

Report No. 82

A report on the investigation of the concerns raised by Dr Christine Eastwood regarding the alleged conduct of Mr Robert Needham and Ms Helen Couper



LEGISLATIVE ASSEMBLY OF QUEENSLAND

PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

A report on the investigation of the concerns raised by Dr Christine Eastwood regarding the alleged conduct of Mr Robert Needham and Ms Helen Couper

Report No. 82

April 2010

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53rd PARLIAMENT**

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CHAIRMAN'S FOREWORD

On 28 October 2009, the Parliamentary Crime and Misconduct Committee (the PCMC or the Committee) received a complaint from Doctor Christine Eastwood regarding alleged improper conduct of Mr Robert Needham, the then Chairperson of the Crime and Misconduct Commission (the CMC or the Commission) and a senior officer of the Commission, Ms Helen Couper.

The complaint arose from a meeting between Mr Needham, Dr Eastwood and her husband, Mr John Costanzo, on 14 August 2009 at a meeting room in a Coolangatta hotel, held at the request of Mr Costanzo and Dr Eastwood.

In her complaint, Dr Eastwood alleged that at the meeting, Mr Needham:

- (a) refused to accept a complaint from Dr Eastwood (dealing with suspected crimes involving Queensland Police Officers) and therefore breached a statutory duty imposed on him;
- (b) acted improperly, in that he intentionally, dishonestly and repeatedly misrepresented the law to Dr Eastwood;
- (c) acted in a bullying way and tried to intimidate Dr Eastwood;
- (d) discouraged Dr Eastwood from taking her complaint to the police;
- (e) failed to comply with his statutory duty to notify the PCMC about the suspected improper conduct of a commission officer, Ms Helen Couper; and
- (f) revealed Ms Couper had an undisclosed conflict of interest - which may have resulted with injustices occurring over a period of 18 years (being the duration Ms Couper has worked at the CMC and its predecessor, the Criminal Justice Commission).

As a consequence of Mr Needham's alleged conduct at the meeting, Dr Eastwood, in her complaint to the Committee, raised allegations against Ms Couper that she was involved in improper conduct by failing to disclose ongoing conflicts of interest arising from the fact her cousins' husbands were members of the Queensland Police Service.

Dr Eastwood, in further correspondence to the Committee dated 16 November 2009, elaborated on her concerns regarding Mr Needham and Ms Couper.

At its meeting on 24 November 2009, the Committee resolved, in accordance with section 295(3) of the *Crime and Misconduct Act 2001*, that:

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

1. Investigate the concerns raised by Dr Christine Eastwood, in her correspondence dated 28 October 2009 and 16 November 2009 regarding the alleged conduct of Mr Robert Needham and Ms Helen Couper; and
2. Provide a report to the Committee on the matters investigated.”

This report attaches the report of the Parliamentary Crime and Misconduct Commissioner. The results of the Commissioner's investigation are set out in pages 4 to 33 of the attached report with the Commissioner's conclusions set out in pages 34 to 36.

Original signed

Paul Hoolihan MP
Chairman

April 2010

1. INTRODUCTION

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

The PCMC monitors and reviews the performance of the functions of the CMC. The Committee is established under the *Crime and Misconduct Act 2001* as a bipartisan committee of the Queensland Legislative Assembly. It has the following functions:

- to monitor and review the performance of the CMC's functions;
- to report to the Legislative Assembly where appropriate on any matters pertinent to the Commission, the discharge of the Commission's functions or the exercise of the powers of the Commission;
- to examine reports of the CMC;
- to participate in the appointment of commissioners;
- to conduct a review of the activities of the CMC at the end of the Committee's term ("the Three Year Review"); and
- to issue guidelines and give directions to the CMC where appropriate.

The PCMC can also receive complaints and deal with other concerns of which it may be aware about the conduct or activities of the CMC or an officer or former officer of the CMC.

The Committee is assisted in its oversight process by the Parliamentary Commissioner. Mr Gary Long SC was appointed as the Parliamentary Commissioner in January 2010. Mr Long's appointment is on a part-time basis.

The Parliamentary Commissioner has a number of functions under the Act. These include, as required by the Committee:

- conducting audits of records kept by, and operational files held by, the CMC;
- investigating complaints made about, or concerns expressed about, the CMC;
- independently investigating allegations of possible unauthorised disclosure of information that is, under the Act, to be treated as confidential;
- reporting to the Committee on the results of carrying out the functions of the Parliamentary Commissioner; and
- performing other functions the Committee considers necessary or desirable.

To assist in the performance of these functions, the Parliamentary Commissioner has wide powers. Any decision by the Committee to ask the Parliamentary Commissioner to investigate or review and report on a matter must have the bipartisan support of the Committee.

The Parliamentary Commissioner has further responsibilities under the *Crime and Misconduct Act 2001* and the *Police Powers and Responsibilities Act 2000* pursuant to amendments made by the *Cross-Border Law Enforcement Legislation Amendment Act 2005*.

These include:

- inspecting the records of the CMC to determine the extent of the CMC's compliance with legislative requirements relating to surveillance device warrants, retrieval warrants and emergency authorisations;
- reporting to the PCMC at six monthly intervals on the results of such inspections;
- inspecting the records of the CMC at least once every 12 months to determine the extent of the CMC's compliance with legislative requirements relating to controlled operations;
- reporting annually on the activities of the CMC under the controlled operations provisions to the Chair of the PCMC; and
- auditing the CMC's records relating to assumed identities at least once every six months.

2. BACKGROUND

In response to a complaint made by Dr Christine Eastwood in correspondence dated 28 October 2009 and 16 November 2009, on 24 November 2009 the Committee resolved, in accordance with section 295(3) of the *Crime and Misconduct Act 2001*, that:

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

1. Investigate the concerns raised by Dr Christine Eastwood, in her correspondence dated 28 October 2009 and 16 November 2009 regarding the alleged conduct of Mr Robert Needham and Ms Helen Couper; and
2. Provide a report to the Committee on the matters investigated.”

3. THE REPORT OF THE PARLIAMENTARY COMMISSIONER

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

In summary, the Parliamentary Commissioner concluded on the basis of the information before him, that he was unable to substantiate any of the allegations made by Dr Eastwood against either Mr Needham or Ms Couper and that there was no evidence of any improper conduct on behalf of any Commission officer.

4. THE COMMITTEE'S COMMENTS

As noted above, the Parliamentary Commissioner concluded on the basis of the information before him, there was no evidence to substantiate any of the allegations made by Dr Eastwood against either Mr Needham or Ms Couper.

The Committee unanimously accepts the findings of the Parliamentary Commissioner and does not intend to take any further action in relation to this matter.

APPENDIX A

**REPORT ON THE INVESTIGATION
OF THE CONCERNS RAISED BY
DR CHRISTINE EASTWOOD
REGARDING THE ALLEGED CONDUCT OF
MR ROBERT NEEDHAM & MS HELEN COUPER**



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

MARCH 2010

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INTRODUCTION

The complainant in this matter is Doctor Christine Eastwood. Dr Eastwood is a recently retired Academic who has published a number of research papers relating to child complainants of sexual abuse in the criminal justice system. Her husband, Mr John Costanzo, is a former Crown Prosecutor and presently a Stipendiary Magistrate.

In her letter to the Parliamentary Crime and Misconduct Committee dated 28 October 2009, Dr Eastwood states that on the evening of Friday 14 August 2009, she and Mr Costanzo met with the then Chairperson of the Crime and Misconduct Commission, Mr Robert Needham, in a meeting room at a Coolangatta hotel. Dr Eastwood states that during the meeting she made a complaint and tried to present Mr Needham with “*documentation in relation to serious crimes of fraud, forgery of a will, and murder potentially involving at least two senior Queensland police officers.*”¹ Dr Eastwood also referred to the possible involvement of a third police officer and a solicitor.

Dr Eastwood took her complaint directly to Mr Needham rather than the police because she believed that if she complained to the Queensland Police Service (QPS) her complaint would almost certainly be investigated by the Fraud Squad and one of the police officers potentially involved in the alleged crimes worked in the Fraud Squad. Furthermore, the three police officers possibly involved in the alleged offences previously or presently had other family members in the QPS up to and including to the level of Assistant Commissioner.

Dr Eastwood also believed that she could not make her complaint through the usual mechanisms of the Crime and Misconduct Commission (CMC) because the then Acting Assistant Commissioner Misconduct, Ms Helen Couper, was related to the families of the subject police officers. In her submission to the Committee, Dr Eastwood notes that, according to the CMC’s guidelines, a complaint may be made directly to the Chairperson in respect of highly sensitive or urgent matters.²

According to Dr Eastwood, early in the course of the meeting on 14 August 2009 Mr Needham stated that he had not been aware of the relationship between Ms Couper and the police families. Dr Eastwood alleges that Mr Needham’s attitude and demeanour then changed and his conduct from then on could be interpreted as an attempt to cover up the alleged crimes Dr Eastwood was trying to report and any implications of Ms Couper’s undisclosed conflict of interest going back 18 years. (Ms Couper had been employed by the CMC and, before that, the Criminal Justice Commission (CJC) since October 1991.)

Dr Eastwood states that Mr Needham refused to accept her complaint and would not even touch the documentation she had prepared. It is Dr Eastwood’s belief that, given the research and facts she had already gathered, further investigation of her complaint of serious fraud, forgery and uttering would not have been complex or difficult. It would only have involved the forensic examination of two documents and the conducting of one or two interviews to either confirm or disprove the facts and suspicions she had raised.

¹ This wording is taken from paragraph numbered “1” on page 2 of Dr Eastwood’s letter to the Parliamentary Crime and Misconduct Committee dated 28 October 2009.

² The CMC’s publication “Facing the Facts” which Dr Eastwood cites in her submission actually states at page 2.10 that “For matters that require a CEO or director-general to respond to the minister, or are highly sensitive for political or other reasons, or contain allegations against a very senior executive, **you may seek advice** from ...the CMC’s Chairperson.” (Emphasis added.)

In her submission to the Committee, Dr Eastwood states that she believes that “... *Mr Needham’s conduct at the meeting on 14 August 2009 (and potentially subsequent acts/omissions) are in breach of his statutory duties under the Crime and Misconduct Act 2001 and may also constitute a number of offences under the Criminal Code (Qld).*”

Dr Eastwood refers to section 92A of the Criminal Code “Misconduct in relation to public office” and section 204 “Disobedience to statute law” as examples of two possible offences under the Criminal Code which Mr Needham may have committed. She also questions whether Mr Needham has breached his statutory duty under section 329 of the *CM Act* “Duty of chairperson to notify improper conduct to the parliamentary committee” if he has failed to notify the Committee that Ms Couper may be involved in improper conduct in failing to disclose her relationship to the two senior police officers.

Dr Eastwood contends that Mr Needham’s conduct at the meeting and his subsequent acts or omissions appear to be an attempt to cover up serious crimes and misconduct. She believes that her case is an example of how police in Queensland can apparently commit serious criminal offences with complete impunity and be facilitated in the commission of those crimes by the corruption and cover-up at the top of the CMC.

In a subsequent letter to the Committee of 16 November 2009, Dr Eastwood described her complaint as involving “...*Needham’s alleged cover-up of serious crimes including forgery, fraud and murder involving senior police, and alleged cover-up at the top of the CMC including the Chair (Needham) and Misconduct Commissioner (Couper).*”

TERMS OF REFERENCE

At a meeting on 24 November 2009 the Parliamentary Committee resolved in accordance with section 295(3) of the *Crime and Misconduct Act 2001* (the *C&M Act*), that:

Pursuant to section 295(2)(d) of the Crime and Misconduct Act 2001, the Parliamentary Crime and Misconduct Commissioner be asked to:

- 1. Investigate the concerns raised by Dr Christine Eastwood, in her correspondence dated 28 October 2009 and 16 November 2009 regarding the alleged conduct of Mr Robert Needham and Ms Helen Couper; and*
- 2. Provide a report to the Committee on the matters investigated.*

RESULTS OF INVESTIGATION**The recording of the meeting of 14 August 2009**

Dr Eastwood states that Mr Needham recorded their meeting of 14 August 2009 (the meeting) so the facts and allegations which she has set out in her complaint can be substantiated by access to that recording. Since Dr Eastwood's concerns relate primarily to Mr Needham's conduct at the meeting, it was considered that the recording of the meeting would indeed provide the best evidence by which to assess Dr Eastwood's allegations.

