

Parliamentary Oversight from the Parliament's Perspective - Overview of Parliamentary Oversight of the Crime and Misconduct Commission

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Introduction

Queensland has had an independent anti-corruption body since the creation of the Criminal Justice Commission in 1990, following a recommendation of the Fitzgerald Commission of Inquiry.

On 1 January 2002 the Queensland Crime Commission and the Criminal Justice Commission were merged under the *Crime and Misconduct Act 2001* ('the Act') to establish the Crime and Misconduct Commission. The Act also established the Parliamentary Crime and Misconduct Committee ('the PCMC') which is principally responsible for monitoring and reviewing the CMC. The Committee is assisted in this role by the Parliamentary Crime and Misconduct Commissioner.

The Crime and Misconduct Commission

The key responsibilities of the Crime and Misconduct Commission (CMC) are:

- to combat and reduce the incidence of major crime (this broadly includes 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 (including the Queensland Police Service).

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

The CMC's multiple roles in respect of major crime, and police and public sector misconduct distinguish it from other bodies. Under the umbrella of the one entity are gathered functions that in New South Wales are performed by a number of agencies, including the Independent Commission Against Corruption, the Police Integrity Commission, the NSW Crime Commission and the NSW Ombudsman.

Unlike other anti-corruption bodies in Australia, the CMC is not based on a single commissioner model; it is instead governed by a group of commissioners. Those commissioners include a fulltime chairperson, currently Mr Robert Needham, who is the Chief Executive Officer of the CMC. The chairperson is assisted by four part-time commissioners. One of the part-time commissioners must be a lawyer with a background in civil liberties. The others must have qualifications or expertise in public sector management, criminology, sociology, or community service experience.

The CMC's role in respect of major crime is to supplement the ability of the Queensland Police Service to deal with major crime, particularly where the usual investigative powers available to police prove ineffective.

Major crime matters are referred to the CMC by a Crime Reference Committee, which is comprised of the CMC chairperson, the Commissioner of Police, the Chair of the Australian Crime Commission, the Commissioner for Children and Young People and two community representatives.

The CMC has responsibility for:

- ensuring that complaints or information involving misconduct in the public sector are dealt with in an appropriate way; and
- building the capacity of public sector departments and agencies (referred to as units of public administration) to prevent and deal with misconduct.

A key principle underpinning the Act is the devolution to public sector agencies themselves of the responsibility for preventing and dealing with misconduct within their own organisations.

The CMC undertakes the initial assessment of complaints to determine how they should be dealt with. More complex matters that raise a reasonable suspicion of official misconduct might be dealt with by the CMC itself. Less serious or complex matters can be referred to the relevant agency to be dealt with. These matters can be subject to varying degrees of monitoring or review by the CMC.

In the case of complaints against police, the Police Commissioner has primary responsibility for dealing with police misconduct (i.e. lower level misconduct by police officers) and responsibility for dealing with matters involving official misconduct referred by the CMC. Again the investigation of such complaints may be subject to monitoring or review by the CMC.

The Parliamentary Crime and Misconduct Committee

The Parliamentary Crime and Misconduct Committee is established under the same Act that establishes the CMC. The Committee's core function is to monitor and review the performance of the CMC's functions. It also has the following 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 of the CMC;
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- to conduct a review of the activities of the CMC at the end of the Committee's three year term; and
- to issue guidelines and give directions to the CMC where appropriate.

The Committee has developed a number of practical mechanisms in carrying out its function to monitor and review the CMC. These include:

- holding regular Committee meetings – at least one in each Parliamentary sitting week;
- considering comprehensive confidential bi-monthly reports from the CMC in relation to its activities;
- holding bi-monthly in camera meetings with the Chairperson, Commissioners, and Assistant Commissioners of the CMC;
- considering confidential minutes of meetings of the Commission and its Executive;
- receiving and considering complaints against the CMC and its officers;
- reviewing CMC reports;
- requesting responses from the CMC on issues which arise (via complaints, the media or other means);
- where necessary referring matters of concern to the Parliamentary Crime and Misconduct Commissioner (or to the Queensland Police Service or the Director of Public Prosecutions) for investigation and report;
- 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 CMC registers recording the use of its coercive powers; and
- examining the CMC's performance against its performance measures.

The Parliamentary Crime and Misconduct Commissioner

The position of Parliamentary Commissioner (then known as the Parliamentary Criminal Justice Commissioner) commenced in April 1998, as a result of a recommendation made by the Parliamentary Criminal Justice Committee in 1997.

The principle role of the Parliamentary Commissioner is to assist the Committee in enhancing the accountability of the CMC.

