



# PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

## ANNUAL REPORT 2010/2011

### REPORT NO. 84

#### THE COMMITTEE

The Parliamentary Crime and Misconduct Committee is a multi-party committee of the Queensland Legislative Assembly constituted under the *Crime and Misconduct Act 2001*.

The principal functions of the Committee are to monitor and review the performance of the Crime and Misconduct Commission (CMC), to report to Parliament on matters pertinent to the CMC (subject to confidentiality constraints), and to participate in the appointment of the Chairperson and Commissioners of the CMC.

The Committee has an on-going role in monitoring and reviewing the CMC and also conducts specific inquiries in respect of matters pertaining to the CMC. It is through the Committee that the CMC is accountable to the Parliament and to the people of Queensland.

#### CONTACTING THE PCMC

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<b>Acting Executive Assistant</b> (from 12 October 2010)	Ms Tanja Dullemond

#### MEMBERSHIP

##### TO 16 JUNE 2011



Mr Paul Hoolihan MP  
Member for Keppel (Chairman)



Mr Jack Dempsey MP  
Member for Bundaberg (Deputy Chairman)



Mr Steven Dickson MP  
Member for Buderim



Mr Scott Emerson MP  
Member for Indooroopilly



Ms Lillian van Litsenburg MP  
Member for Redcliffe



Mr Mark Ryan MP  
Member for Morayfield



Mr Stephen Wettenhall MP  
Member for Barron River

##### FROM 16 JUNE 2011



Dr Alexander Douglas MP  
Member for Gaven (Chairman)



Mr Evan Moorhead MP  
Member for Waterford (Deputy Chairman)



Ms Grace Grace MP  
Member for Brisbane Central



Mr Andrew Powell MP  
Member for Glass House



Mr Mark Ryan MP  
Member for Morayfield



Mr Peter Wellington MP  
Member for Nicklin



Mr Stephen Wettenhall MP  
Member for Barron River

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## INTRODUCTION

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### THE PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

The Parliamentary Crime and Misconduct Committee (PCMC or Committee) was established under section 291 of the *Crime and Misconduct Act 2001* as the parliamentary committee responsible for overseeing the operations of the Crime and Misconduct Commission.

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

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

The reporting period covers the activities of the Parliamentary Crime and Misconduct Committee of the 53<sup>rd</sup> Parliament over the period 1 July 2009 – 30 June 2010. The membership is listed at the beginning of this report. It should be noted that during the reporting period as a result of reforms to the Queensland Parliamentary Committee system, there were a number of changes to the membership of the PCMC, including the appointment of the first non-Government chairperson, Dr Alex Douglas.

### CRIME AND MISCONDUCT COMMISSION

The Crime and Misconduct Commission was created under the *Crime and Misconduct Act 2001* which commenced on 1 January 2002. That Act merged the Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC) into a new body known as the Crime and Misconduct Commission or the CMC.

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

The key responsibilities of the CMC are:

- to combat and reduce the incidence of major crime (organised crime, criminal paedophilia and other serious crime); and

- to continuously improve the integrity of, and to reduce the incidence of misconduct in, the public sector.

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

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

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

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## THE COMMITTEE'S RESPONSIBILITIES

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Under the *Crime and Misconduct Act 2001* the Committee has the following functions:

- to monitor and review the performance of the CMC's functions;
- to report to the Legislative Assembly where appropriate;
- to examine reports of the CMC;
- to participate in the appointment of the Chairperson and Commissioners;
- to conduct a review of the activities of the CMC at the end of the Committee's term (the Three Yearly Review); and
- to issue guidelines and give directions to the CMC where appropriate.

Under the *Crime and Misconduct Act 2001*, the PCMC is able to receive complaints from members

of the public, or deal with any concerns it may have - about the conduct or activities of the CMC or an officer or former officer of the CMC.

The PCMC may also take action in relation to notifications it receives from the Chairperson of the CMC in relation to the conduct of CMC officers that the Chairperson suspects involves, or may involve, improper conduct.

The Committee is also a proper authority within the meaning of the *Public Interest Disclosure Act 2010* and may accept disclosures under that Act in certain circumstances.