A copy of the purported recording of the meeting was obtained from the CMC early in the course of this investigation in circumstances described more fully at page 16. The CMC provided the copy of the purported recording on a copy-protected disc and therefore, despite repeated requests from Dr Eastwood, it has not been feasible to provide her with a direct digital copy. Nonetheless the importance of having Dr Eastwood listen to the purported recording in order to verify, or indeed to challenge, its authenticity has been recognised.

To that end, on 14 January 2010 I provided Dr Eastwood an opportunity to listen to the purported recording in the presence of her legal representative, her husband - Mr Costanzo, and my principal legal officer. This meeting, at which the purported recording was played in its entirety, was itself recorded and a copy of this later recording was provided to Dr Eastwood the following day. Dr Eastwood has therefore had a "second-generation" copy of the purported recording of the meeting since then. In the interim and despite three written requests, Dr Eastwood has not responded to requests to indicate either that she verified or challenged the authenticity of the purported recording of her meeting with Mr Needham.

However, in an affidavit sworn or affirmed on 17 December 2009, Dr Eastwood referred to five remarks she recalled Mr Needham making during the meeting which she said would "*assist in any determination of whether the recording is a true and accurate recording.*" Except in one respect (which is discussed in detail below under the first of the specific concerns raised by Dr Eastwood) the purported recording of the meeting does include remarks by Mr Needham similar to those referred to in Dr Eastwood's affidavit. Furthermore, in a submission dated 3 February and a letter dated 5 March 2010, Dr Eastwood's legal representatives quoted various passages from the purported recording.

I have no doubt whatsoever as to the authenticity of the recording provided by the CMC.

The concerns raised by Dr Christine Eastwood in her correspondence dated 28 October 2009 and 16 November 2009 regarding the alleged conduct of Mr Robert Needham and Ms Helen Couper

On the first page of her correspondence dated 28 October 2009 Dr Eastwood states her general concern that "*Mr Needham's conduct at the meeting on 14 August 2009 (and potentially subsequent acts/omissions) are in breach of his statutory duties under the Crime and Misconduct Act 2001 and may also constitute a number of offences under the Criminal Code (Qld).*"

In her correspondence of 16 November 2009 Dr Eastwood also refers to “...*Needham’s refusal to accept the complaint he had a statutory duty to accept; the undisclosed Couper/QPS relationships; and the alleged attempt by Needham to not only cover-up serious crimes but also his alleged attempt to cover-up the implications of Couper’s undisclosed conflicts.*”

Dr Eastwood explains her specific concerns in some detail at paragraphs numbered 5 to 11 of her correspondence to the Committee dated 28 October 2009. Each of Dr Eastwood’s concerns is set out in full and separately discussed below. I have included transcripts of extracts from the recording of the meeting where relevant.

1. Needham revealed Couper had an undisclosed conflict of interest. *Early in the meeting, Needham indicated he was not aware of the prior work and family relationships between Helen Couper and the police families. From that point his demeanour and attitude changed. His conduct from then on could be interpreted as an attempt to cover-up both the alleged crimes I was trying to report, and also an attempt to cover-up any implications of the Couper undisclosed conflict of interest going back 18 years. (Paragraph number 5.)*

The recording reveals that Dr Eastwood commenced the meeting with Mr Needham by explaining that Ms Helen Couper, at that time the CMC’s Acting Assistant Commissioner Misconduct, is her cousin. Dr Eastwood also informed Mr Needham that her two sisters are married to senior Queensland police officers. For the purposes of this report I have referred to these officers as A and B. This then is the relationship between Ms Couper and the police families to which Dr Eastwood refers in her complaint to the Committee - namely that two of Ms Couper’s cousins are married to serving QPS officers.

Dr Eastwood also revealed, as stated above, that those two senior police officers previously or presently had other family members serving in the QPS up to and including to the rank of Assistant Commissioner.

It appears that Dr Eastwood has been estranged from her family for many years but she was aware that one of her sisters had worked as a legal secretary for Ms Couper before Ms Couper commenced her employment with the CJC.

Dr Eastwood’s complaint to Mr Needham on 14 August 2009 related to alleged offences of fraud, forgery of a will and possibly even murder, involving these two senior police officers (her brothers-in-law), a solicitor and perhaps also a third police officer.

Dr Eastwood alleges that “*Early in the meeting, Needham indicated he was not aware of the prior work and family relationships between Helen Couper and the police families.*” However, on the recording of the meeting, Mr Needham’s responses when informed of the relationship between Ms Couper and the police families were simply “*Uh-huh*” and “*Right*”. At no stage of the recorded meeting did Mr Needham state that he was unaware of the relationship³ although, he has subsequently confirmed that he was unaware of the relationship.

The previous Parliamentary Commissioner, Mr Alan MacSporrán SC, interviewed Mr Needham concerning Dr Eastwood’s allegations on 26 November 2009. Mr Needham stated that he had not

³ This is the exception referred to above at page 4 – the only remark Dr Eastwood mentioned in her affidavit of 17 December 2009 which cannot be heard in the recording of the meeting.

listened to the recording of his meeting with Dr Eastwood and Mr Costanzo so his recollection of the meeting must be regarded in that context.⁴ During that interview Mr Needham stated that:

...when they told me that Helen was related to these, I – I probably said something like ‘Oh I didn’t know Helen was’...

And I’m sure I said something like, ‘Oh, I didn’t know Helen was related to them.’

However, and contrary to Dr Eastwood’s allegation and Mr Needham’s recollection, he did not reveal this at the meeting of 14 August 2009 – at least not whilst the meeting was being recorded.

Whilst there appears to be a clear recollection from the participants in the meeting that Mr Needham did indicate that he was unaware of any relationship between Ms Couper and the police officers, it is not clear as to when this occurred except that it was not during the recorded meeting.

It should be noted that in his interview with Mr MacSporran, Mr Needham stated that Mr Costanzo telephoned him the day before their meeting and told him that *“he and his wife had this evidence about serious offences being committed by police officers and that he would like to meet with me with his wife and to pass some information on to me but that he asked me not to mention it to Helen Couper because he said that she was related in some way to some of these police.”*

It is clear from the recording of the meeting that Mr Needham had not *“revealed Couper had an undisclosed conflict of interest”* as Dr Eastwood asserts. Mr Needham indicated (at some stage) that he was unaware of Ms Couper’s relationship with the police officers, but the issue of whether this amounted to an undisclosed conflict of interest is another matter.

Dr Eastwood’s reference to Ms Couper’s *“undisclosed conflict of interest”* and her reference later in her complaint to Ms Couper’s *“... (required) yearly disclosures of interest”* indicate a misunderstanding as to the obligations of CMC officers with respect to such matters. These obligations and responsibilities are imposed under the CMC’s Code of Conduct and the Personal Disclosures and Conflicts of Interest Policy and Procedure.⁵

The CMC’s Code of Conduct deals generally with conflicts of interest and imposes an obligation upon CMC officers to *“disclose in writing any apparent or actual conflict of interest”*. Under the sub-heading *“Conflicts of Interest”* the Code of Conduct states further:

It is your responsibility to disclose in writing to your manager any direct or indirect personal interest in, or association with, any person, association, corporation or activity involved in or related to a matter that you encounter in the course of carrying out your

⁴ The Committee will note that at various stages of the interview quoted throughout this report, Mr Needham referred to and addressed the precise wording of Dr Eastwood’s complaint. I should make it clear that Mr MacSporran did not provide a copy of Dr Eastwood’s complaint to Mr Needham prior to or during the interview. The document to which Mr Needham referred was amongst copies of documents he said were provided to him by a journalist on 25 November 2009 after Mr Springborg MP tried to table the documents in Parliament and before the Speaker ruled that the documents not be tabled. The documents appear to have been sent to Mr Needham from a facsimile machine in Parliament House.

⁵ There are two Policy and Procedure documents relating to Personal Disclosures and Conflicts of Interest which had application during the relevant period. The first applied from 28 January 2005 to 3 September 2009. The second became effective as of 4 September 2009. The relevant sections of both documents are identical. There is currently a further revised Policy and Procedure before the Commission awaiting the Commissioners’ consideration and approval.

*duties. It is also your responsibility to keep your statement of personal particulars and private interests current.*⁶

However, the more detailed statement of officers' obligations and responsibilities is contained in the Personal Disclosures and Conflicts of Interest Policy and Procedure.

CMC officers have different responsibilities under the Policy and Procedure with respect to the registration of personal particulars and private interests and the disclosure of conflicts of interest. It is important to distinguish between CMC officers' responsibilities in each area.

Personal Disclosures

Pursuant to paragraph 6.1 of the Policy and Procedure any officer of the CMC and all applicants for positions within the CMC must make, at the request of the Human Resources Manager, a statement of his or her personal particulars and private interests and the personal particulars and private interests of any person with whom they are associated. These statements of personal particulars and private interests are generally made prior to the officer commencing employment with the CMC and before there could be any suggestion of the officer's private interests conflicting with their duties and responsibilities in serving the public interest.

CMC officers are required to provide notification by statutory declaration within 30 days of any substantial change to their personal particulars or private interests or those of any person with whom they are associated. It is the responsibility of each CMC officer to keep his or her statement of personal particulars and private interests current.

During the course of this investigation Ms Couper's "Statement of Personal Particulars" was obtained and inspected. The document takes the form of a statutory declaration dated 25 August 1991. The document is a standard CJC form and it records the details of an officer's parents, partner (married or de facto) children (including step-children) and siblings (including half and step brothers and sisters). There is no requirement to record the details of an officer's cousins or an officer's cousins' spouses and Ms Couper's "Statement of Personal Particulars" does not include these details.

Ms Couper's "Statement of Private Interests" was also obtained and inspected during this investigation. This document was also in the form of a statutory declaration dated 25 August 1991.

The term "private interests" is defined as:

...those interests that can bring benefits or disadvantages to an officer as an individual, or others whom the officer may wish to benefit or disadvantage. Private interests are not limited to pecuniary interests or to interests that can bring personal gain or help avoid personal loss. They also include many social and professional activities or interests.

It can be seen that this definition is necessarily broad but also has to be applied in a practically sensible way. It can be seen that social and professional activity or interest by way of membership of particular professional or other organisations (for example clubs, political parties and public interest groups) may have a sufficiently close connection with an individual's personal interests and also be of a type to raise such a potentiality or foreseeability of actual or apparent conflict of interest arising in the future as to be disclosable in the Statement of Private Interests.

⁶ Crime and Misconduct Commission Code of Conduct (2005) "Principle 3: Integrity" and "3.1 Conflicts of Interest" at page 12. This code of conduct was applicable at all times relevant to Dr Eastwood's complaint.

Otherwise and particularly in relation to individual personal associations, much will depend upon the nature and extent and particularly the closeness of the association. As will be seen in the discussion which follows, there are particular requirements established in the Policy and Procedure, which are directed at the situation where an actual or apparent conflict of interest emerges or is confronted in the course of an officer's duties.

Conflicts of Interest

In respect of conflicts of interest, the Policy and Procedure states that:

All conflicts of interest must be disclosed and effectively managed, to help maintain public confidence in the integrity of the CMC and its officers.

Conflicts of interest cover pecuniary and non-financial matters. They may include an officer's personal, professional or business interests outside those of the CMC, as well as those interests of the individuals or groups the officer associates with.

Conflicts of interest may involve a direct conflict between the officer's current duties and responsibilities and existing private interests, or a potential conflict where such private interests could conflict with their official duties in the future. It is also important to recognise that a perceived or apparent conflict of interest – whether or not it actually exists – can be just as damaging as an actual conflict of interest.⁷

The Policy and Procedure includes the following definitions:

Conflict of interest: A 'conflict of interest' involves a conflict between an officer's duties and responsibilities in serving the public interest, and the officer's private interest. A conflict of interest can arise from avoiding personal losses as well as gaining personal advantage – whether financial or otherwise.