The Parliamentary Commissioner has no 'own motion' power and can act only at the direction of the Committee – in broad terms the Parliamentary Commissioner is the 'agent' of the Committee.

The Committee 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.

Any direction to the Parliamentary Commissioner requires the bipartisan support of the Committee (this requires a majority of the members which does not consist wholly of Government members).

The Parliamentary Commissioner has power to access all CMC documents records and files. The Parliamentary Commissioner can also hold hearings in certain circumstances, with the Committee's prior authorisation.

The Parliamentary Commissioner is also obliged under the Act to conduct an annual review of the intelligence holdings of the CMC and QPS. No direction is required from the Committee in this regard. The report of such review is provided to the CMC chairperson, the Commissioner of Police, and the PCMC.

Possible weaknesses of the accountability system

I will briefly mention two areas where the Queensland system differs from other models.

Firstly, it might be argued that a Commission which includes a number of part-time commissioners (rather than a single commissioner) could be inefficient – decisions must await a meeting of the Commission, and time and resources are absorbed in this process.

This has not proved to be a problem in the case of the CMC. The commissioners generally meet every two weeks. Urgent matters are dealt with at specially convened meetings which can take place via teleconference. On the other hand, there is an advantage in having a number of commissioners – enhanced availability of part-time commissioners to act as chairperson or undertake the role of the chairperson in matters of potential conflict. As long as the right personnel are appointed, the multiple commissioner model allows a range of experiences and viewpoints to be taken into consideration. Our experience has been that this model has enhanced the decision making process.

Secondly, the Parliamentary Commissioner can only act upon direction from the Committee (contrast the NSW and WA Inspectors who can act on their own motion or upon complaints received directly by them). In Queensland it is the Committee that undertakes primary responsibility for the handling of complaints against the CMC. The Committee can determine to ask the Parliamentary Commissioner to investigate and report to the Committee.

If matters of concern come to the attention of the Parliamentary Commissioner, they can be passed to the Committee recommending action including if thought appropriate a possible referral back to the Parliamentary Commissioner for investigation.

The oversight structure – whereby the Committee considers complaints, is responsible for directing the Parliamentary Commissioner in the performance of his functions, and is involved in the appointment of commissioners of the CMC and of the Parliamentary Commissioner - means that the Committee is more actively aware of the operations of the CMC. The disadvantage may be an increased workload of the Committee, but an advantage is a greater understanding of the day to day operations of the CMC.

The jurisdiction of the CMC regarding elected representatives

Given various definitions in the legislation, the jurisdiction of the CMC in respect of members of Parliament and Councillors of local government authorities is limited to conduct which, if proved, could amount to the commission of a criminal offence. This has been the position since the CMC's predecessor was established in 1989. Traditionally the appropriateness or propriety of the conduct of elected officials falling short of criminal conduct has been determined by the Parliamentary or the electoral process.

In early 2005, the CMC reported upon an investigation involving actions of a minister and of various public servants.¹ Whilst the CMC in its report correctly concluded that it did not have jurisdiction regarding the actions of the Minister (as there was no evidence that a criminal offence had been committed) it was of concern to the Committee that the CMC in its report posed the question²:

Did the minister behave improperly either by having Mr Foster and Mr Yanner accompany her to Palm Island or by allowing the false press statement to be issued?

The Committee raised with the Commission the appropriateness of addressing the question of whether the minister "behaved improperly", (where that did not involve any criminality) as this is not a matter within the Commission's jurisdiction.

The better approach is exemplified in a later report of the CMC, on its investigation of claims of bribery against the Premier of Queensland which arose from an offer made by him to the Palm Island Aboriginal Council. The Commission, having concluded that the offer could not amount to a criminal offence, observed regarding its jurisdiction:³

It must be pointed out that the question of whether the offer could constitute a criminal offence, and therefore official misconduct, is quite different from the question of whether the Premier's action was in a political, practical or moral sense a wise one. The CMC has no jurisdiction to comment on the latter question, nor does it wish to make or imply a view for or against the Premier.

¹ *Palm Island Airfare Controversy*, Crime and Misconduct Commission, March 2005. The report is available at <http://www.cmc.qld.gov.au/library/CMCWEBSITE/PalmIsland.pdf>

² At page 38.

³ *Palm Island Bribery Allegation: Report of a CMC investigation into an offer made by the Premier of Queensland to the Palm Island Aboriginal Council*, Crime and Misconduct Commission, March 2005, page 44. The report is available at <http://www.cmc.qld.gov.au/library/CMCWEBSITE/FullBeattiereport.pdf>