



PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

ANNUAL REPORT 2007/2008

REPORT NO. 78

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.

MEMBERSHIP



Mr Paul Hoolihan MP, Member for Keppel
(Chairman)



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



Mrs Liz Cunningham MP, Member for Gladstone



Mr Jack Dempsey MP, Member for Bundaberg



Mr Simon Finn MP, Member for Yeerongpilly



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

INTRODUCTION

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.

CRIME AND MISCONDUCT COMMISSION

The Crime and Misconduct Commission was created 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.

THE COMMITTEE'S RESPONSIBILITIES

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 CMC. 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 CMC 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 two of those reports in the reporting period. In respect of the remainder the Committee determined not to table those 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 such a report be given to the Speaker of the Legislative Assembly in order for it to be tabled.

During the reporting year, one such direction was 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.

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 of 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 suspected improper conduct by officers of the CMC.¹ 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 2007-2008

In the reporting year the Committee received 33 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 Committee, 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 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 (the Attorney-General and Minister for Justice) can appoint a person (nominated by the Minister) to the Misconduct Tribunal. The Committee was requested to consider four nominations for appointment during the reporting year.

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.

A person can only be appointed as Parliamentary Commissioner with the bipartisan support of the Committee.

¹ Section 329 of the *Crime and Misconduct Act 2001*.

The current Parliamentary Commissioner, Mr Alan MacSporran SC, commenced in that role on 13 December 2004, on a part-time basis and for an initial period of two years. His term was subsequently extended firstly to 13 December 2007 and then to 31 December 2008.

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.

The Parliamentary Commissioner also now has a number of other statutory roles as a result of amendments made by the *Cross-Border Law Enforcement Legislation Amendment Act 2005*. These include:

- inspection of the records of the CMC to decide the extent of the CMC's compliance with the legislative requirements relating to surveillance device warrants, retrieval warrants and emergency authorisations;
- reporting in writing to the Committee at six monthly intervals on the results of such inspections;
- inspection of the records of the CMC at least once every 12 months to determine the extent of the CMC's compliance with the legislative requirements relating to controlled operations;
- as soon as practicable after 30 June each year, preparing a report of the activities of the CMC relating to controlled operations for the preceding 12 months and providing a copy of the report to

the CMC Chairperson and the Chair of the PCMC; and

- auditing the CMC's records relating to assumed identities at least once every six months and providing a report on the results of the audit to the CMC Chairperson.

Assistance provided by the Parliamentary Commissioner in the reporting period

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.

During the reporting period the Committee referred issues involving the CMC's actions in three matters to the Parliamentary Commissioner for review.

The Parliamentary Commissioner also reported to the Committee on his oversight of a CMC investigation of allegations against a CMC officer in another matter.

In another two matters the Committee sought the Parliamentary Commissioner's advice as to whether he thought those matters were capable of productive investigation. After reviewing the available evidence, the Parliamentary Commissioner advised that one matter was not capable of productive investigation and that any investigation of the other would be unsuccessful in uncovering the source of a possible unauthorised disclosure.

MEETINGS

In addition to Committee meetings (held at least once every Parliamentary 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 it and the CMC.

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 32 times including:

- 6 joint meetings with the CMC; and
- 5 meetings with the Parliamentary Commissioner.

CONFERENCES AND VISITS

In October 2007, a delegation from the Committee travelled to Sydney to attend the inaugural Australian Public Sector Anti-Corruption Conference (APSAC).

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. It recommended the power be extended to those agencies, subject to strict guidelines.

In previous annual reports the Committee has provided information on interim responses from the then Minister for Police to report 50.

On 21 June 2002, the Committee wrote to the then 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 then 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 6th PCMC in its report on its Three Year Review of the CMC, tabled on 9 October 2006.

The 6th PCMC recommended that the Queensland Government introduce legislation to enable the CMC and the Queensland Police Service to intercept telecommunications, with the safeguard that any such scheme would include a role for an Inspector, such as the Public Interest Monitor, in the application process for a telecommunications interception warrant.²

On 28 August 2008, the State Government announced that the Commonwealth Government had agreed to allow for a role for the Public Interest Monitor in the process of applications for telecommunications interception warrants.