Apparent (or perceived) conflict of interest: An apparent conflict of interest exists where it appears that an officer's private interest could improperly influence the performance of their duties – whether or not this is in fact the case.

Potential conflict of interest: A potential conflict of interest arises where the officer has private interests that could conflict with their official duties in the future.⁸

The Policy and Procedure does not define the term “non-financial matters” (as used in the second paragraph quoted above) but it does define “non-pecuniary interests” which would appear to be essentially the same concept. The Policy and Procedure states that non-pecuniary interests “... may arise from a personal or family relationship, or involvement in sporting, social or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group.”

In my view, it is therefore apparent that the assessment of potential conflicts of interest does not require speculation about possible future circumstances in respect of individual personal associations which are beyond those which are sufficiently close in nature to be included in the “Statement of Personal Particulars”. For example, the mere possibility that the CMC might be called upon to consider a complaint made against that associate is not a sufficient connection. There is also a difficulty in the sense of foreseeability because the enquiry is divorced from the touchstone of connection to any particular duty which might give rise to an actual or apparent conflict of interest.

⁷ CMC Policy and Procedure – Personal Disclosures and Conflicts of Interest, Part 2 Introduction.

⁸ CMC Policy and Procedure – Personal Disclosures and Conflicts of Interest, Part 5 Definitions.

Because of the more specific requirements in respect of subsequently identified actual or apparent conflicts of interest, an overly strict or pedantic approach to the “Statement of Personal Interests” is not necessary and CMC officers could not be expected to provide lists of the names of all persons with whom there might conceivably arise a conflict in the future. Otherwise a person in Ms Couper’s position would be expected to provide the names of all persons in the QPS and other Units of Public Administration with whom she has anything more than a passing acquaintance.

Accordingly, in my view Ms Couper’s relationship with the two police officers does not come within what is contemplated by the definition of “private interests” and therefore would not need to be, and is not, included in her “Statement of Private Interests”.

However, the potentiality for actual or apparent conflict of interest can arise at any time and may, in some circumstances, be recognisable before a position of being conflicted is reached. However, that will not be because of mere future possibilities but because of existing circumstances that raise an actual or apparent conflict as a real or significant consideration.

Therefore, depending on the exact nature of Ms Couper’s relationship with her cousins’ spouses, that relationship could be regarded as a potential conflict of interest, namely a non-financial matter having the potential to conflict with Ms Couper’s official duties should matters involving those police officers come before her.

The responsibilities of CMC officers in such circumstances are set out in the Policy and Procedure document.⁹

6.2 Conflict of interest

6.2.1 Employee responsibility

Officers of the CMC hold positions of trust and must manage their private interests so as to ensure they do not adversely affect their public duty.

It is the responsibility of each officer to:

- *assess his or her private and personal interests, and whether such interests may conflict or have the potential to conflict with his or her official duties.*
- *avoid, where possible, situations that may give rise to a conflict of interest or an apparent conflict of interest.*
- *manage any conflicts of interest effectively and transparently, where such conflict of interest cannot be avoided.*
- *formally disclose all conflicts of interest he or she may have according to procedures established by this policy.*

6.2.2 Disclosing conflicts of interest

- *Officers must disclose in writing to their manager any direct or indirect personal interest in, or association with, any person, association, corporation or activity involved in or related to a matter that the officer encounters in the course of carrying out his or her duties.*
- *It is the officer’s responsibility to keep any conflict of interest disclosure current, and record any changes to the situation until it is resolved.*

⁹ The responsibilities of CMC officers with respect to conflicts of interest are set out in similar but less detailed terms in the Code of Conduct.

To the extent that the Policy and Procedure imposes an obligation to disclose the potentiality of conflict of interest this is obviously directed at potentialities that are related to the functions that an officer is to, or may have to, perform.

The significant obligation of CMC officers is to be alert to notify of a conflict of interest when it arises (upon and actual or apparent basis) in connection with the performance of their duties.

Between May 2000 and 28 October 2009 (being the date Dr Eastwood made her complaint to the Committee) Ms Couper respectively held the positions of Director, Integrity Services and Acting Assistant Commissioner, Misconduct and there are differently expressed obligations and responsibilities applicable to Directors and Assistant Commissioners under the Policy and Procedure:

9.3 Directors and Assistant Commissioners

Assistant Commissioners and Directors shall;

- *Monitor the existence of conflicts of interest in respect of themselves and their staff and report any actual or apparent conflict of interest in respect of themselves to the Chairperson for decision...*

Again, it is clear from this section of the Policy and Procedure that there is an obligation upon Directors and Assistant Commissioners to disclose actual or apparent conflicts of interest.

There could therefore be no requirement upon Ms Couper to disclose to Mr Needham her relationship with police officers A and B unless and until one or both of those officers was involved in a matter that Ms Couper encountered in the course of carrying out her duties.

Since Ms Couper had not encountered Dr Eastwood's allegations against her cousins' husbands as at 14 August 2009 (the date of the meeting with Mr Needham), there can be no suggestion that she failed to comply with the CMC's Policy and Procedure. Dr Eastwood's assertion that Ms Couper had an "*undisclosed conflict of interest*" in relation to these allegations is incorrect – no conflict of interest had arisen.

Furthermore, Dr Eastwood's reference to "*... (required) yearly disclosures of interest*" is misinformed. There is no requirement for CMC officers to provide yearly disclosures of interest. Commissioners must update their pecuniary interests register and register of personal and political associations annually, in accordance with section 238 of the *CM Act*, but there is no such requirement for other CMC officers.

When interviewed by Mr MacSporran SC, Mr Needham stated in relation to the assertion that "*Needham revealed Couper had an undisclosed conflict of interest*":

Well they've interpreted what I revealed that way. What I revealed was, when they told me that Helen was related to these, I – I probably said something like 'Oh I didn't know Helen was'...

And I'm sure I said something like, 'Oh, I didn't know Helen was related to them.'

Now she says my attitude changed. I wouldn't have thought it did. Helen's related to [B's family] but, you know, if [B's family] have done something wrong, well chase [B's family]...

But, you know, if she's related to them – so what. We've got people here who are married to police officers. I can think of two women and there's probably others who are related. But I certainly never mentioned conflict because, to my way of thinking, conflict, a potential or an

apparent or a perceived or anything conflict could only arise if something about one of those police officers was before us. And, at that stage, I would expect Helen to say 'I'm related by marriage, or whatever, to this person. I can't deal with it.' That's when she would declare a conflict of interest. And to my knowledge there's been nothing about any of those people – certainly not in the five years I've been here, to my knowledge.

I wouldn't have thought that my conduct, my demeanour and attitude changed - certainly not intentionally. She might have seen something that she interpreted.

Dr Eastwood states that after she revealed to Mr Needham the relationship between Ms Couper and the police officers, his demeanour and attitude changed and “*His conduct from then on could be interpreted as an attempt to cover-up both the alleged crimes I was trying to report, and also an attempt to cover-up any implications of the Couper undisclosed conflict of interest going back 18 years.*”

Dr Eastwood appears to be of the view that her information about Ms Couper's relationship with the police officers was a damaging revelation about an undisclosed conflict of interest whereas, in fact, the information was of little significance in terms of the allegations she made about the police officers' possible involvement in the criminal offences. Certainly Ms Couper's relationship with the police officers hadn't been disclosed to Mr Needham but there could be no need for it to be disclosed - it is not something of which Mr Needham would necessarily have been informed until such time as Ms Couper actually encountered a complaint involving one or both of the police officers, thereby giving rise to, at least, an apparent or perceived conflict of interest.

The issue of whether there had been any previous “*undisclosed conflict of interest going back 18 years*” is of course another matter entirely. It is discussed in further detail at point 6 below.

For what it's worth, after listening to the recording of the meeting I am unable to discern any change in Mr Needham's attitude or demeanour towards Dr Eastwood and Mr Costanzo subsequent to Dr Eastwood mentioning the relationship between Ms Couper and the police families. Nor would I expect there to be any reaction on Mr Needham's part. There was no need to cover up anything.

This first of Dr Eastwood's concerns is therefore misguided and without foundation. Dr Eastwood has misunderstood the obligations imposed upon CMC officers with respect to disclosure of conflicts of interest and unfortunately, this erroneous view appears to have had a negative impact upon her assessment of Mr Needham's statements and actions throughout the rest of their meeting and since.

2. He refused to accept my complaint and would not even touch the documentation we had prepared for him. Needham had a statutory duty to accept my complaint. The documentation which I tried to give to Needham at that meeting involved serious criminal offences, potentially involving up to three senior police families and a solicitor...if proven, it would also raise the problem of serious crime and corruption at the top of the QPS and now (in view of Needham's comments regarding Couper) serious misconduct and corruption at the top of the CMC.

Under the CMC Act he had a duty to accept my complaint yet he refused, and in doing so breached his statutory duty. Needham's conduct at that meeting was also in breach of most sections of his own Code of Conduct. (Paragraph number 6.)

The second of Dr Eastwood's concerns relates primarily to her contention that Mr Needham had a statutory duty to accept her complaint. She also asserts that Mr Needham "*would not even touch the documentation we had prepared for him.*"

It is abundantly clear from listening to the recording of the meeting that Mr Needham did look at the documentation Dr Eastwood had prepared. Mr Needham can be heard on the recording discussing in detail various irregularities on the copies of Dr Eastwood's parents' wills, specific clauses and the signatures on the wills, the front sheets of the wills and correspondence passing between Dr Eastwood and the solicitor who purported to have prepared the wills.

This issue was discussed in Mr Needham's interview with Mr MacSporran:

Mr Needham: She says in here that I didn't read the material which is utter garbage...

Mr Needham: [reading from Dr Eastwood's complaint] "I would not even touch the documentation." That's not correct – I read it all. They took me through it and pointed out things in it.

Mr MacSporran: Did they want you to take the documents with you when you left?

Mr Needham: No, no no no – they didn't. I was sitting at the end of the table and she was there and John there and she and I talked around this way looking at the documents and they were pointing out various parts and about the two wills and juxtaposing the two. No, at the end I would suspect that I probably did this – of folding them all up and putting them back together and putting them over like that. Which..

Mr Kunde: In front of her?

Mr Needham: Well towards her – not pushing right at her because I didn't intend to take them so if - she would have interpreted that that I was leaving them, and that interpretation would have been correct. So if she interprets that as a refusal - I didn't use the words a refusal but by my actions I think that I would've shown that I wasn't taking the documents. But if they had asked me to – they didn't ask – and I can understand why they didn't.

Mr MacSporran: Were the documents that they had with them and showed you, were they originals or copies? Do you remember?

Mr Needham: They weren't original wills – they were copies. Whether there was any original correspondence like letters – their letters from their solicitor would have been copied. Whether they were originals of the letters they had got from the other solicitor I can't recall. They might have been – they might not. I don't know.

Mr MacSporran: So the only documents they showed you was the – both wills and a series of letters between the solicitors were they?

Mr Needham: Yes, I can't recall anything else but – if they said there was more they were – I would accept they would be correct. I do remember the two wills because they were juxtaposing the two of them and I do remember a series of correspondence with the solicitors.

Dr Eastwood's assertion that Mr Needham "*would not even touch the documentation we had prepared for him*" is incorrect. Mr Needham clearly inspected the documents that Dr Eastwood and Mr Costanzo showed him. At no stage during the meeting was it made clear to Mr Needham that Dr Eastwood wanted him to take the documents.

Statutory Duty?

I turn now to the issue of whether Mr Needham had a statutory duty to accept Dr Eastwood's complaint. It is Mr Needham's supposed breach of this statutory duty that Dr Eastwood maintains may also constitute offences under the Criminal Code, namely section 92A "Misconduct in relation to public office" and section 204 "Disobedience to statute law".