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

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

- holding regular Committee meetings;
- carefully examining the confidential reports provided by the CMC every two months which provide detailed information about the activities of the CMC during the relevant period;
- considering the confidential minutes of meetings of the CMC and its executive;
- holding bi-monthly *in camera* meetings with the Chairperson, part-time Commissioners, and Assistant Commissioners of the CMC during which committee members may question Commissioners about the activities of the CMC;
- receiving and considering complaints against the CMC and its officers;
- reviewing CMC reports;
- requesting reports from the CMC on matters which arise via complaints, the media or other means;
- conducting inquiries into specific or general matters relating to the CMC;
- conducting (either itself or through the Parliamentary Crime and Misconduct Commissioner) audits of various registers and files kept by the CMC concerning the use of its powers;
- meeting regularly with the Parliamentary Crime and Misconduct Commissioner to discuss the Commissioner's activities;
- seeking independent legal advice to assist the Committee where a particular skill or expertise is required;

- examining the appropriateness of the CMC's performance measures; and
- examining the CMC's performance against its performance measures.

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

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

The Committee determined not to table those reports however, as they generally contained material that was confidential and considered inappropriate for tabling and it was not in the public interest to table the reports.

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

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

- Two reports of the Parliamentary Crime and Misconduct Commissioner on the results of his inspection of the records of the CMC pursuant to section 362 of the *Police Powers and Responsibilities Act 2000* (surveillance device warrants);<sup>1</sup>
- A report of the Parliamentary Crime and Misconduct Commissioner on the work and activities of the CMC under chapter 11 of the *Police Powers and Responsibilities Act 2000* (controlled operations);<sup>2</sup>
- Annual reports from the CMC on compliance requirements under the *Police Powers and Responsibilities Act 2000* for assumed identities and surveillance devices;<sup>3</sup> and
- An annual report from the CMC on activities of the Controlled Operations Committee under the *Crime and Misconduct Act 2001*.<sup>4</sup>

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

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<sup>1</sup> Tabled on 19 August 2010 and 7 April 2011 as required by section 363(5) of the *Police Powers and Responsibilities Act 2000*.

<sup>2</sup> Tabled on 28 October 2010 as required by section 269(6) of the *Police Powers and Responsibilities Act 2000*.

<sup>3</sup> Tabled on 19 August 2010 as required by sections 314(3) and 358(5) of the *Police Powers and Responsibilities Act 2000*.

<sup>4</sup> Tabled on 19 August 2010 as required by section 138(3) of the *Crime and Misconduct Act 2001*.

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

The Committee directed the CMC to provide the following reports to the Speaker during the reporting period:

- *Setting the Standard: A Review of Current Processes for the Management of Police Discipline and Misconduct Matters*; and
- *Evaluating Taser Reforms: a Review of Queensland Police Service Policy and Practice*.

The Committee also considered the following report provided to it by the CMC during the reporting period:

- *Report on an Investigation into the Alleged Misuse of Public Monies, and a Former Ministerial Adviser*.

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

The CMC is headed by five Commissioners – one full-time Chairperson and four part-time Commissioners who are community representatives.

In any appointment or reappointment of the Chairperson or a part-time Commissioner, the responsible Minister (the Attorney-General and Minister for Industrial Relations) must consult with the Committee. Any nomination by the Minister requires the bipartisan support of the Committee before the nominee can be appointed.

During the reporting year, the Committee considered and provided its bipartisan support for both the nomination of Professor Marilyn McMeniman, AM and the reappointment of Mrs Judith Bell as part-time Commissioners.

#### **ISSUING GUIDELINES TO THE CMC**

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

The Committee did not issue any guidelines to the Commission in the reporting period.

#### **COMPLAINTS**

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

Considering complaints about the Commission and its officers assists the Committee in its oversight role

by providing a valuable insight into the Commission's operations and activities.

The Committee does not have jurisdiction over any organisation other than the CMC and so cannot consider original allegations of official or police misconduct itself. Further, the Committee is not able to substitute its own decision for that of the CMC in a particular matter.

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

#### ***Complaints from members of the public***

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

#### ***Other complaints about the Commission***

Under section 329 of the *Crime and Misconduct Act 2001*, the Chairperson of the CMC is obliged to advise the PCMC of suspected improper conduct by officers of the CMC. Knowledge of such conduct might come to the Chairperson via a complaint made to the Commission about a Commission officer or from officers within the Commission itself referring the conduct to the Chairperson.

At present, the Committee receives frank and prompt advice from the CMC Chairperson concerning conduct of Commission officers which the Chairperson suspects involves, or may involve, 'improper conduct'.

#### ***Complaints considered 2010-2011***

Throughout the reporting year, the Committee considered 38 complaints against the Commission or Commission officers, received from the general public.

In most cases, the Committee determined that the complaints made against specific officers were not substantiated or that it was not satisfied that the Commission had acted inappropriately.

The Committee requested further information from the Commission at times, and in other cases requested the Commission to review or amend its practices and procedures, or sought comment on particular aspects of a matter.