BUDGET AND EXPENDITURE

The total budget allocation for the Committee in 2007/2008 was \$292,385.00³ The Committee's total actual expenditure for 2007/2008 was \$284,710.44⁴.

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

Salary costs ^a	202,323.08
Salary related taxes/accruals ^b	65,352.44
Business travel ^c	7,250.28
Printing, advertising & memberships	3,964.88
Telephone costs	2,360.03
Books, subscriptions & publications	290.91

² *Three Year Review of the Crime and Misconduct Commission*, Parliamentary Crime and Misconduct Committee, Report No. 71, October 2006, Recommendations 19 and 20.

³ This compares with the Committee's budget allocation for 2005/2006 of \$264,433.00 and for 2006/2007 of \$277,451.00.

⁴ This compares with the Committee's actual expenditure for 2005/2006 of \$266,095.88 and for 2006/2007 of \$275,898.66.

Hospitality	2,068.82
Other costs	1,100.00
TOTAL	284,710.44

- a) Includes temporary assistance, higher duties, overtime and allowances.
- 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.

2007/2008 Meeting Attendance Record – 7th PCMC

DATE	PURPOSE	<i>Paul Hoolihan</i>	<i>Howard Hobbs</i>	<i>Liz Cunningham</i>	<i>Jack Dempsey</i>	<i>Simon Finn</i>	<i>Christine Smith</i>	<i>Dean Wells</i>
23 July 2007	PCMC	✓	X	✓	✓	X	X	✓
8 August 2007	PCMC	✓	✓	✓	✓	✓	✓	✓
22 August 2007	PCMC	✓	✓	✓	✓	✓	✓	X
23 August 2007	PCMC / Parliamentary Commissioner	X	✓	✓	✓	X	✓	X
24 August 2007	PCMC	✓	✓	✓	✓	✓	✓	X
24 August 2007	PCMC / CMC	✓	✓	✓	✓	✓	✓	✓
5 September 2007	PCMC	✓	✓	✓	✓	✓	✓	✓
10 October 2007	PCMC	✓	✓	✓	✓	✓	✓	✓
12 October 2007	PCMC	✓	✓	✓	✓	✓	X	X
12 October 2007	PCMC / CMC	✓	✓	✓	✓	✓	X	✓
17 October 2007	PCMC	✓	✓	✓	✓	✓	✓	✓
18 October 2007	PCMC / Parliamentary Commissioner	✓	✓	✓	✓	X	✓	X
31 October 2007	PCMC	✓	✓	✓	✓	✓	✓	✓
14 November 2007	PCMC	✓	✓	✓	✓	✓	✓	✓
16 November 2007	PCMC	✓	✓	✓	✓	✓	X	X
16 November 2007	PCMC / CMC	✓	✓	✓	✓	✓	X	X
11 December 2007	PCMC	✓	✓	X	✓	✓	✓	✓
13 February 2008	PCMC	✓	✓	✓	✓	✓	✓	✓
15 February 2008	PCMC	✓	✓	✓	X	✓	✓	✓
15 February 2008	PCMC / CMC	✓	X	✓	X	✓	✓	✓
27 February 2008	PCMC	✓	✓	✓	X	✓	✓	✓
12 March 2008	PCMC	✓	✓	✓	✓	✓	✓	✓
13 March 2008	PCMC / Parliamentary Commissioner	✓	✓	✓	✓	X	✓	X
16 April 2008	PCMC	✓	✓	✓	✓	✓	✓	✓
18 April 2008	PCMC	✓	✓	✓	✓	✓	✓	✓
18 April 2008	PCMC / CMC	✓	✓	✓	✓	✓	✓	✓
30 April 2008	PCMC	✓	✓	✓	✓	✓	✓	✓
1 May 2008	PCMC / Parliamentary Commissioner	✓	✓	✓	✓	X	✓	X
14 May 2008	PCMC	✓	✓	✓	✓	✓	✓	✓
4 June 2008	PCMC	✓	✓	✓	✓	✓	✓	✓
5 June 2008	PCMC / Parliamentary Commissioner	✓	✓	✓	✓	X	✓	✓
6 June 2008	PCMC / CMC	✓	✓	✓	✓	✓	✓	✓