Misconduct function

Section 33 of the *CM Act* confers the misconduct functions upon the CMC. One of the CMC's misconduct functions pursuant to section 33(b) is:

to ensure a complaint about, or information or matter involving, misconduct is dealt with in an appropriate way, having regard to the principles set out in section 34

Section 34 of the Act requires the CMC to apply the Devolution principle in performing its misconduct function, which effectively means that subject to the principles of Cooperation and Public Interest, misconduct should generally be dealt with within the relevant units of public administration. For present purposes it is sufficient to note the following aspect of the Public Interest principle as stated in section 34(d):

[T]he commission should exercise its power to deal with particular cases of misconduct when it is appropriate having primary regard to the following—

- the capacity of, and the resources available to, a unit of public administration to effectively deal with the misconduct*
- the nature and seriousness of the misconduct, particularly if there is reason to believe that misconduct is prevalent or systemic within a unit of public administration*
- any likely increase in public confidence in having the misconduct dealt with by the commission directly.*

Pursuant to section 45(1) of the Act:

The commission has primary responsibility for dealing with complaints about, or information or matter involving, official misconduct.

Section 46(1) of the Act is specifically directed at how the CMC is to deal with complaints of misconduct and states that:

The commission deals with a complaint about, or information or matter (also a complaint) involving, misconduct by—

- (a) expeditiously assessing each complaint about misconduct made or notified to it, or otherwise coming to its attention; and*
- (b) taking the action the commission considers most appropriate in the circumstances having regard to the principles set out in section 34.*

Similar statements are to be found in the more generally expressed provisions of section 35 of the *CM Act* but in addition, it can be noted that section 35(1)(g) is directed at the ability of the CMC to assume responsibility for the conduct of a misconduct investigation as follows:

- (g) *assuming responsibility for, and completing, an investigation, by itself or in cooperation with a unit of public administration, if the commission considers that action to be appropriate having regard to the principles set out in section 34;*

However, section 35(2) of the Act should also be noted as it requires that in the performance of its misconduct functions “*in a way mentioned in subsection (1), the commission should, whenever possible, liaise with a relevant public official.*” In the case of police misconduct, the relevant public official is the Commissioner of Police.¹⁰

Section 46(2) then goes on to specify actions that the CMC may take in dealing with complaints of misconduct – official misconduct and police misconduct. Subsections (2)(a) to (c) relate to complaints about official misconduct. Basically, the CMC may (a) deal with the complaint itself (b) refer the complaint to a unit of public administration to be dealt with or (c) if the complaint may involve criminal activity, refer the complaint to the Commissioner of Police.

At the meeting of 14 August 2009 Mr Needham was of the view that the conduct the subject of Dr Eastwood’s allegations did not amount to official misconduct and did not come within the CMC’s misconduct jurisdiction. Accordingly he did not view the actions specified in section 46 subsections (2)(a) to (c) as applicable. (Whether Mr Needham’s view was open is discussed below at point 3. It is not determinative of the question of whether he in fact had a statutory duty to accept Dr Eastwood’s complaint.)

Section 46 subsections (2)(d) and (e) specify actions that the CMC may take in dealing with complaints of police misconduct. Subsection (2)(d) relates to complaints of police misconduct notified to the CMC by the Commissioner of Police and is therefore not relevant here. Subsection (2)(e) relates to complaints of police misconduct notified to the CMC by someone other than the Commissioner of Police. Under both subsections and consistently with the Devolution principle, the Commissioner of Police is expected to deal with the complaint, subject to the CMC’s monitoring role.

Section 46(2)(f) relates to complaints made to the CMC by public officials as defined in schedule 2 of the *CM Act*. Again, that subsection is not relevant here.

Section 46(2)(g) sets out one further action the CMC may take in relation to complaints it receives, namely:

if the commission is satisfied that—

(i) the complaint—

(A) is frivolous or vexatious; or

(B) lacks substance or credibility; or

(ii) dealing with the complaint would be an unjustifiable use of resources;

take no action or discontinue action.

Pursuant to section 46(3)(a) of the *CM Act*, if a person makes a complaint to the CMC and no action is taken by the CMC on the complaint, the CMC must give the person a response stating the reason for not taking action. It is clear from various comments Mr Needham made during the meeting that he considered Dr Eastwood’s complaint lacked substance or credibility and/or that dealing with the

¹⁰ See schedule 2 to the *Crime and Misconduct Act 2001*, definition of “public official”.

complaint would be an unjustifiable use of resources. At various times throughout the meeting Mr Needham stated:

I don't think at the moment you've got enough to prove it in a legal sense...

Well at the moment on what's there – there's a few odd things, but there's not enough on there that I could – well a) there's a big argument about whether I could – a very big argument about whether I could and, secondly, whether I would on what's there...

Look there are peculiar things [about the wills] but really, you're right, it'd have to go further if anything was going to be done and I, I don't – there's no way that I could, say, issue a notice to discover under the Crime and Misconduct Act to the solicitor to produce the original wills. I can only do that when we're doing a crime investigation or when we're doing a misconduct investigation and there's not enough there vis-à-vis police officers for me to do it...

Well the point is, you've got to have enough material – what it would need if you took it to the police is – there would have to be enough material for the police to be able to go to a Magistrate and get a search warrant to go and get that will.

It must be borne in mind that although he then held the position of Chairperson of the CMC, when he met with Dr Eastwood and Mr Costanzo, Mr Needham was not, by himself, the CMC.¹¹ Further, I can find no provision of the *CM Act* which places any individual responsibility upon any officer of the CMC in respect of dealing with or acceptance of complaints. However, it is obviously the case that had he thought it appropriate to do so, Mr Needham could (with her agreement) have taken Dr Eastwood's complaint and sought to have it dealt with through the processes of the CMC.

In this regard, an obvious difficulty was Dr Eastwood's concerns as to disclosure of the issues she had raised to Ms Couper and the police service generally.

During his interview with Mr MacSporran, Mr Needham raised a matter relevant to this issue of whether he had a statutory duty to accept Dr Eastwood's complaint, which I should mention. He suggested that he had not even regarded Dr Eastwood's allegations as a complaint to the CMC:

And John hadn't – when I thought back on it, John hadn't rung me and said that he was - in any words – that he was making a complaint. It was more seeking assistance and I realised why, because when I got down there they weren't making a complaint to us as the CMC – they were making a complaint generally about these other matters.

Mr Needham stated that on the Monday after the meeting, he made the decision not to register Dr Eastwood's allegations as a complaint because the allegations were “*just not within our jurisdiction so I'm not going to register because then it would be very hard to keep it from Helen and they had said 'You mustn't tell Helen' which I never did. Helen's only found out that I met with them in this last week when this has all come to light. Helen never knew.*” Mr Needham explained that he did not record the allegations on the CMC's COMPASS system because the allegations would then come to Ms Couper's attention since she was a frequent and expert user of COMPASS. Furthermore, he said, if he registered the allegations he would simply be registering in order to then immediately write them off as not within the CMC's jurisdiction so he chose not to register them at all.

¹¹ The Commission is constituted pursuant to section 223 of the *Crime and Misconduct Act 2001* and acts through its officers, including the Chairperson, Assistant Commissioners, Senior Officers, staff and agents as provided for in chapter 6 of the Act.

All of this is not inconsistent with the “Facing the Facts” publication which, as has been noted above, has been specifically cited by Dr Eastwood and which refers to seeking advice from the Chairperson, in difficult cases.

Mr Needham explained that, having made the decision not to register Dr Eastwood’s allegations as a complaint, he left the digital recorder containing the recording of the meeting sitting in his drawer for a month or more. Then, at some stage in late September or early October he gave the digital recorder back to his Executive Assistant because she had the box and accessories for the recorder. He told her that it was not necessary to transcribe the recording on the device because “*it’s not going anywhere - it’s not needed.*”

After Dr Eastwood’s allegations became public, Mr Needham asked his Executive Assistant whether the recording he had made was still on the digital recorder. Mr Needham’s Executive Assistant believed she had wiped the recording after Mr Needham told her that it wasn’t needed. She checked the recorder and found that the recording had indeed been erased. Mr Needham believed that the recording of the meeting would completely vindicate him and he immediately arranged for the CMC’s Forensic Computing Unit to try to retrieve the recording which they were able to do. The Forensic Computing Unit then made a copy of the recording onto a compact disc for the purposes of this investigation.

An analysis of the CMC’s misconduct function and the various actions the CMC is authorised to take in dealing with misconduct complaints (particularly section 46(2)(g)) establishes that there is no absolute statutory duty upon the CMC to accept any and every misconduct complaint it receives.

Moreover there is no justification for the contention that Mr Needham had such a statutory duty when he was performing the role described in the “Facing the Facts” publication (which Dr Eastwood cites) to provide advice in difficult cases. It was and remains open to Dr Eastwood to formally commit her complaint to the police or the CMC.

For completeness it is necessary to consider whether Mr Needham had a statutory duty to accept Dr Eastwood’s complaint pursuant to the CMC’s crime function.

Crime function

Section 25 of the *CM Act* confers the major crime function upon the CMC:

The commission has a function (its crime function) to investigate major crime referred to it under division 2 by the reference committee.

Pursuant to section 26 of the Act:

...the commission performs its crime function by (a) investigating major crime referred to it under division 2 by the reference committee...

The CMC has no power to investigate a complaint about major crime received directly from a member of the public. There is certainly no statutory duty upon the CMC to accept such complaints. (Other provisions of the *CM Act* would have prevented the CMC investigating Dr Eastwood’s complaint under its crime function anyway as discussed below at point 3.)

An analysis of the CMC’s misconduct and crime functions reveals that Dr Eastwood’s contention that Mr Needham had a statutory duty to accept her complaint is incorrect.

Concluding as I have that Mr Needham has not breached a statutory duty to accept Dr Eastwood's complaint, it follows that he has not failed to perform a function of his office with intent to dishonestly cause a detriment to Dr Eastwood as she contended in her footnote concerning a possible offence under section 92A of the Criminal Code.¹² Nor has Mr Needham omitted to do an act which he was, by the provisions of the CM Act, required to do - an offence under section 204 of the Criminal Code.

In his interview with Mr MacSporran SC on 26 November 2009, Mr Needham spoke about his actions at the meeting and his assessment of Dr Eastwood's allegations:

I assumed, wrongly, that it was sort of official misconduct. I assumed it was coming out of his work as a Magistrate. I didn't really know how she'd be involved, but I assumed it was going to be misconduct by police officers I'd been told about. But when I got there and they started going into it, it was this really quite astounding story of murder and forging wills and all this sort of stuff which clearly had nothing to do with their roles as police officers...

I certainly wasn't trying to bully and intimidate. I wasn't rude or aggressive. I could perceive that she might see I was insensitive to the circumstances because I wasn't agreeing with them. But literally there was absolutely nothing there that you would want to investigate - there really was nothing there.

So after spending all this time with them, I then started to say - now look what you've shown me here doesn't raise anything within our misconduct jurisdiction - there's nothing here. For a start there's nothing done in connection with their duties as police officers and when you go away from their duties as police officers all we get to is police misconduct which is really for the QPS. We only do it if they ask us to do it. Under our Act they have primary responsibility for Police Misconduct. So there's nothing there in our misconduct jurisdiction and it's - we don't do this in crime.

They said "[unintelligible] - you know - it's major crime. It falls within your definition". And I said "Yes alright. Major crime is very broadly defined there, but if you look at it, we only have the crime function as referred to us by our Crime Reference Committee. We can't just go and investigate any murder if we feel like it. We just don't have the power to go and do that. And I can tell you this isn't the sort of thing that would be referred by the Crime Reference Committee."

Impropriety – A cover-up?

Although it is difficult to separate from the accusation of breach of statutory duty, a further aspect of Dr Eastwood's complaint is that Mr Needham acted to cover up her allegations and therefore acted improperly. To so conclude would require an ability to find that it was not open to Mr Needham to conclude that Dr Eastwood's complaint lacked substance or credibility or that investigating her complaint would be an unjustifiable use of resources and/or that he acted in bad faith in respect of his advice to Dr Eastwood and Mr Costanzo. To that end Mr MacSporran and then I considered it desirable to inspect the documentation which Dr Eastwood showed Mr Needham during their meeting.

The documents have been formally requested six times in letters and e-mails to Dr Eastwood and/or her legal representatives on 3 and 4 December 2009, 22 and 29 January and 8 and 18 February 2010. On 4 December 2009 Mr MacSporran wrote to Dr Eastwood in the following terms:

¹² See Dr Eastwood's letter to the Parliamentary Crime and Misconduct Committee dated 28 October 2009 at footnote 2 on page 2.

