

# Statement to the Inquiry in Law Enforcement Integrity Models

**Stephen Lambrides**  
**Acting Chairperson**  
**Crime and Misconduct Commission (Queensland).**

## A. Overview of the CMC

On 1 January 2002 the Crime and Misconduct Commission came into being. It absorbed the roles of the former Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC).

As you are no doubt aware, the CJC was a direct descendant of the Fitzgerald Commission of Inquiry, which was a landmark event in recent Queensland history.

The Fitzgerald Report advanced a comprehensive blueprint for reforming the State's police service and political institutions. One of the key recommendations of the Inquiry was to create a permanent body, in the form of the CJC, to act as an ongoing commission of inquiry and to carry through with the reforms which had been identified in the report. The CJC commenced operations in 1989.

The Act of Parliament that established the CMC is the *Crime and Misconduct Act 2001*. Section 4 of the Act states:

*The purposes of this Act are*

- (a) *to combat and reduce the incidence of major crime; and*
- (b) *to continuously improve the integrity of, and to reduce the incidence of misconduct in the public sector.*

The CMC is also given by the *Witness Protection Act 2000*, the role of providing witness protection for the State. Accordingly, the CMC has three major functional areas:

- **Misconduct** – jurisdiction over police, the public service, local councils, prisons, universities, the courts, politicians (State and local government).

Under the Crime and Misconduct Act, 'misconduct' refers to official misconduct or police misconduct, defined as follows:

- Official misconduct (which applies to all public sector officials, including police) is conduct relating to the performance of a public sector officer's duties or exercise of powers that is dishonest or lacks impartiality, or involves a breach of the trust placed in a person by virtue of their position, or is a misuse of officially obtained information. To amount to official misconduct, the conduct must be a criminal offence or serious enough to justify dismissal. Official misconduct includes conduct by anyone who seeks to corrupt a public officer.
- Police misconduct (which relates only to police officers) is any conduct — other than official misconduct — that is disgraceful, improper or unbecoming a police officer, or demonstrates that person's unfitness to be or continue as an officer, or does not meet the standard of conduct that the community reasonably expects of a police officer.

- **Crime** – major crime

Under the Crime and Misconduct Act, major crime encompasses:

- **organised crime** — criminal activity undertaken with the purpose of gaining profit, power or influence, and involving offences punishable by not less than seven years' jail, two or more people, and planning and organisation or systematic and continuing activity
- **criminal paedophilia** — criminal activity involving sexual offences against children, or child pornography
- **serious crime** — criminal activity involving offences punishable by not less than 14 years' imprisonment (e.g. murder, arson)
- **terrorism** (added by an amendment to our Act in 2004).

- **Witness Protection**

These areas are supported by:

- **Intelligence**
- **Surveillance and Technical**
- **Research**

## **B. Our Governing Body and Staff**

The CMC is headed by a five-member Commission comprising the Chairperson (currently Mr Robert Needham), who is also the chief executive officer (CEO), and four part-time Commissioners who represent the community. There are also two Assistant Commissioners, one for Misconduct and one for Crime, who may attend Commission meetings but who have no voting rights. A question at a Commission meeting is decided by a majority of the votes of the Commissioners present. The person presiding, the Chairperson, also has a casting vote. The Commission has primary responsibility for achieving the purposes of the Crime and Misconduct Act. In guiding and maintaining the strategic focus of the organisation, the Commission considers matters affecting all areas of the CMC, including financial, staffing and managerial issues; specific crime and misconduct operations; research and intelligence projects; and capacity development and misconduct-prevention activities.

Our Act mandates that the membership of the five-member Commission represent a depth of legal experience, demonstrated interest in civil liberties, and expertise in public sector management and review, criminology, sociology or relevant research, and that at least one member is a woman.

A similar range of expertise is represented in our staff. About 300 people work at the CMC, including lawyers, investigators, sworn police officers (who are seconded from the Queensland Police Service), social scientists, financial investigators, intelligence analysts, IT and surveillance specialists, administrators and support officers.

### **Appointment conditions for Commissioners and Assistant Commissioners**

#### **Appointment of Commissioners**

Commissioners (including the Chairperson) are appointed by the Governor-in-Council under the terms of the Crime and Misconduct Act for a period of not more than five years. Their nomination for appointment must have the bipartisan support of the PCMC. They are paid the remuneration and allowances decided by the Governor-in-Council.