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

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

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

#### ***Notifications from the Chairperson 2010-2011***

The Committee received 14 notifications from the Chairperson of the CMC under section 329 of the *Crime and Misconduct Act 2001*.

While the Chairperson of the CMC is the final decision maker in relation to any disciplinary action that may or may not be taken against employees of the CMC, the PCMC monitors the processes undertaken by the CMC and was kept informed at all

times of the Chairperson's intended actions relating to the relevant CMC officers.

There were no instances during the reporting period where the PCMC was not satisfied with the actions taken by the Chairperson of the CMC in relation to the matters referred to the Committee under section 329 of the Act.

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### **MECHANISMS AVAILABLE TO THE COMMITTEE**

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#### **POWERS OF THE COMMITTEE**

Under the *Crime and Misconduct Act 2001* and the *Parliament of Queensland Act 2001* the Committee has a range of powers that assist it carry out its functions. These include the power to:

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

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

The Committee is assisted in its role of monitoring and reviewing the CMC by the Parliamentary Crime and Misconduct Commissioner (the Parliamentary Commissioner). The Parliamentary Commissioner undertakes a range of functions on behalf of the Committee, at its direction, reporting back to the Committee.

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

During the reporting period, Mr Gary Long SC continued in the role as Parliamentary Commissioner until 12 May 2011, when he was appointed a Judge of the District Court of Queensland. As the holder of a judicial appointment, Mr Long became ineligible to continue in the role and accordingly provided his resignation to the Speaker.

On 18 May 2011, Mr Mitchell Kunde, Principal Legal Officer in the office of the Parliamentary Commissioner was appointed by the Speaker as Acting Parliamentary Commissioner until a new Parliamentary Commissioner could be appointed.

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

Under section 314 of the *Crime and Misconduct Act 2001*, the PCMC may require the Parliamentary Commissioner to:

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

The Parliamentary Commissioner can conduct hearings in limited circumstances and only with the bipartisan authorisation of the PCMC.

The Parliamentary Commissioner also conducts an annual review of the intelligence data held by the CMC and the Queensland Police Service.

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

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

the CMC Chairperson and the Chair of the Committee; and

- auditing the CMC's records relating to assumed identities at least once every six months.

The Parliamentary Commissioner also has statutory duties under the *Telecommunications Interception Act 2009* which include:

- regularly carrying out inspections of the records of the CMC to determine the extent of the CMC's compliance with the legislative requirements relating to telecommunications interception; and
- providing reports on the inspections to the responsible Minister and to the Committee.

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

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

During the reporting period the Committee referred issues involving the CMC's actions in two matters to the Parliamentary Commissioner for review. The Committee received the reports of three matters that had been referred to the Parliamentary Commissioner, including one matter that had been referred to the Parliamentary Commissioner in the previous reporting period.

The Parliamentary Commissioner also provided the Committee with general legal advice on four matters relating to the performance of the Committee's functions under the *Crime and Misconduct Act 2001*.

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

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### **MEETINGS**

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

These meetings are held *in camera* and provide an opportunity for candid and open discussions. The

Committee has found these meetings very valuable for open communication between it and the CMC.

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

The Committee also meets regularly with the Parliamentary Commissioner who reports to the Committee on his activities on a bi-monthly basis. This keeps the Committee informed of the status of matters that have been referred to the Commissioner as well as administrative issues concerning the day-to-day running of the Office of the Parliamentary Commissioner.

During the reporting year the Committee met 43 times including:

- six joint meetings with the Crime and Misconduct Commission; and
- six meetings with the Parliamentary Crime and Misconduct Commissioner.

#### **CONFERENCES AND VISITS / MEETING WITH OTHER AGENCIES**

On 6 October 2010, members of the Committee met with the Mr Peter Alcock, Clerk of the Tasmanian House of Assembly to discuss the operation and functions of oversight committees specifically in relation to the new Tasmanian Joint Standing Committee on Integrity.

Committee staff also met with Mr Alcock on 7 October 2010 to discuss administrative arrangements of the Committee to assist with the operation of the new Tasmanian Committee.

On 21 January 2011, Committee staff also met with staff of the new Tasmanian Integrity Commission to discuss the relationship between Parliamentary Committees and the agencies which are subject to parliamentary oversight.

