 year, pursuant to prior reference from the Committee. In February 2006, the Committee provided a similar reference to the Parliamentary Commissioner, asking him to conduct an audit of the Commission's records for the 2005-2006 year.

In March 2006, the Parliamentary Commissioner reported to the Committee on his examination of the CMC's report into a matter concerning the Honourable Gordon Nuttall, with such report being tabled in Parliament by the Committee in May 2006.

The Parliamentary Commissioner is provided with a copy of the CMC's bi-monthly briefing paper to the PCMC in order to assist the Committee to identify issues for examination.

## **PARTICULAR ISSUES CONSIDERED BY THE COMMITTEE**

### ***Communication by the CMC***

In some complaint matters considered by the Committee in the reporting year, the Committee raised with the CMC concerns regarding the adequacy of its communication with persons who had made complaints to it. The CMC is undertaking a major review of its complaints services processes which, *inter alia*, is addressing these issues, with a focus on timeliness. This review is ongoing. The Committee supports this initiative.

### ***CMC's draft 2004-2008 Strategic Plan***

The CMC provided the Committee with a draft of its 2004-2008 Strategic Plan and the Committee made comment upon the draft plan.

### ***Three Year Review – CMC***

In March 2006, the 6<sup>th</sup> PCMC commenced the process of its three yearly review of the Commission. A number of submissions were received and considered, and public hearings were held over two days in July

2006. [The Committee tabled its report on the Three Year Review on 9 October 2006.]

### **Other matters**

The Committee has considered many issues during the reporting period which, for confidentiality reasons, cannot be discussed in this report.

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## **MEETINGS**

In addition to Committee meetings (held at least once every sitting week) the Committee holds separate meetings with the Chairperson, Commissioners and senior officers of the CMC on a regular basis, usually every two months.

These meetings are held in camera and provide an opportunity for candid and open discussions. The Committee has found these meetings very valuable for open communication between the Committee and the CMC.

The first meeting with the CMC for the term of the 6<sup>th</sup> PCMC was held in public.

To assist with the meeting process the CMC provides bi-monthly briefing papers on its activities since the previous joint meeting. The Committee also considers minutes of internal CMC meetings. The PCMC asks questions in relation to matters contained in these documents or any other matter that has come to its attention.

The Committee also meets regularly with the Parliamentary Commissioner (usually bi-monthly). The Parliamentary Commissioner also provides a report on his activities on a bi-monthly basis. This keeps the Committee informed of the status of matters that have been referred to the Commissioner as well as administrative issues concerning the office of the Parliamentary Commissioner.

During the reporting year the Committee met 27 times including:

- 4 joint meetings with the CMC; and
- 4 meetings with the Parliamentary Commissioner.

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## **MEETINGS WITH OTHER AGENCIES**

In October 2005, a delegation from the Committee travelled to Sydney to attend the annual conference of the Australasian Study of Parliament Group, which had as its theme *Parliament and Accountability in the 21st Century*. The then Chairman of the PCMC

presented a paper at the conference. Meetings were also held in Sydney with representatives of other oversight agencies from New South Wales and Western Australia.

A delegation of Committee members and staff attended the second National Conference of Parliamentary Oversight Committees of Anti-Corruption/Crime Bodies held in Sydney on 22 and 23 February 2006. At this conference the then Chairman of the PCMC presented a paper on recent Queensland developments in Parliamentary oversight.

Attendance at conferences such as these and meetings with oversight agencies, including members of similar oversight Parliamentary committees, assist the PCMC in its oversight role, as they inform the Committee regarding the operations of relevant bodies in other jurisdictions, and allow the Committee to attain a broader appreciation of the aspects of the Queensland regime that are operating well, as well as areas that could be improved.

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## **MINISTERIAL RESPONSES TO COMMITTEE RECOMMENDATIONS**

Section 107 of the *Parliament of Queensland Act 2001* requires a response by the relevant Minister to reports of certain Committees of the Legislative Assembly, including the PCMC, where the report makes recommendations that the government or the Minister take (or not take) particular action.

### **MINISTERIAL RESPONSE TO REPORT NO 50 – TELECOMMUNICATIONS INTERCEPTION**

The 4th PCJC's report 50, in brief, addressed the desirability of Queensland law enforcement agencies (including the then CJC and QCC) being granted the power to use telecommunications interception (phone tapping) accompanied by certain civil liberties protections and recommended the power be extended to those agencies, subject to strict guidelines.

In previous annual reports this Committee has provided information on interim responses from the then Minister for Police to this report.

On 21 June 2002, the Committee wrote to the Premier, referring to the recommendations in report 50 and in the Three Year Review of the previous PCJC (report 55). The Committee urged the government to look favourably on the recommendations of the previous PCJC that the then CJC and QCC (now the CMC) be given the power to use telecommunications interception together with civil liberty safeguards.

