



# **REPORT**

**OF THE**

**PARLIAMENTARY CRIMINAL JUSTICE COMMITTEE**

**The Term of Sir Max Bingham QC, Chairman of the Criminal Justice Commission**

Delivered to the Clerk of the Parliament and deemed presented to the Parliament and Ordered to be printed pursuant to a resolution of the Legislative Assembly of 20 December 1991

Report No. 11, 2 August 1991

## COMMITTEE MEMBERS

**CHAIRMAN:** Mr P D Beattie MLA, Member for Brisbane Central

**DEPUTY CHAIRMAN:** Hon W A M Gunn MLA, Member for Somerset

**MEMBERS:** Mrs W M Edmond MLA, Member for Mt Cootha

Hon N J Harper MLA, Member for Auburn

Mr S Santoro MLA, Member for Merthyr

Mr R E Schwarten MLA, Member for Rockhampton  
North

Mrs M R Woodgate MLA, Member for Pine Rivers

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**RESEARCH DIRECTOR:** Tony Woodyatt

**RESEARCH ASSISTANT:** Daniel Wright

## CHAIRMAN'S FOREWORD

**The Parliamentary Criminal Justice Committee** has the serious and heavy responsibility of monitoring and reviewing the **Criminal Justice Commission**, in the discharge of its functions and duties. **The Committee should report to the Parliament on matters that it believes appropriate to ensure that the Fitzgerald process of reform in relation to the CJC continues and succeeds.**

It is the Committee's view that it would be negligent in its duty if it did not make an appropriate recommendation at this time to the Parliament and the Government about Sir Max Bingham's appointment. The Committee has **therefore** made the **appropriate** recommendation and the Committee's recommendation is attached.

**The Parliamentary Criminal Justice Committee** and the Criminal Justice Commission have developed a good, hardworking relationship and through the frequent private and public hearings conducted between the Commission and the Committee have developed respect for the process and for each other's responsibilities.

I am happy to report **that** the confidentiality section of the Act (section 6.7) has been respected by both the Commission and the Committee. This has confirmed the respect which the Committee and the Commission have for one another and ensured maximum **co-operation** and disclosure.

**The Committee in recent weeks has visited Southport, Broadbeach, Toowoomba, Mt Isa, Cairns and Townsvilk** in its monitor and review role. These visits, together with the numerous and **frequent** public and private hearings over a fifteen month period between the Commission and the Committee have given all committee members an ideal **opportunity** to assess the worth of Sir Max and the CJC. Several of the **Hansard transcripts** of these public hearings between the Committee and the Commission have been tabled in the Parliament for the information of Honourable Members and the community.

It should be pointed out that Sir Max has travelled extensively in Queensland as part of his **CJC responsibilities**. Members of the Committee have also individually had discussions with officers of the **Police Service**.

**The timing of the** confirmation or otherwise of Sir Max's term of appointment by Cabinet is a matter for the Government. Sir Max was appointed as Chairman on and from 21 December 1989. The minimum term he could serve pursuant to the **Criminal Justice Act 1989-1990** would therefore not expire until **20** December 1991.

The Committee obtained an opinion of Queen's Counsel **confirming** its ability to pursue the course of action taken in this **report**. The Committee felt that in light of the **CJC's** ongoing reporting process it is **appropriate** that it make its recommendation now so that the Committee's recommendation will not be misconstrued or misinterpreted in light of any reports or events.

The **confirmation** of Sir Max's **term**, in the Committee's opinion, is fundamentally important to the stability of **the CJC and the success of its work**. **The Committee is of the view that two years is too short for the first term of the inaugural CJC Chairman**. **Sir Max has confirmed to the Committee his willingness to serve the full three year period as recommended in this report.**

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2 August 1991

## THE COMMITTEE'S ROLE

Section 4.8 of the *Criminal Justice Act* 1989-1990 sets out the functions and powers of the Parliamentary Criminal Justice Committee.

The provisions of section 4.8(1) so far as they are relevant to this question are as follows:

- “(a) To monitor and review the discharge of **the** functions of the Commission as a whole and of the Official Misconduct Division in **particular**;
- (b) To report to **the** Legislative Assembly, with such comments as it thinks fit, on any matters pertinent to the Commission, the discharge of the Commission's functions or **the** exercise of **the** powers of **the** Commission, a Commissioner, or of officers of **the** Commission, to **which the** attention of **the** Assembly **should**, in **the** committee's **opinion**, be directed;
- ...
- (e) To participate in the constitution of the Commission and **the** removal from office of a Commissioner as prescribed;”

Division 1 of Part II of the Act deals with the establishment of the Commission.

In that Division, in relation to the selection for appointment of the Chairman of the CJC, section 2.5(2) provides:

“Before **proceeding** to a selection of any person for recommendation for appointment as **Chairman**, **the** Minister shall consult **with the** Parliamentary Committee, or, if at **the** material time **there** be no **such** Committee, **with the** Leader of **the** Opposition in **the** Legislative Assembly and **the** Leader in the Assembly of any other political party represented in the Assembly by at least five members.”

Section 2.5(3) adds that:

“**Where** consultation is had under subsection (2) **with the** Parliamentary Committee, a person **shall** not be recommended for appointment as Chairman unless **his** appointment is supported by **the** members of **the** committee, unanimously or by a majority thereof, **other than** a majority consisting **wholly** of members of **the** political party or parties in Government in **the** Assembly.”

Whilst these provisions relate to the initial appointment of a Chairman, they are instructive of the appropriate process to be followed when the position of CJC chairman is **considered**, and are directly relevant when dealing with the term of the first Chairman.

