



PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

ANNUAL REPORT 2008/2009

REPORT NO. 80

THE COMMITTEE

The Parliamentary Crime and Misconduct Committee is a multi-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

Address: Parliamentary Crime and Misconduct Committee
Parliament House
George Street
Brisbane Qld 4000

Telephone: 07 3406 7207

Facsimile: 07 3210 6011

Email: pcmc@parliament.qld.gov.au

Web: www.parliament.qld.gov.au/pcmc

STAFF

Research Director	Mr Stephen Finimore (to 18 December 2008)
A/Research Director	Ms Renée Easten (from 18 December 2008)
Principal Research Officer	Ms Renée Easten (to 18 December 2008)
A/Principal Research Officer	Ms Joanna Fear (from 27 January 2009)
A/Principal Research Officer	Mrs Ali Jarro (from 18 December 2008 to March 2009)
Executive Assistant	Mrs Jenny North

MEMBERSHIP

52ND PARLIAMENT



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

53RD PARLIAMENT



Mr Paul Hoolihan MP, Member for Keppel
(Chairman)



Mr Jack Dempsey MP, Member for Bundaberg
(Deputy Chairman)



Mr Steven Dickson MP, Member for Buderim



Mr Scott Emerson MP, Member for Indooroopilly



Mrs Betty Kiernan MP, Member for Mount Isa



Mr Mark Ryan MP, Member for Morayfield



Mr Stephen Wettenhall MP, Member for Barron River

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 responsible for overseeing the operations of the Crime and Misconduct Commission (CMC).

The Committee is assisted in its role by the Parliamentary Crime and Misconduct Commissioner who undertakes a range of functions on behalf of the PCMC, including audits and investigations.

As in previous annual reports, the Committee commends the CMC on the co-operative and responsive approach it has taken to its dealings with the PCMC.

The reporting period covers the activities of both the 7th Parliamentary Crime and Misconduct Committee – the PCMC of the 52nd Parliament and the 8th Parliamentary Crime and Misconduct Committee of the 53rd Parliament. The membership of both are listed at the beginning of this report.

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

The CJC had been 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 range 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 Yearly Review); and
- to issue guidelines and give directions to the CMC where appropriate.

The PCMC can also receive complaints and deal with any concerns it may have about the conduct or activities of the CMC or an officer or former officer of the CMC.

MONITORING AND REVIEWING THE CMC

The Committee actively monitors and reviews the operations of the CMC by:

- holding regular Committee meetings;
- carefully examining the confidential reports provided by the CMC every two months which provide detailed information about the activities of the CMC during the relevant period;
- considering the 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 during which committee members question Commissioners about the activities 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;
- meeting regularly with the Parliamentary Crime and Misconduct Commissioner to discuss the Commissioner's activities;
- seeking independent legal advice to assist the Committee where a particular skill or expertise is required;
- examining the appropriateness of the CMC's performance measures; and
- examining the CMC's performance against its performance measures.

REPORTING TO THE LEGISLATIVE ASSEMBLY

The Committee tabled the report of its most recent three yearly review of the operations of the Crime and Misconduct Commission in April 2009.

During the year the Committee also considered whether to table reports produced by the Parliamentary Crime and Misconduct Commissioner on matters the Committee had referred for investigation. In each case the Committee decided that issues of confidentiality meant it was not in the public interest to table those reports.