## **Qualifications of the Chairperson and Assistant Commissioners**

Under the terms of the Crime and Misconduct Act, the Chairperson and Assistant Commissioners, must be a legal practitioner who has served as, or is qualified for appointment as, a judge of the Supreme Court of any state, the High Court or the Federal Court.

## **Resignation and termination of a Commissioner**

The Governor-in-Council may terminate the appointment of a Commissioner (including the Chairperson) at any time if the Commissioner becomes incapable of satisfactorily performing the duties of office or is absent from three consecutive meetings of the Commission without prior approval and reasonable excuse. In addition, the Governor-in-Council must terminate the appointment of the Chairperson if the Chairperson engages in paid employment outside the duties of office without the minister's approval.

The Governor may terminate the appointment of a Commissioner on a recommendation to the Legislative Assembly made with the bipartisan support of the Parliamentary Crime and Misconduct Committee and approved by the Legislative Assembly. A CMC Commissioner (including the Chairperson) may resign at any time by written notice to the minister.

## **Assistant Commissioners and senior officers**

The Crime and Misconduct Act states that Assistant Commissioners and senior officers must not hold office in the CMC for more than 10 years in total (however, under certain circumstances this period may be extended to a maximum of 15 years). A 'senior officer' is an officer whose principal duties relate directly to the performance of the CMC's prevention, crime, misconduct, research or intelligence functions or the giving of legal advice to the Commission. It does not include a senior officer whose duties support the CMC's functions, such as the Executive Director or a human resource, information technology or finance manager.

Before nominating a person for appointment as an Assistant Commissioner, the Minister must consult with the Leader of the Opposition and the Chairperson.

# **C. External accountability**

While independent of the government of the day, the CMC is fully accountable to the people of Queensland through the Parliamentary Crime and Misconduct Committee (PCMC), a seven member all-party committee that monitors and reviews our activities and deals with complaints against us.

Others who play a role in accountability are the Parliamentary Crime and Misconduct Commissioner, the Minister, the Public Interest Monitor, the Supreme Court, the Crime Reference Committee and the Controlled Operations Committee.

## **Parliamentary Crime and Misconduct Committee**

In performing its functions the PCMC:

- monitors and reviews the performance of the CMC, including reviewing CMC reports
- requests on an ad hoc basis reports on matters that have come to the PCMC's attention through the media or by other means
- receives and considers complaints against the CMC and deals with issues concerning the CMC
- consults with the Attorney-General on the appointment of the CMC Chairperson and Commissioners.

The Commission formally meet with the PCMC about every two months to discuss current activities and performance. We provide a detailed report to the PCMC before each meeting.

## **Staff accountability to the PCMC**

Our Act (section 329) requires the Chairperson to report to the PCMC any conduct of a CMC officer (including seconded police officers) that the Chairperson suspects involves or may involve improper conduct. The Act also

provides for a wider definition of CMC officers, by including former officers, and specifically allows the PCMC to request reports in respect of these matters.

## **Parliamentary Crime and Misconduct Commissioner**

The Parliamentary Crime and Misconduct Commissioner (Parliamentary Commissioner) assists the PCMC in its role of monitoring and reviewing the CMC. The Parliamentary Commissioner may investigate complaints against the CMC or its officers on the direction of the PCMC, and conducts audits and reviews of the CMC's activities.

The Parliamentary Commissioner regularly:

- acts on referrals from the PCMC to review the CMC's management of complaint matters
- audits the CMC's compliance with legislation governing covert instruments and the use of surveillance devices and assumed identities
- inspects registers that the CMC is required to maintain
- audits the CMC's intelligence holdings.

The Parliamentary Commissioner may make recommendations about possible improvements to processes or procedure.

## **The Minister**

The CMC's minister is the Honourable Kerry Shine MP, Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland.

The minister participates in the selection of the Chairperson, Commissioners and Assistant Commissioners, approves staff remuneration conditions, and approves the CMC's budget. Our legislation also requires the minister to ensure that the CMC operates in accordance with best-practice standards. To assist the minister in this regard, the CMC provided written reports every six months on the efficiency, effectiveness, economy and timeliness of its operational processes.

## **Public Interest Monitor**

The Public Interest Monitor monitors applications for, and the use of, surveillance warrants and covert search warrants under our Act and the *Police Powers and Responsibilities Act 2000* (PPRA). They will also monitor applications for Telephone Interceptions when ultimately introduced into Queensland.