Fortunately, I have obtained the tape recording of your meeting with Mr Needham and from its contents have been able to glean a limited understanding of the relevant documents you discussed with Mr Needham on that occasion. However, in order to enable me to form an independent view as to the correctness and propriety of Mr Needham's expressed views as to the evidentiary value of the documents, I need to personally examine those same documents.

Accordingly, I again request your cooperation in providing copies of all documents shown to Mr Needham on the occasion of your meeting with him, so as to enable me to continue to investigate your complaint.

Should you fail to provide such copies to me, I will continue my investigation but will be forced to report to the Committee without the benefit of this clearly important evidence, an outcome which would be undesirable and one which I am anxious to avoid if at all possible.

On 19 February 2010, after four further requests for the documents, Dr Eastwood's legal representatives wrote to my office advising:

We confirm that our position remains that the documents are irrelevant to the substance of our client's complaint as the complaint is that Mr Needham did not look at them. Accordingly we are instructed not to provide them to the Commissioner at this stage.

This response is somewhat surprising, particularly in light of the fact that Dr Eastwood states in her correspondence to the Committee of 16 November 2009 that "...ALL of the information related to this complaint was passed onto, and continues to be passed onto a number of trusted people: top academics around Australia, lawyers and barristers, parliamentarians (state and federal), and several top investigative journalists."¹³

However, in the absence of specific reference to these documents there is obvious difficulty in concluding, as Dr Eastwood contends, that Mr Needham erred in concluding that her complaint did not warrant investigation.

As stated above, it is clear that Mr Needham did in fact look at the documentation Dr Eastwood had prepared. Having listened to the recording of Dr Eastwood's meeting with Mr Needham, like Mr MacSporran, I too have a limited understanding of the contents and nature of the documents shown to, and discussed with, Mr Needham on that occasion. On my assessment of the available material there is no basis disclosed for concluding that Mr Needham was wrong to view Dr Eastwood's complaint as lacking substance or credibility or that investigating her complaint would be an unjustifiable use of resources.

Further there has been nothing uncovered in this investigation to indicate that Mr Needham acted in bad faith or in any way improperly in what he did and said at this meeting.

As to Dr Eastwood's contention that Mr Needham's conduct at the meeting was in breach of most sections of the CMC's Code of Conduct - I can find no such breach.

Under this paragraph of her complaint to the Committee, Dr Eastwood also suggested that "Needham's comments regarding Couper [raised the problem of] serious misconduct and corruption at the top of the CMC." In light of the conclusions in relation to the first of Dr Eastwood's concerns, there is absolutely no basis for such a suggestion.

¹³ This passage is taken from paragraph numbered "7" on page 2 of Dr Eastwood's letter to the Parliamentary Crime and Misconduct Committee dated 16 November 2009.

3. Needham intentionally, dishonestly and repeatedly misrepresented the law to me. He told me that if police committed serious crimes outside of work hours there is nothing he can do about it...

When I asked if crimes of forgery and uttering (involving two or three police families and a solicitor) and manslaughter/murder could fall under the category of major crimes involving imprisonment of 14 years plus, he appeared surprised I even knew of the section and brushed me off by telling me that it usually only applied to organised crime. That is false. Schedule 2 of the CMC Act clearly states major crime means criminal activity that involves an indictable offence punishable by a term of imprisonment not less than 14 years. Furthermore, my complaint could also fall under the category of organised crime under the CMC Act. (Paragraph number 7.)

The first part of this concern relates to what Mr Needham said at the meeting in relation to the CMC's jurisdiction for investigating complaints of misconduct. The second part relates to what he said about the CMC's crime function.

Misconduct

What was actually said about the CMC's misconduct jurisdiction during the course of the meeting of 14 August 2009 was as follows:

Mr Needham: Well look, the problem I have at the moment for the CMC is that all of this doesn't come within our jurisdiction – unless peripherally, the signature by a police officer – it's not part of his duty...

Our jurisdiction is about police acting as police. There is very minimally – and we don't have primary jurisdiction for it – there's a disciplinary charge that if they've done something that brings the police service into disrepute...

Well at the moment on what's there – there's a few odd things, but there's not enough on there that I could – well a) there's a big argument about whether I could – a very big argument about whether I could and, secondly, whether I would on what's there...

[It appears that Mr Needham was referring to the fact that there were real doubts about whether the alleged conduct fell within the definition of official misconduct. His second point appears to recognise that although the CMC might have a limited jurisdiction in respect of police misconduct, it was doubtful as to whether this case would be an appropriate exercise of that jurisdiction under sections 35(1)(g) and 34(d). His third point concerned whether the complaint lacked substance or credibility or whether dealing with the complaint would be an unjustifiable use of resources under section 46(2)(g).]

Dr Eastwood: So is it essentially what you're saying is because this wasn't – if these police officers were involved (and I believe they were) – but because, if they have done something (and I believe they have) – because it wasn't done as their duties as a police officer it's outside your scope?

Mr Needham: What you have to do, and John would understand this, is you have to go to the definition of official misconduct in our Act because it's official misconduct we have jurisdiction over. Now official misconduct relates to things that they do in the carrying out of their duties.

Now, you can go to police misconduct, which can be a little bit less. That can be a thing that is done – like a police officer who everyone knows is a police officer running starkers down the street out here would be police misconduct because that is conduct that would bring the police service into disrepute. That's just a disciplinary thing and the primary responsibility for that is with the Queensland Police Service. We can only come in and assist if they in fact, if the Commissioner asks us in writing to do so. We have responsibility for official misconduct.

The issue for consideration now is whether, in making these statements, Mr Needham has misrepresented the law to Dr Eastwood and, if so, whether he did so intentionally, dishonestly and repeatedly.

Mr Needham did not misrepresent the law in relation to the respective jurisdictions of the CMC and the QPS. It is correct that the CMC has primary responsibility for dealing with complaints involving official misconduct pursuant to section 45(1) of the *CM Act*. The Commissioner of Police has primary responsibility for dealing with complaints involving police misconduct.¹⁴

The definition of official misconduct under the *CM Act* is a two-stage definition set out in sections 14 and 15.

According to section 15, official misconduct is conduct (as defined below) that could, if proved, be:

- (a) *a criminal offence; or*
- (b) *a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment.*

For persons holding appointments in units of public administration such as the two senior police officers the subject of Dr Eastwood's allegations, section 14(b) defines conduct as:

—conduct, or a conspiracy or attempt to engage in conduct, of or by the person that is or involves-

- (i) *the performance of the person's functions or the exercise of the person's powers, as **the holder of the appointment**, in a way that is not honest or is not impartial; or*
- (ii) *a breach of the trust placed in the person as **the holder of the appointment**; or*
- (iii) *a misuse of information or material acquired in or in connection with the performance of the person's functions as **the holder of the appointment**, whether the misuse is for the person's benefit or the benefit of someone else.*
(Emphasis added)

Hence the view that, for a person holding an appointment in a unit of public administration, official misconduct must involve conduct of that person in their capacity as the holder of the appointment.

A consistent explanation appears on the CMC's website:

What is official misconduct?

*Official misconduct involves wrongdoing by a public sector official (including police) **in carrying out their official duties or exercising their powers.***

It must involve one of the following – dishonesty or lack of impartiality; a breach of the trust put in a person by virtue of their position; or a misuse of officially obtained information. It must also be a criminal offence or serious enough to justify dismissal of the person from their position...

Checklist for official misconduct.

Is it behaviour by a public official (this includes police)?

Is it related to the person's official duties or powers?

¹⁴ See section 41 of the *CM Act* - Responsibility of commissioner of police and section 42 - Dealing with complaints – commissioner of police.

Is it at least one of the following:

- (i) dishonest or lacking impartiality*
- (ii) a breach of the trust*
- (iii) a misuse of officially obtained information?*

Is it either a criminal offence or serious enough to warrant dismissal?

If the answer to all questions is 'yes', the behaviour is likely to be official misconduct.¹⁵
(Emphasis added.)

The passages emphasised in these definitions support the explanation of the CMC's misconduct jurisdiction that Mr Needham tried to convey to Dr Eastwood at the meeting.

This view is also supported by the judgement of His Honour Mr Justice Lee in the Supreme Court decision of *Re Mullen*.¹⁶ That case related to an essentially similar definition of official misconduct under the *Criminal Justice Act 1989* rather than the *Crime and Misconduct Act 2001*. His Honour stated (at pages 612 and 613):

There is no doubt that official misconduct may be constituted by an act which amounts to a breach of the criminal law: s 32(1)(d),(e). In a sense, however, the question which arises for consideration in this case is whether the converse of that proposition holds true, namely whether any breach of the criminal law constitutes official misconduct...

I do not think that it can be doubted that for conduct in the ordinary sense to be described as "official" some connection between it and the particular office held must be shown. The existence of such a nexus is essential to the characterisation of the conduct in the way required...

If then an act is performed in circumstances where the alleged offender is neither actually nor apparently representing the office which they occupy, it would in my opinion be difficult to label that conduct "official"...

There must be misconduct by the officer in the course of or pertaining to the exercise of the powers, functions, duties or responsibilities attaching to his or her office.

At the meeting Mr Needham did not misrepresent the law in relation to the CMC's jurisdiction for investigating complaints of official misconduct and he certainly did not do so intentionally, dishonestly and repeatedly.

Mr Needham did not expressly state that there was nothing he could do about the allegations. He tried to explain his view that the alleged conduct did not fall within the CMC's official misconduct jurisdiction but may have amounted to police misconduct. The further difficulty was that it appears Mr Needham did not consider there to be sufficient evidence to raise a suspicion of police misconduct although he conceded that some magistrates might consider there was sufficient evidence upon which to ground a search warrant. (This issue is discussed more fully at point 7 below.) However, Dr Eastwood had repeatedly made it clear that she believed she could not take her allegations to the police. It was principally this belief held by Dr Eastwood that led her to conclude there was nothing that could be done about her allegations.

The second part of this concern of Dr Eastwood relates to what Mr Needham said at the meeting in relation to the CMC's crime function.

¹⁵ <http://www.cmc.qld.gov.au/asp/index.asp?pgid=10760>

¹⁶ *Re Mullen* [1995] 2 Qd R 608 at 612-613

Major Crime

Dr Eastwood alleges that at the meeting she “asked if crimes of forgery and uttering (involving two or three police families and a solicitor) and manslaughter/murder could fall under the category of major crimes involving imprisonment of 14 years plus.” No such inquiry can be heard on the recording.

She states that Mr Needham “appeared surprised I even knew of the section and brushed me off by telling me that it usually only applied to organised crime. That is false. Schedule 2 of the CMC Act clearly states major crime means criminal activity that involves an indictable offence punishable by a term of imprisonment not less than 14 years. Furthermore, my complaint could also fall under the category of organised crime under the CMC Act.”

The fact that the alleged criminal activity (forgery, uttering and manslaughter or murder) falls within the definition of major crime in schedule 2 of the *CM Act* does not bring the alleged criminal activity within the CMC’s major crime jurisdiction. As stated above, the CMC’s major crime jurisdiction only relates to investigating major crime referred to the CMC by the crime reference committee.¹⁷

After the discussions at the meeting about the CMC’s misconduct jurisdiction, the issue of the CMC’s major crime jurisdiction was raised in the following manner:

Mr Costanzo (to Dr Eastwood): I thought you read somewhere about offences that carry more than 14 years can be specially investigated. What’s that provision?

Mr Needham: Well you’re probably going to our crime provision. Our crime – well we only have the areas that are referred to us under the Crime Reference Committee. And it does include a reference to that¹⁸ but it has to be – um organised crime – which I wouldn’t put it into that sort of situation. You know, this is, you know –we do it all the time with drugs and all that sort of stuff.

Mr Costanzo: So this wouldn’t be suitable for a referral?

Mr Needham: No. No, we wouldn’t touch it. We wouldn’t touch it in our crime area.

In stating that “it has to be organised crime” Mr Needham appears to have been suggesting that the alleged criminal activity would need to fall within the terms of one of the CMC’s standing or “general” references before the CMC could deal with the matter under its major crime function.

The relevant provisions of the *CM Act* had been amended in May 2009 as a result of the decision in *Michael John Scott v Witness C*¹⁹.