As required by legislation, the Committee has tabled a range of documents provided to it by the CMC and the Parliamentary Crime and Misconduct Commissioner during the year including:

- Two reports of the Parliamentary Crime and Misconduct Commissioner on the results of his inspection of the records of the CMC pursuant to

section 362 of the *Police Powers and Responsibilities Act 2000* (surveillance device warrants);¹

- A report of the Parliamentary Crime and Misconduct Commissioner on the work and activities of the CMC under chapter 11 of the *Police Powers and Responsibilities Act 2000* (controlled operations);²
- An annual report from the CMC on compliance requirements under the *Police Powers and Responsibilities Act 2000* for assumed identities and surveillance devices;³
- An annual report from the CMC on activities of the Controlled Operations Committee under the *Crime and Misconduct Act 2001*;⁴ and
- A certified copy of the Register of Reports and Recommendations to the Police Minister, Ministerial Directions and Tabled Ministerial Reasons 2008 and a letter from the Chairperson of the CMC in relation to the certified copy.⁵

EXAMINING REPORTS OF THE CMC

Section 69 of the *Crime and Misconduct Act 2001* allows the Committee to direct that certain reports of the CMC be given to the Speaker and tabled in the Legislative Assembly.

The Committee gave no such directions during the reporting period.

PARTICIPATING IN THE APPOINTMENT OF COMMISSIONERS

The CMC is headed by a five-member Commission consisting of a full-time Chairperson and four part-time Commissioners who are community representatives. 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 and the Attorney-General and Minister for Industrial Relations) must consult with the Committee. Any

¹ Tabled on 11 September 2008 and 12 February 2009 as required by section 363(5) of the *Police Powers and Responsibilities Act 2000*.

² Tabled on 9 October 2008 as required by section 269(6) of the *Police Powers and Responsibilities Act 2000*.

³ Tabled on 11 September 2008 as required by sections 314(3) and 358(5) of the *Police Powers and Responsibilities Act 2000*.

⁴ Tabled on 9 October 2008 as required by section 138(3) of the *Crime and Misconduct Act 2001*.

⁵ Tabled on 12 February 2009 as required by section 4.7(4) of the *Police Service Administration Act 1990*.

nomination by the Minister requires the bipartisan support of the Committee before the nominee can be appointed.

During the reporting year, the Committee considered and supported the nomination of Mr Philip Nase as a part-time Commissioner and the reappointment of Mr Robert Needham as Chairperson and Dr David Gow as part-time Commissioner.

THREE YEARLY REVIEW OF THE ACTIVITIES OF THE CMC

The Committee conducted its most recent three yearly review of the activities of the CMC during the reporting period. The review process began in September 2008 when the Committee called for submissions. The Committee heard evidence from witnesses during two days of public hearings in November 2008 and received 32 written submissions.

The Committee's three yearly review report (tabled on 20 April 2009) made 29 recommendations to Government, a number of which have already been implemented.

ISSUING GUIDELINES TO THE CMC

Under section 296 of the *Crime and Misconduct Act 2001* the PCMC may issue guidelines to the CMC about the conduct and activities of the Commission.

The Committee did not issue any guidelines 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 consider original allegations of official or police misconduct itself. Further, the Committee is not able to substitute its own decision for that of the CMC in a particular matter.

The Committee will examine complaints to assess whether the Commission or any of its officers has acted inappropriately and 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 section 329 of 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. 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 2008-2009

In the reporting year the Committee received 27 complaints against the Commission or Commission officers. Four of those complaints were 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 bipartisan support of the Committee is required before the responsible Minister can appoint a person (nominated by the Minister) to the Misconduct Tribunal. The Committee considered and supported one nomination for appointment and two nominations for reappointment of Tribunal members during the reporting year.

MECHANISMS AVAILABLE TO THE COMMITTEE

POWERS OF THE COMMITTEE

Under the *Crime and Misconduct Act 2001* and the *Parliament of Queensland Act 2001* the Committee has a range of powers that assist it carry out its functions. These include 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 Committee is assisted in its role of monitoring and reviewing the CMC by the Parliamentary Crime

and Misconduct Commissioner (the Parliamentary Commissioner). The Parliamentary Commissioner undertakes a range of functions on behalf of the Committee, at its direction, reporting back to the Committee.

The Parliamentary Commissioner is a senior lawyer, appointed on a part-time basis, for a period between two and five years, by the Speaker of the Legislative Assembly with the bipartisan support of the Committee.