On 17 December 2002, the Premier responded, noting the Committee's views and stating:

*I am aware that there may be implications on the Crime and Misconduct Commission's ability to access telecommunications interception flowing from the establishment of the Australian Crime Commission. I can advise you that this and other issues relevant to these changes are under consideration.*

[The issue of telecommunications interception was the subject of further recommendations by the 6<sup>th</sup> PCMC in its report on its Three Year Review of the CMC, tabled on 9 October 2006. A ministerial response to that report is required by section 107 of the *Parliament of Queensland Act*, but is not yet due. That ministerial response will be reported upon in a future annual report.]

## BUDGET AND EXPENDITURE

The total budget allocation for the Committee in 2005/2006 was \$264,433.00.<sup>3</sup> The Committee's total actual expenditure for 2005/2006 was \$266,095.88.<sup>4</sup>

The expenses for the Committee are set out in the following table:

|  |                   |
|--|-------------------|
| Salary costs <sup>a</sup>                    | 178,430.93        |
| Employee allowances and recruitment expenses | 225.05            |
| Salary related taxes/accruals <sup>b</sup>   | 61,682.93         |
| Business travel <sup>c</sup>                 | 12,892.65         |
| Printing, advertising & memberships          | 7,039.68          |
| Telephone costs                              | 2,645.40          |
| Books, subscriptions & publications          | 1,617.73          |
| Minor equipment and maintenance of equipment | 0.00              |
| Hospitality                                  | 1519.64           |
| Other costs                                  | 41.87             |
| <b>TOTAL</b>                                 | <b>266,095.88</b> |

- a) Includes temporary assistance, higher duties and overtime.
- b) Includes Superannuation, FBT, payroll tax and Workcover premiums.
- c) Includes travel and other expenses relating to attendance at meetings, hearings and staff travel with, or for the Committee.

<sup>3</sup> This compares with the Committee's budget allocation for 2004/2005 of \$308,980.00.

<sup>4</sup> This compares with the Committee's actual expenditure for 2004/2005 of \$223,047.68.

## 2005/2006 Meeting Attendance Record

| <i>DATE</i>       | <i>PURPOSE</i>                          | <i>Geoff<br/>Wilson</i> | <i>Howard<br/>Hobbs</i> | <i>Michael<br/>Choi</i> | <i>Stuart<br/>Copeland</i> | <i>Liz<br/>Cunningham</i> | <i>John<br/>English</i> | <i>Cate<br/>Molloy</i> |
|-------------------|---|-------------------------|-------------------------|-------------------------|----------------------------|---------------------------|-------------------------|------------------------|
| 10 August 2005    | PCMC                                    | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 24 August 2005    | PCMC<br>(Interview)                     | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 24 August 2005    | PCMC                                    | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 26 August 2005    | PCMC (pre-joint)                        | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | X                      |
| 26 August 2005    | PCMC / CMC                              | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | X                      |
| 29 September 2006 | PCMC                                    | ✓                       | X                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 26 October 2005   | PCMC                                    | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | X                      |
| 27 October 2005   | PCMC /<br>Parliamentary<br>Commissioner | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 9 November 2005   | PCMC                                    | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 23 November 2005  | PCMC                                    | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 25 November 2005  | PCMC / CMC                              | ✓                       | X                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 30 November 2005  | PCMC                                    | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 1 December 2005   | PCMC /<br>Parliamentary<br>Commissioner | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 15 February 2006  | PCMC                                    | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 1 March 2006      | PCMC                                    | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 8 March 2006      | PCMC                                    | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 10 March 2006     | PCMC (pre-joint)                        | ✓                       | ✓                       | ✓                       | X                          | ✓                         | ✓                       | X                      |
| 10 March 2006     | PCMC / CMC                              | ✓                       | ✓                       | ✓                       | X                          | ✓                         | ✓                       | X                      |
| 29 March 2006     | PCMC                                    | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 30 March 2006     | PCMC /<br>Parliamentary<br>Commissioner | ✓                       | ✓                       | ✓                       | X                          | ✓                         | ✓                       | ✓                      |
| 20 April 2006     | PCMC                                    | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | X                       | ✓                      |
| 9 May 2006        | PCMC                                    | ✓                       | ✓                       | X                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 10 May 2006       | PCMC                                    | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 12 May 2006       | PCMC / CMC                              | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 24 May 2006       | PCMC                                    | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |
| 25 May 2006       | PCMC /<br>Parliamentary<br>Commissioner | ✓                       | ✓                       | X                       | ✓                          | ✓                         | X                       | X                      |
| 7 June 2006       | PCMC                                    | ✓                       | ✓                       | ✓                       | ✓                          | ✓                         | ✓                       | ✓                      |