Section 27 of the Act states that the Crime Reference Committee may refer major crime (a “general referral”) or a particular incident of major crime (a “specific referral”) to the CMC for investigation. Pursuant to section 28(1) the Crime Reference Committee can make a specific referral to the CMC only if satisfied that (amongst other things) the police service has carried out an investigation into the particular incident of major crime which investigation has not been effective. That had not

¹⁷ See section 25 *Crime and Misconduct Act 2001* “Commission’s major crime function” and section 26 “How commission performs its crime function”.

¹⁸ It would appear that Mr Needham is referring here to the definition of major crime in schedule 2 of the *CM Act* which includes “criminal activity that involves an indictable offence punishable on conviction by a term of imprisonment not less than 14 years”.

¹⁹ *Michael John Scott v Witness C* [2009] QSC 35.

occurred in relation to Dr Eastwood's allegations. Therefore, the only way the CMC could deal with Dr Eastwood's allegations would be if the alleged criminal activity came within one of the CMC's general references – and the only relevant general reference was the organised crime reference.²⁰

In this respect then, Mr Needham's comments were absolutely correct. Moreover, as Mr Needham indicated, Dr Eastwood's allegations did not correspond with the nature of the criminal activities the CMC would generally investigate pursuant to its major crime function.

In his interview with Mr MacSporran, Mr Needham addressed this specific concern of Dr Eastwood:

“I intentionally dishonestly and repeatedly misrepresented the law”. Well – “He told me that if police committed serious crimes outside of work hours there is nothing he can do about it”. Well I didn't quite put it that way. I put it on the basis that they didn't directly relate in - to the definition of official misconduct to come within our misconduct jurisdiction because there's only certain ways they can do that if it is outside work. And in fact I think on official misconduct, it couldn't be outside. I know people who aren't members of a UPA can commit it if they attempt to influence ones who are in. But if a police officer committed murder - totally separate from his police work – that doesn't fall within the definition of official misconduct. It certainly would fall within the definition of police misconduct because it's disgraceful. You know, it's unbecoming a police officer to murder someone.

As I was going through that area I was just saying, “Look, it really doesn't come within our misconduct area,” and then she raised with me about, “Well you have the crime thing.” And I can't remember whether she referred me specifically to the definition she probably – I don't think she had the Act. But she referred to the fact that we have this major crime function and I explained to her that that doesn't mean we can automatically investigate all crimes that fall within that definition. We have a limited jurisdiction and it's only what is conferred on us by the Crime Reference Committee. Now that mustn't have sunk in because she doesn't refer to that now. So she has interpreted that as “intentionally and dishonestly and repeatedly misrepresented the law to her”.

It should be borne in mind that Mr Needham attended the meeting outside of work hours on a Friday evening on his way to a week-end at his property in northern New South Wales. His wife was waiting for him in the foyer of the hotel. He agreed to attend the meeting out of deference towards a former colleague at the Bar and he provided his advice extemporaneously. Although he recorded the meeting and made the recording available for the purposes of this investigation, the exercise of deconstructing and analysing Mr Needham's every word at the meeting is somewhat artificial and perhaps unfair in any comparison that can be made with the more considered outline which I have set out above.

Nonetheless, in my view his explanation of the law was quite reasonable in the circumstances and there is nothing disclosed in the investigation to indicate that Mr Needham intentionally, dishonestly or repeatedly misrepresented the law to Dr Eastwood.

4. Needham tried to bully and intimidate me. Once I had explained the Couper connection, I could hardly get a sentence out without him interrupting me. In essence he reverted to grubby defence lawyer tactics. He was rude, aggressive and insensitive to the difficult circumstances I was trying to explain to him. He made ridiculous statements of law and fact. (Paragraph number 8.)

²⁰ The CMC's other general references at the relevant time related to paedophilia, terrorism and outlaw motorcycle gangs.

As stated above, after listening to the recording of the meeting I am unable to discern any change in Mr Needham's attitude or demeanour towards Dr Eastwood and Mr Costanzo subsequent to Dr Eastwood mentioning the relationship between Ms Couper and the police families. There were a few instances throughout the meeting where Mr Needham interrupted Dr Eastwood but generally only to clarify matters to which Dr Eastwood was referring. There were also instances where Dr Eastwood similarly interrupted Mr Needham and Mr Costanzo. The recording presents as a perfectly reasonable exchange of information and opinions between the three persons present. There is certainly nothing on the recording which causes me to consider that Mr Needham was rude, aggressive or insensitive to Dr Eastwood's plight. In fact, Mr Needham appears to have been quite patient and genuinely understanding of Dr Eastwood's situation throughout the meeting.

For example, early in the interview when Dr Eastwood was endeavouring to explain the basis of her complaint, the following exchange occurred:

Dr Eastwood: ...But basically what I have found is that the cover sheets – sorry forgive me, it is a little bit stressful for me as you can imagine.

Mr Needham: That's alright, take your time.

Even at the conclusion of the meeting, after Mr Needham had indicated that he did not consider that the CMC could or would investigate Dr Eastwood's complaint, the conversation was polite and cordial:

Dr Eastwood: OK we'll have to give it some more thought.

Mr Needham: Yes well look I'm sorry.

Dr Eastwood: No I appreciate your time, I really do.

Mr Costanzo: I hope you don't feel we have wasted your time completely.

Mr Needham: No. No, it's not a waste of my time.

During his interview with Mr MacSporran, Mr Needham stated:

I didn't get short with them. I wouldn't do that to John. And I started to feel a bit sorry for the poor woman because, you know it's a pretty horrible thing to find out that your mother and father are both dead and you weren't told. I can understand perhaps, you know, you can think of all sorts of reasons why the funeral notice wasn't put in. They might not have wanted her to know and be at the funeral.

I certainly wasn't trying to bully and intimidate. I wasn't rude or aggressive. I could perceive that she might see I was insensitive to the circumstances because I wasn't agreeing with them. But literally there was absolutely nothing there that you would want to investigate – there really was nothing there...

"Tried to bully and intimidate...Once I'd explained the Couper connection I could hardly get a sentence out without him interrupting me". Well, yeah I might have in the middle of the sentence interrupted her on one or two occasions if we were – because we were having an interchange about these documents and everything. But certainly as a general thing that's not the case. I certainly listened to all the - everything she – I spent quite a lot of time with her. I didn't revert to grubby defence lawyer tactics. I would refute that I was rude, aggressive or insensitive to her difficult circumstances. I don't think I made ridiculous statements of law and fact.

In my view, the recording of the meeting bears out Mr Needham's assertions in this regard.

5. Needham had a statutory duty to notify the PCMC. Under the CMC Act, the duty to notify is paramount.²¹ Section 329 of the Act explicitly states the duty of the Chairperson.

329 Duty of chairperson to notify improper conduct to the parliamentary committee

(1) *The chairperson must notify the parliamentary committee, in the way, and within the time, required by the committee, of all conduct of a commission officer that the chairperson suspects involves, or may involve, improper conduct.*

(2) *In this section—*

improper conduct, of a commission officer, means—

- (a) *disgraceful or improper conduct in an official capacity; or*
- (b) *disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the commission; or*
- (c) *conduct that would, if the officer were an officer in a unit of public administration, be official misconduct.*

Given that it is now more than two months since the meeting took place, I ask the PCMC if Needham fulfilled his statutory duty subsequent to the meeting and notified the PCMC that Couper may be involved in improper conduct. As a result of information received at that meeting, he now knew Couper had failed to disclose her relationship to the two senior police officers. I am also aware that the CJC/CMC has been involved in at least two past complaints and investigations of two police officers from one of these families (in 1993 and in 1996). (Paragraph number 9.)

There are two aspects to this concern of Dr Eastwood. The first relates to Dr Eastwood's statement that as a result of information received at that meeting, Mr Needham now knew that Ms Couper had failed to disclose her relationship with the two senior police officers. Dr Eastwood questions whether, subsequent to the meeting, Mr Needham fulfilled his statutory duty and notified the Committee that Ms Couper may be involved in improper conduct in that she failed to disclose a conflict of interest.

Of course, before considering whether Mr Needham failed in his statutory duty to notify the Committee of Ms Couper's improper conduct, it must be established whether there was conduct by Ms Couper that the chairperson suspected involved, or may involve, improper conduct.

Dr Eastwood's belief that Ms Couper may be involved in improper conduct derives from her misunderstanding as to the obligations imposed upon CMC officers with respect to disclosure of conflicts of interest, as discussed above under the first of Dr Eastwood's concerns. For the reasons set out, there could sensibly be no obligation upon Ms Couper to disclose her relationship with the police officers unless and until at least the potentiality of an actual or apparent conflict of interest materialised in connection with the performance of her duties at the CMC.

Further and in order to assess whether such a situation had arisen, it would be necessary to have regard to the nature and extent or closeness of her relationship with those officers.

²¹ The reference to the duty to notify being paramount appears to come from section 39 of the *CM Act* which imposes a duty on public officials to notify the CMC of complaints of police misconduct and official misconduct under sections 37 and 38 respectively. The expression "*duty to notify is paramount*" is not used in relation to section 329, although clearly the chairperson has a mandatory duty under that section.

Since Ms Couper had not encountered Dr Eastwood's allegations against the police officers as at the date of the meeting with Mr Needham (nor indeed subsequent to the meeting) she was under no obligation to disclose the relationship and there was nothing improper in Ms Couper failing to disclose her relationship to the two senior police officers.

It follows then that, in relation to Dr Eastwood's allegations against the two police officers, there was no conduct by Ms Couper that Mr Needham would have suspected involved, or may have involved, improper conduct. Consequently, there was nothing about which to notify the Committee.

The second aspect to this concern of Dr Eastwood arises from her comment that she is "*aware that the CJC/CMC has been involved in at least two past complaints and investigations of two police officers from one of these families (in 1993 and in 1996).*" In making this comment, Dr Eastwood appears to question whether, subsequent to the meeting, Mr Needham notified the Committee that Ms Couper may have been involved in improper conduct in the past in that she may have failed to disclose a conflict of interest when the CJC or CMC was involved in previous complaints and investigations of the two police families.

The issue for consideration here is whether, having been informed of Ms Couper's relationship to the two senior police officers, Mr Needham had reason to suspect that Ms Couper may have failed to disclose a conflict of interest in relation to previous complaints and investigations of the police families. As I understand this second aspect of Dr Eastwood's concern, it is suggested that since Mr Needham was aware of Ms Couper's improper conduct (failing to disclose her relationship with the two senior police officers) in relation to the present allegations, Mr Needham had reason to suspect that she may have been involved in improper conduct in relation to the CJC's and the CMC's previous complaints and investigations of the police families.

Having concluded above that, in relation to Dr Eastwood's present allegations against the two police officers, there was no conduct by Ms Couper that Mr Needham would have suspected involved, or may have involved, improper conduct, it is difficult to see upon what basis Mr Needham would have reason to suspect Ms Couper's involvement in improper conduct in relation to the previous complaints and investigations of the police families.

This second aspect of Dr Eastwood's concern is speculative and again derives from her misunderstanding as to the obligations imposed upon CMC officers with respect to disclosure of conflicts of interest. Mr Needham had no reason to suspect that any conduct by Ms Couper in relation to the CJC's and the CMC's previous complaints and investigations of the police families involved, or may have involved, improper conduct.

In her letter of complaint to the Committee dated 28 October 2009, Dr Eastwood states that Mr Needham's conduct (presumably not notifying the Committee of Ms Couper's supposed improper conduct) raises important questions. I do not propose to deal with these questions in any great detail, as they are speculative and, in some cases, based on erroneous conclusions. Dr Eastwood asks:

At the time of our meeting, how many complaints or investigations related to the senior police officers A, B or C or their police officer relatives was Needham aware of? Were any of them involved in Operation Capri for example, and sent back only for disciplinary charges as a result of a decision between Couper and the Ethical Standards Unit? Could that knowledge explain his apparent panic and refusal to take my complaint? Given the enormous risk he was obviously prepared to take with his improper conduct and by refusing

to accept my complaint, what is the nature of the relationship between Needham and Couper? Did he then go back and (improperly) discuss our meeting with Couper?