The current Parliamentary Commissioner, Mr Alan MacSporran SC, commenced in that role on 13 December 2004 for an initial period of two years. Mr MacSporran's term has been extended on three occasions, firstly to 13 December 2007, then to 12 December 2008 and most recently to 12 December 2009, when Mr MacSporran will have served as Parliamentary Commissioner for the maximum five years allowable under the *Crime and Misconduct Act 2001*.

Role and functions of the Parliamentary Commissioner

Under section 314 of 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 conducts an annual review of the intelligence data held by the CMC and the Queensland Police Service.

The Parliamentary Commissioner has a number of other statutory roles under the *Police Powers and Responsibilities Act 2001*. 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.

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 two matters to the Parliamentary Commissioner for review and received the reports of two matters that had been referred to the Parliamentary Commissioner during the previous reporting period.

The Parliamentary Commissioner also reviewed and provided the Committee with comments on submissions made to the Committee's three yearly review of the CMC and the consultation draft of the Telecommunications Interception Bill 2009.

These activities are in addition to the statutory reporting responsibilities of the Parliamentary Commissioner outlined above.

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 who reports to the Committee 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 day-to-day running of the Office of the Parliamentary Commissioner.

During the reporting year the Committee met 33 times including:

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

CONFERENCES AND VISITS / MEETING WITH OTHER AGENCIES

Four members of the Committee met with the Commonwealth Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity on 14 November 2008 when the Joint Committee was in Brisbane for hearings in relation to its inquiry into law enforcement integrity models.

Three PCMC members also gave evidence to the Tasmanian Parliament's Joint Select Committee on Ethical Conduct at a hearing in Brisbane on 24 November 2008.

On 27 February 2009 staff from the Committee secretariat met with members and staff of the Western Australian Parliamentary Joint Standing Committee on the Corruption and Crime Commission. Discussed were issues relevant to the Western Australian Committee's inquiry into the relationship between the Western Australian Corruption and Crime Commission and its Parliamentary Inspector.

On 15 June 2009 members and staff of the PCMC inspected the new premises of the CMC in Fortitude Valley, Brisbane.

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.⁶

No such responses were received by the PCMC during the current reporting period.

Committees from the 4th PCJC on have all expressed their belief in the desirability of telecommunications interception (phone tapping) powers being granted to the CMC and its predecessor the CJC.

The 4th PCJC's report no. 50 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.

The issue of telecommunications interception was the subject of further recommendations by subsequent Committees in their three yearly reviews of the CMC. For example, 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.⁷

On 28 August 2008, the Premier announced that an agreement had been reached with the Commonwealth Government to allow the Public Interest Monitor to be involved in applications for telephone interception warrants in Queensland.

In 2009 legislation was enacted in Queensland⁸ and at the Federal level⁹ to enable Queensland to become part of the national telecommunications interception

regime. On 7 July 2009 the CMC was declared to be an agency for the purposes of the *Telecommunications (Interception and Access) Act 1979* (Cth) enabling the CMC to apply for and execute telecommunications interception warrants.¹⁰

BUDGET AND EXPENDITURE

The total budget allocation for the Committee in 2008/2009 was \$299,910.00.¹¹ The Committee's total actual expenditure for 2008/2009 was \$332,742.81.¹²

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

Salary costs ^a	237,607.77
Salary related taxes/accruals ^b	81,936.26
Business travel ^c	5,323.59
Printing, advertising & memberships	3,063.46
Telephone costs	2,436.89
Hospitality	2,374.84
TOTAL	\$332,742.81

- 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.

⁶ Where a Committee (except the Scrutiny of Legislation Committee) of the Legislative Assembly tables a report making recommendations for the Government or Minister, the Minister must within three months of the reports tabling, table at least an interim response to those recommendations.

⁷ *Three Year Review of the Crime and Misconduct Commission*, Parliamentary Crime and Misconduct Committee, Report No. 71, October 2006, Recommendations 19 and 20.