#### **BUDGET AND EXPENDITURE**

The total budget allocation for the Committee in 2010/2011 was \$251,265.00.<sup>5</sup> The Committee's total actual expenditure for 2010/2011 was \$243,984.28.<sup>6</sup>

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

Salary costs <sup>a</sup>	177,212.85
Salary related taxes/accruals <sup>b</sup>	61,228.84
Business travel	-
Printing, advertising & memberships <sup>c</sup>	1,559.64
Telephone costs	2,133.30
Hospitality	1,849.65
<b>TOTAL</b>	<b>\$243,984.28</b>

- a) Includes temporary assistance, higher duties, overtime and allowances.
- b) Includes Superannuation, FBT, payroll tax and Workcover premiums.
- c) Includes stationary and consumables



**DR ALEX DOUGLAS MP**

Chairman

October 2011

<sup>5</sup> This compares with the Committee's budget allocation for 2009/2010 of \$235,496.00.

<sup>6</sup> This compares with the Committee's actual expenditure for 2009/2010 of \$221,266.92.

## 2010/11 Meeting Attendance Record – 8<sup>th</sup> PCMC

<b>DATE</b>	<b>PURPOSE</b>	<b>Paul Hoolihan</b>	<b>Jack Dempsey</b>	<b>Steve Dickson</b>	<b>Scott Emerson</b>	<b>Lillian van Litsenburg</b>	<b>Mark Ryan</b>	<b>Stephen Wettenhall</b>
12 July 2010	PCMC	✓	✓	✓	✓	✓	✓	✓
3 Aug 2010	PCMC	✓	✓	X	✓	✓	✓	✓
5 Aug 2010	PCMC / Parliamentary Commissioner	✓	✓	X	✓	✓	✓	✓
6 Aug 2010	PCMC	✓	✓	X	✓	✓	✓	✓
6 Aug 2010	PCMC / CMC	✓	✓	X	✓	✓	✓	✓
17 Aug 2010	PCMC	✓	✓	✓	✓	✓	✓	✓
31 Aug 2010	PCMC	✓	✓	✓	✓	✓	✓	✓
14 Sep 2010	PCMC	✓	✓	✓	✓	✓	✓	✓
17 Sep 2010	PCMC	✓	✓	✓	✓	✓	✓	X*
17 Sep 2010	PCMC / CMC	✓	✓	✓	✓	✓	✓	X*
5 Oct 2010	PCMC	✓	✓	✓	✓	✓	✓	✓
7 Oct 2010	PCMC / Parliamentary Commissioner	✓	✓	✓	✓	✓	✓	✓
26 Oct 2010	PCMC	✓	✓	✓	✓	✓	✓	✓
29 Oct 2010	PCMC	✓	✓	✓	✓	✓	X*	✓
29 Oct 2010	PCMC / CMC	✓	✓	✓	✓	✓	X*	✓
23 Nov 2010	PCMC	✓	✓	✓	✓	✓	✓	✓
25 Nov 2010	PCMC / Parliamentary Commissioner	✓	X	✓	✓	✓	✓	✓
15 Feb 2011	PCMC	✓	✓	✓	✓	✓	✓	✓
17 Feb 2011	PCMC / Parliamentary Commissioner	✓	✓	✓	✓	✓	✓	✓
18 Feb 2011	PCMC	✓	X	✓	✓	✓	✓	✓
8 Mar 2011	PCMC	✓	✓	✓	✓	✓	✓	✓
11 Mar 2011	PCMC	✓	✓	X	✓	✓	✓	X
11 Mar 2011	PCMC / CMC	✓	X	X	✓	✓	✓	X
22 Mar 2011	PCMC	✓	✓	✓	X	✓	✓	✓
25 Mar 2011	PCMC	✓	✓	✓	✓	✓	✓	✓
25 Mar 2011	PCMC / CMC	✓	✓	✓	✓	✓	✓	✓
5 Apr 2011	PCMC	✓	✓	✓	✓	✓	✓	✓
7 Apr 2011	PCMC / Parliamentary Commissioner	✓	✓	✓	✓	✓	✓	✓
10 May 2011	PCMC	✓	✓	✓	✓	✓	✓	✓
13 May 2011	PCMC	✓	X*	✓	✓	✓	✓	✓
13 May 2011	PCMC / CMC	✓	X*	✓	✓	✓	✓	✓
13 May 2011	PCMC	✓	X*	X	✓	X	✓	✓
19 May 2011	PCMC teleconference	✓	X	✓	X	✓	✓	✓
<b>DATE</b>	<b>PURPOSE</b>	<b>Alexander Douglas</b>	<b>Evan Moorhead</b>	<b>Grace Grace</b>	<b>Andrew Powell</b>	<b>Mark Ryan</b>	<b>Peter Wellington</b>	<b>Stephen Wettenhall</b>
16 Jun 2011	PCMC	✓	✓	✓	✓	✓	X	✓

X\* - Absence was due to the Committee Member representing the Government at a conflicting official engagement or performing Shadow Ministry duties.