During his interview with Mr MacSporran, Mr Needham stated that he had no knowledge of any complaints having been made against police officers A or B or members of their families in the police service. Actually, there had been complaints made to the CJC and the CMC about these officers as discussed below. However, this is not information Mr Needham would be expected to know unless the complaints were drawn to his attention for some particular reason.

None of the senior police officers A, B or C or their police officer relatives were involved in Operation Capri. Obviously then, none of these officers had complaints arising from Operation Capri sent back only for disciplinary charges - as a result of a decision between Ms Couper and the Ethical Standards Command or otherwise.

I do not consider there is any evidence to suggest that Mr Needham panicked at all in his dealings with Dr Eastwood. Mr Needham's actions in respect of Dr Eastwood's complaint against the police officers have been discussed earlier in this report. Basically, Mr Needham did not consider that the alleged conduct came within the CMC's official misconduct jurisdiction. The CMC's major crime jurisdiction only relates to investigating major crime referred by the crime reference committee. If proven, the alleged conduct would amount to police misconduct but Mr Needham did not consider there to be sufficient evidence to raise a suspicion of police misconduct. He conceded that some magistrates might consider there was sufficient evidence upon which to ground a search warrant to police officers but Dr Eastwood had repeatedly made it clear that she believed she could not take her allegations to the police.

I do not consider that Mr Needham's conduct was improper in any respect. Nor do I believe he took an "enormous risk" by not accepting Dr Eastwood's complaint. The question as to the nature of Mr Needham's relationship with Ms Couper does not warrant a response. In his interview with Mr MacSporran, Mr Needham stated:

Any complaint against Helen wasn't raised that night or in the phone calls previous. Helen was certainly raised but on the basis of total secrecy of Helen that she must not be aware of any of this because they were terrified of her saying it back to the other members of the family. So I just honoured that. There was no need for me to tell Helen. There was never any complaint about Helen herself. The first I've heard of the complaint is here where they have obviously looked at it later of what my not knowing and said well that shows that she never declared it - which is true.

...they had said "You mustn't tell Helen" which I never did. Helen's only found out that I met with them in this last week when this has all come to light. Helen never knew.

Mr Needham stated that he had only revealed to Ms Couper his attendance at the meeting after Dr Eastwood's complaint had been publicised following Mr Springborg MP's attempt to table documents in Parliament on 25 November 2009. Ms Couper subsequently confirmed to me during the interview I conducted with her that Mr Needham had not informed her of his meeting with Dr Eastwood and Mr Costanzo until some months after the event.

6. What, if any, injustices have occurred to other people over the last 18 years as a result of the undisclosed QPS/CMC connection? The question of whether there has been any misconduct on the part of Couper could initially require examination of files going back 18 years to examine her (required) yearly disclosures of interest; discovery of her role in any other complaints, disciplinary actions or decisions involving the A and the B; whether A or B have at any time been members of

the Ethical Standards Unit or any other unit of the QPS that made decisions in liaison with Couper; whether A or B have ever been seconded to the CMC to investigate matters over which Couper had oversight? Have there been other decisions in which Couper played a part involving any police proximate or in the same chain of command as the A or B. (Paragraph number 10.)

I have concluded above that Mr Needham had no reason to suspect that Ms Couper was involved in improper conduct in relation to previous CJC and CMC complaints and investigations of the police families. However, in her letter to the Committee of 28 October 2009 Dr Eastwood has expressly raised a concern as to whether there has been any misconduct by Ms Couper over the last 18 years and the Committee's terms of reference ask that I investigate the concerns raised by Dr Eastwood in her correspondence.

In order to investigate whether "*any injustices have occurred to other people over the last 18 years as a result of the undisclosed QPS/CMC connection*", as Dr Eastwood suggested, I arranged for a search to be conducted of the CMC's records and archives to identify every complaint made to the CJC or the CMC in the past twenty years involving police officers A or B or members of their families who were presently or previously members of the QPS. A number of such complaint files were identified.

Electronic searches were then conducted of the CMC's COMPASS and RecFind databases to ascertain whether there was any electronic record indicative of Ms Couper having any involvement with these complaints.

The CMC was then asked to produce their holdings for each complaint involving police officers A or B or members of their families. This involved obtaining the complaint files from the CMC's Records Management Section and Archives. Each file was inspected for any hard-copy evidence of Ms Couper having any involvement with the complaints. (It was not possible to examine Ms Couper's yearly disclosures of interest because, as noted earlier in this report, there is no requirement for CMC officers to provide such.)

On 23 February 2010 I conducted an electronically recorded interview with Ms Couper to discuss the nature of her relationship with police officers A and B and their families, her understanding as to her obligations with respect to disclosure of conflicts of interest and her actual involvement with the complaints involving police officers A or B or members of their families.

Ms Couper confirmed that she was indeed Dr Eastwood's cousin and that Dr Eastwood's two sisters were married to serving QPS officers. Whilst Ms Couper confirmed that one of her cousins was married to police officer A, she stated that her other cousin was not married to police officer B, as Dr Eastwood believed, but to one of B's two brothers, both of whom were also police officers.²² (The search conducted of the CMC's records and archives related to all members of B's family who were presently or previously members of the QPS and therefore included the brother who was married to Ms Couper's cousin.) Ms Couper thought that her cousin had been married to B's brother for ten to twelve years²³, but she had not attended the wedding.

Ms Couper stated that her family and Dr Eastwood's family had never been close, although one of her cousins (A's wife) had worked as a legal secretary for her law firm some twenty years ago.

²² The information provided by Ms Couper as to the identity of her cousin's husband has since been confirmed by the Registrar of Births, Deaths and Marriages.

²³ The Registrar of Births, Deaths and Marriages advised that Ms Couper's cousin married B's brother in December 1997.

Ms Couper said that since commencing employment with the CJC in October 1991 she had only seen her cousins on three occasions that she could recall: at her father's funeral in 2004; at Dr Eastwood's father's funeral which she believed was in 2006 or 2007 (which was the first time she met B's brother); and at Dr Eastwood's mother's funeral in 2008.

Ms Couper stated that she had had no contact with her cousins and their husbands beyond that. She did not know A's police officer brother, but she did know B and the third brother both of whom were also police officers. Ms Couper advised that B had previously been attached to the Ethical Standards Command (ESC) for a number of years and she had had some dealings with B and the third brother in their professional capacities over the years. She had not had any dealings with the brother of B who is married to her cousin. The nature of these particular dealings with B and the third brother does not give rise to any concerns as to conflicts of interest.

During my interview with her, Ms Couper demonstrated an understanding of her obligations with regard to disclosure of actual or apparent conflicts of interest. She explained her understanding of the requirements in relation to dealing with such issues as follows:

I'm obliged to declare a conflict of interest if my private interests conflict with my obligations in my professional role. My private interests can be not just my financial or other interests but interests of family members or organisations or associations which I have an association with.

I then proceeded to interview Ms Couper in detail about every complaint file involving A or B or members of their families who were presently or previously members of the QPS in which there was even a mere suggestion that Ms Couper may possibly have had some involvement.

Most of the complaint files relating to police officer B and his family (including Ms Couper's cousin's husband) were finalised before Ms Couper's cousin and B's brother were married. Ms Couper was not aware that her cousin was married to B's brother until some years after the event, so no conflict of interest exists in relation to these files.

One of these older files came to Ms Couper's attention again more recently when a former senior CJC officer wrote to Mr Needham seeking details of his (the former officer's) precise involvement in the matter. Mr Needham delegated the task to the then Assistant Commissioner Misconduct who, in turn, asked Ms Couper to attend to the request. Ms Couper's only involvement in this matter was to allocate an Executive Legal Officer to provide the requested information.

Another, more recent complaint file involved B as the notifier by virtue of his position in the ESC. He was not the complainant or the subject officer. The complaint had been sent directly to the CMC's Covert Investigation Unit and the Misconduct Assessment Committee subsequently ratified that action. Ms Couper's only involvement in this complaint was to record the decision of the Misconduct Assessment Committee on COMPASS.

In my view, Ms Couper's actual involvement in these two complaint files does not constitute a conflict between her duties and responsibilities in serving the public interest, and her private interest. Nor is there an appearance that her private interest could improperly influence the performance of her duties in these situations.

After detailed discussions with Ms Couper and a close inspection of the electronic records and hard-copy files, I am satisfied that Ms Couper had no involvement whatsoever in all but two of the files involving police officer A or members of his family who were presently or previously QPS officers.

The first of these two files was a complaint against A. The investigation of the complaint had been devolved to the QPS with the CMC to be advised of the outcome. (Ms Couper was not involved in the decision to devolve the investigation to the QPS.) The QPS subsequently wrote to Ms Couper in her position of Director, Complaints Services to advise of the outcome of the investigation. Upon receiving that correspondence, Ms Couper wrote a note to the Acting Executive Legal Officer, Monitoring and Support Unit stating “*As the subject officer is married to my cousin, if you need to discuss the outcome of the matter with a senior officer please take up with the Assistant Commissioner Misconduct.*” The file was then sent to the Acting Executive Legal Officer for consideration of the outcome advice. When the QPS wrote to Ms Couper about the matter again some months later, she again immediately forwarded the file to Acting Executive Legal Officer.

Ms Couper’s actions in respect of this complaint against A were consistent with her obligations under the Code of Conduct and Policy and Procedure. Her actions do not raise any concerns of misconduct or injustice occurring to any person.²⁴

Ms Couper also had limited involvement in a 1999 complaint against a number of police officers including A’s brother. A Legal Officer prepared a memorandum to Ms Couper recommending that the investigation of the complaint be referred to the QPS. Ms Couper’s involvement consisted of approving the Legal Officer’s recommendation and noting on the file “*The matter is appropriately dealt with by the QPS as an investigation of possible misconduct.*”

In determining whether Ms Couper’s relationship with A’s brother could constitute an actual or apparent conflict of interest which therefore needed to be declared, the test is whether a reasonably informed bystander could reasonably perceive bias on Ms Couper’s part.²⁵ The notion that the bystander be “reasonably informed” means it is necessary to ascertain the precise nature of Ms Couper’s relationship with A’s brother. In *Hot Holdings Pty Ltd v Creasy* the High Court considered the analogous issue of apprehended bias on the part of decision-makers. McHugh J stated:

In some cases, a reasonable apprehension of bias may arise simply from the close connection of a decision-maker with a person who may be affected by the outcome of the decision. The relationship of the parties may be so close and personal or the person interested in the outcome so influential or dominant that a fair-minded person might reasonably apprehend that the decision-maker might not make the decision impartially...However, whether or not the mechanics of the process are known, no conclusion of apprehended bias by association can be drawn until the court examines the nature of the association, the frequency of contact, and the nature of the interest of the person associated, with the decision-maker.²⁶

In the course of my interview with Ms Couper she explained the nature of her relationship with A’s brother and whether that relationship constituted an actual or apparent conflict of interest which therefore needed to be declared. Ms Couper stated:

And the question I suppose is it’s about the person and whether I have that sort of connection in fact, on the basis of whether a reasonable person fully informed would form the view that I have a conflict in relation to someone who is either married to a cousin I have no connection with or a brother of someone who’s married to my cousin. So from my

²⁴ This complaint file dates back to 2004. Mr Needham would not have been aware of Ms Couper’s declaration of a conflict of interest in this matter because this was prior to his term as CMC Chairperson.

²⁵ *Re Minister for Immigration and Multicultural Affairs; Ex parte Epeabaka* (2001) 206 CLR 128 at 150 per Kirby J citing *Newfoundland Telephone Co v Board of Commissioners of Public Utilities* [1992] 1 SCR 623.

²⁶ *Hot Holdings Pty Ltd v Creasy* (2002) 210 CLR 438. See judgement of McHugh J at paragraph 74.

perspective, if I was faced with that situation today and I had to deal with a complaint in relation to one of the brothers, given what's happened now, I probably would declare it – but otherwise, I wouldn't because I don't have a conflict between my professional interests and my private interests. I have no connection whatsoever with that family. I don't deal with them socially or otherwise. For the brother of someone who's married to a cousin with which I have no relationship I'm not sure technically speaking that actually complies with the obligations I have in terms of the obligations set out in our Code of Conduct...