⁸ *Telecommunications Interception Act 2009* (Qld)

⁹ *Telecommunications Interception Legislation Amendment Act (No. 1) 2009* (Cth)

¹⁰ *Declaration of eligible authority as agency – Crime and Misconduct Commission of Queensland* (Cth)

¹¹ This compares with the Committee's budget allocation for 2006/2007 of \$277,451.00 and for 2007/2008 of \$292,385.00.

¹² This compares with the Committee's actual expenditure for 2006/2007 of \$275,898.66 and for 2007/08 of \$284,710.44. This increased expenditure was due to additional costs incurred in conducting the Committee's Three Yearly Review for extra staffing, advertising for submissions, mail-outs and the holding of public hearings.

2008/2009 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>
27 August 2008	PCMC	✓	✓	✓	✓	✓	✓	✓
29 August 2008	PCMC	✓	✓	X	✓	X	✓	✓
29 August 2008	PCMC / CMC	✓	✓	X	✓	X	✓	✓
10 September 2008	PCMC	✓	✓	✓	✓	✓	✓	✓
8 October 2008	PCMC	✓	✓	✓	✓	✓	✓	✓
9 October 2008	PCMC / Parliamentary Commissioner	✓	✓	✓	✓	X	✓	X
10 October 2008	PCMC	✓	✓	✓	✓	✓	✓	✓
10 October 2008	PCMC / CMC	✓	✓	✓	✓	✓	✓	✓
24 October 2008	PCMC	✓	✓	✓	X	✓	✓	✓
12 November 2008	PCMC	✓	✓	✓	✓	✓	✓	✓
19 November 2008	PCMC	✓	X	X	✓	✓	✓	✓
19 November 2008	PCMC	✓	X	X	✓	✓	✓	✓
19 November 2008	PCMC	✓	X	X	✓	✓	✓	✓
20 November 2008	PCMC	✓	✓	X	✓	X	✓	✓
26 November 2008	PCMC	✓	X	✓	✓	✓	✓	✓
27 November 2008	PCMC / Parliamentary Commissioner	✓	X	✓	✓	X	✓	X
28 November 2008	PCMC	✓	X	✓	✓	X	✓	✓
28 November 2008	PCMC / CMC	✓	X	✓	✓	✓	✓	✓
3 December 2008	PCMC	✓	✓	✓	✓	✓	X	✓
16 December 2008	PCMC	✓	X	✓	✓	X	✓	✓
5 February 2009	PCMC	✓	✓	✓	✓	X	✓	X
11 February 2009	PCMC	✓	✓	✓	✓	✓	✓	✓
13 February 2009	PCMC	✓	✓	✓	✓	X	✓	X
13 February 2009	PCMC / CMC	✓	✓	✓	✓	X	✓	✓
8 April 2009	PCMC	✓	✓	✓	✓	✓	✓	✓
16 April 2009	PCMC	✓	✓	✓	✓	✓	✓	✓
20 April 2009	PCMC	✓	✓	✓	✓	✓	✓	X

2008/2009 Meeting Attendance Record – 8th PCMC

DATE	PURPOSE	<i>Paul Hoolihan</i>	<i>Jack Dempsey</i>	<i>Steve Dickson</i>	<i>Scott Emerson</i>	<i>Betty Kiernan</i>	<i>Mark Ryan</i>	<i>Stephen Wettenhall</i>
19 May 2009	PCMC	✓	✓	✓	✓	✓	✓	✓
21 May 2009	PCMC / Parliamentary Commissioner	✓	✓	✓	✓	✓	✓	✓
2 June 2009	PCMC	✓	✓	✓	✓	✓	✓	✓
5 June 2009	PCMC	✓	✓	✓	✓	X	✓	✓
5 June 2009	PCMC / CMC	✓	✓	✓	✓	X	✓	✓
18 June 2009	PCMC	✓	✓	✓	✓	✓	✓	✓