## APPOINTMENT OF THE CJC CHAIRMAN

Section 2.8(1) of the Act **provides**:

"The first Chairman of the Commission shall be appointed for a term not less than two years and not more than three years."

Section 2.8(3) provides further that:

"The first Chairman of the Commission is not eligible to be appointed for a further term as Chairman."

Sir Max Bingham QC commenced duties as Chairman of the Criminal Justice Commission on and from 21 December 1989. The gazettal of this appointment is silent as to the duration of his term. It is possible for him to be appointed until 20 December 1992 but no longer.

## THE COMMITTEE PROCESS

The Parliamentary Criminal Justice Committee is currently conducting a major "monitor and review" study of how the Commission and the Committee are operating. This review has involved the calling of submissions from the public and the holding of public hearings on three occasions (24 May, 6 and 13 June 1991) and will culminate in a two part report to Parliament.

Part A of the Committee's "monitor and review" report was tabled in Parliament on Tuesday 16 July 1991 and included all the written submissions received by the Committee together with the Hansard record of the oral evidence given before the Committee at the public hearings on 6 and 13 June 1991. The transcript of the hearing of 24 May 1991 was tabled in the House on 17 June 1991.

A major part of Part A included a submission from the Criminal Justice Commission in April 1991 on its activities over the first year of its operations as well as proposed recommended changes to the Criminal Justice Act.

The Committee is currently assessing the material put before it and in particular the material from the CJC and it will be the subject of a major report, Part B, to be tabled later in the year.

The Criminal Justice Commission in its detailed submission showed a clear commitment to fulfilling its public responsibilities and its responsibilities to this Committee.

The Committee intended at all times to include in its report as part of this monitor and review exercise a recommendation regarding Sir Max Bingham's term.

There has been debate in recent times and submissions were put before the Committee about concerns involving Sir Max Bingham's term. The Committee is of the view that it should fulfil its statutory obligations and ensure that as far as possible stability is guaranteed with the administration of the CJC and that the public debate about Sir Max's position be finalised as soon as possible.

An assessment of the material put before the Committee, while it is still in the process of

being examined, clearly indicates that the Commission and Sir Max as Chairman, are **fulfilling** their statutory obligations.

## SELECTION **CRITERIA**

However, without limiting further detailed assessment of this issue at a later time, the Committee has determined some criteria which could form the basis of CJC Chairman selection consideration.

Section **2.3(1)** of the *Criminal Justice Act* provides that the Chairman of the Commission shall be a person who has served as, or is qualified for appointment as, a judge of a Supreme Court, the Federal Court or the High Court

Section 2.4 disqualifies a person if that person is a Judge, a Member of Parliament, a Director of Prosecutions, a police officer, or has been a police officer in the **previous five** years, a public servant or Crown employee or a member-or servant of any **other** statutory **body**.

The purpose of the Commission is to initiate and coordinate reform of the administration of criminal justice in Queensland. In achieving this the Commission is required to assist in the development of a system that is fairer and more accountable, that reduces the incidence of crime, particularly major and organised crime and official misconduct, that oversees the development of a more efficient, effective and corruption free Police Service and provides to the Parliament and the community advice and information so that there is a greater understanding of the reform process and criminal justice issues.

The responsibilities of the Chairman of the Commission **are** therefore demanding. With this in mind the Committee believes that the Chairman should have an extensive knowledge of and experience in the criminal justice system. The Chairman is required to be familiar to a high level with the complex issues and details of operation of all five divisions within the Commission. A thorough practical legal knowledge would also be required. **In** addition to having this particular knowledge and experience, it would be expected that the Chairman would be widely respected for a high degree of scholarship in the criminal justice field.

An experienced and knowledgeable Chairman must also demonstrate a capacity to provide leadership and direction both within the Commission Board and to the Commission's staff. This is necessary because of the need to maintain the reform momentum and because the Commission will inevitably attract considerable criticism because of the controversial nature of the reform process and the issues with which it deals. Staff morale is crucial to the Commission's success.

Because the **Chairman** of the Commission is the only full-time Commissioner, administrative and organisational skills are also necessary to ensure that the Commission runs efficiently and economically. While the Chairman is assisted in this **regard** by an Executive Director, the Chairman must be satisfied that all systems **are operating** effectively and that all the functions of the Commission are being fulfilled to the highest standards.

## SIR MAX BINGHAM QC

The Committee held two special meetings to consider Sir Max's term. The first was to determine the above selection criteria and the second was to apply that criteria to Sir Max's **performance**.

Bearing in mind the organisational and logistical difficulties that any new body has when it is established, the Committee is of the view that Sir Max Bingham QC has performed his tasks and responsibilities in accordance with the Act and with the **standards** expected of the position. The Committee also believes that Sir Max Bingham enjoys considerable bipartisan and public **confidence** in the performance of his job. Accordingly Sir Max Bingham QC should be invited to continue as Chairman of the Criminal Justice Commission until December 1992.

The Committee meets with Sir Max Bingham QC and other members and employees of the Criminal Justice Commission in monthly private hearings. Since the first such meeting in May 1990, **there** have been fourteen private hearings as well as numerous public hearings, the first of which was held in April 1990.

These meetings have given the Committee the opportunity to not only carry out its monitoring and reviewing function of the Commission at large, but also to have a close liaison with Sir Max Bingham QC and to **scrutinise** his performance as Chairman. Having regard to the criteria the Committee makes the following unanimous recommendation:

### RECOMMENDATION

**The Committee recommends to the Parliament that Sir Max Bingham's term of appointment be confirmed for the full period of three years in accordance with section 2.8(1) of the *Criminal Justice Act 1989-1990*.**