I wouldn't consider that as a conflict of interest – to deal with [A's brother], the brother of an officer who was married to a cousin with whom I have nothing to do. I don't see that there is any conflict at all in terms of ...

... I knew [A] had a brother – the fact that it was [A's brother's name] I don't know if I knew he was named [A's brother's name], but even if I did, I don't think the fact that there's a brother of a police officer who's married to someone who's – sorry – a brother of someone who's married to a cousin with whom I have no relationship whatsoever creates a conflict of interest given the obligations under our code of conduct at the time. I don't think a fully informed person - a reasonable person - would have that perception.

Ms Couper's involvement with the complaint which included A's brother occurred in 1999. At that stage she would not have seen A for eight years or more.²⁷ She knew A had a brother who was also a police officer but she did not know him and she is not sure that in 1999 she even knew his name.

Having regard to these matters establishing the nature of Ms Couper's relationship with A's brother, it is my view that Ms Couper's involvement in the 1999 complaint against a number of police officers including A's brother did not constitute a conflict or an apparent conflict between her duties and responsibilities in serving the public interest, and her private interests.

Dr Eastwood also asks in paragraph 10 “*whether A or B have ever been seconded to the CMC to investigate matters over which Couper had oversight?*” They have not.

And lastly in this paragraph, Dr Eastwood asks “*Have there been other decisions in which Couper played a part involving any police proximate or in the same chain of command as the A or B.*” It does seem quite likely that Ms Couper would have been involved in such decisions. Over Ms Couper's more than 18 years with the CJC and the CMC there would have been scores (perhaps hundreds) of police proximate or in the same chain of command as A or B. However, to suggest that Ms Couper would have had a conflict of interest for her part in decisions involving police proximate or in the same chain of command as the husbands of cousins with whom she has no real relationship, is extending the concept of conflict of interest to an intolerable limit. In my view, having regard to the conclusions I have reached in respect of Dr Eastwood's other concerns about Ms Couper's alleged conflicts of interest, this issue does not warrant further investigation.

7. Needham discouraged me from taking the complaint to the police. *I was told that if we took the evidence we had gathered to the police, they wouldn't bother with it because they would find it 'too hard'. Towards the end of the meeting when I expressed concern that he had left me with nowhere to go - he again discouraged me from going to police and reiterated that the CMC would not accept the complaint. Given everything I know now, I would not under any circumstances make a complaint to the police and nor could I trust the police to investigate it. Nevertheless, what a strange statement from the Chair of the CMC. (Paragraph number 11.)*

²⁷ This is based on Ms Couper's recollection that, since commencing employment with the CJC in October 1991, she had only seen her cousins on three occasions: in 2004, 2006 or 2007 and 2008.

If Dr Eastwood means to suggest that Mr Needham discouraged her from taking the complaint to the police in order to cover up the allegations, she is incorrect. This concern appears to relate to two passages in the last five or so minutes of the meeting:

Mr Costanzo: You can see our dilemma. It's not something we can take to the police – it just won't go anywhere with all these police involved and because of what happened in the past - the collusion between a few police officers and a prosecutor.

Mr Needham: Well the point is you have got to have enough material. What it would need if you took it to the police would – there would have to be enough material for the police to be able to go to a magistrate and get a search warrant to go and get that Will. We have the power of notices. I can issue a notice to discover material. The police don't have that. They have to go through the search warrant power. So you look at it as a magistrate yourself, would you issue a search warrant to go and get that from the solicitor's office on the material that's here?

Mr Costanzo: I suppose I'm too close to it to really answer honestly Bob, but quite possibly yes, due to the number of problems with these Wills.

Mr Needham: You might get some magistrates who would and you would get some other magistrates who would say "No".

Here Mr Needham conceded that, whilst in his view there was insufficient evidence to support the allegations, some magistrates might consider there to be sufficient evidence upon which to ground a search warrant. He appeared to have no concern with Dr Eastwood taking her allegations to the police except that he did not believe that the evidence supported the inferences that she was drawing. Basically though, it was a matter for Dr Eastwood as to whether she wished to pursue the allegations with the police.

A few minutes later, at the conclusion of the meeting, after Dr Eastwood reiterated that she couldn't take the allegations to the police because the police would just cover up the evidence, Mr Needham stated:

I suspect that even if these weren't police officers, if you took it to the police, the police wouldn't be wanting to do anything. It's um, it's too complex and too many bits have to be wound in together. I think you'd find your average police officer would say 'leave it go and, you know, give me an easier one'. You know, I don't think you'd need police officers in there stopping it. I think most police would be very reluctant to do anything about it.

Mr Needham does not appear to be suggesting that the police would cover up the evidence, as opposed to trying to convey that the difficulty was not that the police would cover up evidence, rather that there was, in his view, insufficient evidence for the police to act upon.

During his interview with Mr MacSporran, Mr Needham explained what he was trying to convey to Dr Eastwood during the meeting:

She was saying "Well we can't take it to police because there are police involved." And I said "Well, with respect you're taking – police will investigate allegations of murder against other police officers." I can't remember whether I told her of that rape in the watch house in Caloundra or Maroochydore - we gave to the police to investigate. They do those. They do them better than we can because they have expertise that we don't. Like we wouldn't investigate a murder – it's homicide – it's got that specialised expertise. And I said "Look if you really want this to be investigated, it has to go to the police. But I'd suggest that on that material that you've got there you are not going to get the police to investigate it because really, I don't think it supports the inferences that you're drawing from it." That's where she would be saying I was dissuading her from going to the police. I would accept that she

would have seen it that way. At that stage John was coming in and supporting what she was saying but he was being totally rational except he was supporting it, but he wasn't going over the top or anything, so I had thought that John would explain to her and everything after I'd gone. So that's the way it was left.

It was not the case that Mr Needham discouraged Dr Eastwood from taking the complaint to the police. He simply provided his opinion that the material Dr Eastwood presented to him did not support the inferences that she was drawing from it. It was Mr Needham's view that Dr Eastwood would have to take the matter to the police if she wanted the allegations to be investigated.

Dr Eastwood concludes by stating that she would not under any circumstances make a complaint to the police, nor could she trust the police to investigate it. That is, of course a matter for her.

If the complaint is to be further investigated, it is clear that the appropriate agency to do so is the QPS and, if nothing else, the public ventilation of Dr Eastwood's complaint should tend to alleviate any concern that police would cover up the evidence. On the other hand, and with the benefit of Mr Needham's experienced view, it would not be surprising if the police concluded that the evidence did not sufficiently support the allegations.

CONCLUSION

1. Mr Needham did not reveal that Ms Couper had an undisclosed conflict of interest during the meeting of 14 August 2009. At some stage Mr Needham confirmed that he was unaware of Ms Couper's relationship with police officers A and B (or B's brother), but Dr Eastwood's assertion that this constituted an "*undisclosed conflict of interest*" is incorrect – Ms Couper had not encountered the allegations against the police officers in the course of her duties so no conflict of interest had arisen for her to disclose.

I am unable to discern any change in Mr Needham's attitude or demeanour towards Dr Eastwood and Mr Costanzo in the meeting subsequent to Dr Eastwood mentioning the relationship between Ms Couper and the police families.

I do not interpret Mr Needham's conduct as an attempt to cover up Dr Eastwood's allegations against the police officers. Dr Eastwood's reference in her letter to the Committee of 16 November 2009, to "Needham's alleged cover-up of serious crimes including forgery, fraud and murder involving senior police", is without foundation and arises from her misunderstanding as to the CMC's jurisdiction. Her further reference to an "alleged cover-up at the top of the CMC including the Chair (Needham) and Misconduct Commissioner (Couper)" arises from her misunderstanding as to the obligations upon CMC officers to report conflicts of interest. Ms Couper did not have an "undisclosed conflict of interest going back 18 years" so there was no need for Mr Needham to attempt to cover up any implications of such a conflict.

2. It is clear that Mr Needham did look at the documentation Dr Eastwood had prepared.

There is no absolute statutory duty upon the CMC Chairperson to accept any and every complaint received. Moreover, there is no such statutory duty upon the Chairperson when he is performing the role of providing advice in relation to matters that are "highly sensitive for political or other reasons, or contain allegations against a very senior executive" as described in the "Facing the Facts" publication.

On my assessment of the available material there is no basis disclosed for concluding that Mr Needham was wrong to view Dr Eastwood's complaint as lacking substance or credibility or that investigating her complaint would be an unjustifiable use of resources.

The CMC has no power to investigate a complaint about major crime received directly from a member of the public and there is certainly no statutory duty upon the CMC to accept such complaints.

Dr Eastwood's contention that Mr Needham had a statutory duty to accept her complaint is incorrect. It follows that no offences are disclosed under section 92A of the Criminal Code "Misconduct in relation to public office" or section 204 "Disobedience to statute law". This investigation has uncovered nothing to indicate that Mr Needham acted in bad faith or in any way improperly in what he did and said at the meeting.

3. Mr Needham did not misrepresent the law in relation to the CMC's jurisdiction for investigating complaints of misconduct, at the meeting.

Mr Needham did not misrepresent the law in relation to the CMC's major crime jurisdiction either. The CMC's major crime jurisdiction only relates to investigating major crime referred to the CMC by the Crime Reference Committee. The Crime Reference Committee may refer major crime (a "general referral") or a particular incident of major crime (a "specific referral") to the CMC for investigation. A specific referral may be made to the CMC only if the Crime Reference Committee is satisfied that the police service has carried out an investigation into the particular incident of major crime which investigation has not been effective. That had not occurred in relation to Dr Eastwood's allegations. Further it is apparent that her allegations did not fit within the parameters of any general reference.

4. Having listened to the recording of the meeting I am unable to conclude that Mr Needham tried to bully and intimidate Dr Eastwood. There were a few instances throughout the meeting where Mr Needham and Dr Eastwood interrupted each other but overall the meeting presents as a perfectly reasonable exchange of information and opinions between the three persons present. There is nothing on the recording which causes me to consider that Mr Needham was rude, aggressive or insensitive to Dr Eastwood's plight.
5. There could be no obligation upon Ms Couper to disclose her relationship with the police officers unless and until one or both of those officers was involved in a matter she encountered in the course of carrying out her duties. Since Ms Couper had not encountered Dr Eastwood's allegations against the police officers as at the date of the meeting with Mr Needham (nor indeed subsequent to the meeting) she was under no obligation to disclose the relationship. It follows then that, in relation to Dr Eastwood's allegations against the two police officers, there was no conduct by Ms Couper that Mr Needham would have suspected involved, or may have involved, improper conduct. Consequently, there was nothing about which Mr Needham needed to notify the Committee.

There was also no basis for Mr Needham to have suspected any improper conduct by Ms Couper in relation to the CJC's and the CMC's previous complaints and investigations of the police officers' families and no basis disclosed for the speculative accusations as to collusion or improper conduct by Mr Needham or Ms Couper.

6. I interviewed Ms Couper in detail about every CJC and CMC complaint file involving A or B or members of their families who were presently or previously members of the QPS in which there was even a mere suggestion that she may have had some involvement.

In my view, Ms Couper's actual involvement in complaint files relating to police officer B and his family does not constitute a conflict between her duties and responsibilities in serving the public interest, and her private interest. Nor was there an appearance that her private interests could have improperly influenced the performance of her duties in those matters.

Ms Couper had some involvement in one complaint file relating to police officer A and one complaint file relating to A's police officer brother. Ms Couper's actions in respect of the complaint against A were consistent with her obligations under the Code of Conduct and Policy and Procedure. She declared her relationship with A and divested herself of any further involvement in the matter.

Having regard to the nature of Ms Couper's relationship with A's brother, it is my view that her involvement in the complaint against a number of police officers including A's brother did not constitute a conflict or an apparent conflict between her duties and responsibilities in serving the public interest, and her private interests.

Ms Couper's actions in relation to CJC and CMC complaint files involving A or B or members of their families do not raise any concerns of misconduct or injustice occurring to any person.

7. It is incorrect to suggest that Mr Needham discouraged Dr Eastwood from taking her complaint to the police in order to cover up the allegations. He appeared to have no concern with Dr Eastwood taking her allegations to the police except that he revealed his view that the evidence did not support the inferences that she was drawing and that it was therefore not likely that the matter would warrant further investigation.