## **Supreme Court**

Many of the CMC's coercive powers may be exercised only with the approval of a Supreme Court judge. The approval of a Supreme Court judge must also be sought when the CMC wishes to serve compulsory process on interstate residents.

Some decisions of the CMC may be reviewed by a Supreme Court judge under the *Judicial Review Act 1991* or section 332 of the Crime and Misconduct Act where a person claims an investigation into official misconduct is being conducted unfairly or a matter does not warrant investigation.

## **Crime Reference Committee**

The Crime Reference Committee, established under section 274 of our Act, has a major role in referring crime to the CMC for investigation. It also has a coordinating role for investigations into major crime conducted by the CMC in cooperation with any law enforcement agency.

## **Controlled Operations Committee**

The Controlled Operations Committee was established under the PPRA to consider and make recommendations about applications for 'controlled operations' to be undertaken by the QPS or the CMC. (Controlled operations are investigations of serious indictable offences, misconduct or organised crime that involve police officers and others engaging in activities that may be unlawful — e.g. it may involve undercover officers, in order to maintain their cover, buying illicit drugs from the target of an investigation).

The committee comprises the Commissioner of Police (or nominee), the Chairperson of the CMC, and a retired District Court judge (the independent member), who is the chair.

In the case of any controlled operation by the CMC that involves investigating a police officer, the Chairperson may approve the application without referring it to the committee, but must first contact the independent member and obtain their agreement.

## **D. Internal accountability**

The CMC's most important internal accountability mechanism is the Commission. CMC corporate policy and strategic directions are set by the Commission, implemented by a range of internal committees, and generally overseen by the Executive Committee.

Other officers contributing to internal accountability are the General Counsel and the internal auditor, both of whom provide independent advice to the Commission and report directly to the Chairperson.

### **The Commission**

The Commission has primary responsibility for achieving the purposes of the Crime and Misconduct Act.

In guiding and maintaining the strategic focus of the organisation, the Commission considers matters affecting all areas of the CMC, including financial, staffing and managerial issues; specific crime and misconduct operations; research and intelligence projects; and capacity development and misconduct-prevention activities. In addition, the part-time Commissioners chair significant internal committees, participate in others, and represent the CMC on external bodies.

### **Internal committees**

The CMC has a comprehensive committee structure to comply with corporate governance principles of effective management.

The most significant is the Executive Committee (EC). The others are either governance committees (usually having Commissioner or external representation) or operational committees (which may be chaired by a CMC staff member and deal with operational matters).

#### **Executive Committee**

##### **Chair: Chairperson**

- The Executive Committee's membership comprises the organisation's executive management, whose key role is to assist the Commission advance corporate initiatives, manage strategic issues, overview major business improvements and monitor significant operational initiatives.

#### **Risk Management Committee**

##### **Chair: Chairperson**

- As part of the new risk management framework, the Executive Committee also acts as the organisation's Risk Management Committee. It is responsible for ensuring robust and effective risk management strategies and related practices. This is done by monitoring and reviewing all risk-related matters, and working with the Commission to address significant risks.

#### **Finance Committee**

##### **Chair: Chairperson**

The CMC operates in an accrual-based financial management framework where all senior managers are responsible and accountable for achieving corporate goals and objectives within approved budget allocations.

The Finance Committee assists the Commission to meet its financial management responsibilities by providing independent advice and monitoring. The committee ensures the CMC's practices are effective and comply with statutory requirements, by overseeing preparation, implementation and analysis of the CMC's budget, financial

statements, Ministerial Portfolio Statement, submission to the Parliamentary Estimates Committee Hearings and other significant financial matters.

### **Audit Committee**

#### **Chair: External member**

The Audit Committee independently advises the Commission to help it maintain effective financial management, internal control systems, audit processes and compliance with governance requirements. The Committee reviews the reports of the internal auditor.

### **Information Steering Committee**

#### **Chair: Chairperson**

- The Information Steering Committee monitors and reviews the information and communication technology program of work and provides business advice to support the development of the CMC's four-year ICT Resources Strategic Plan in alignment with the Government Enterprise Architecture.

### **Internal audit**

Internal Audit operates under a formal charter approved by the Commission, and its activities are monitored by the Audit Committee. Its role is to conduct independent audits as a service to management, and to help management achieve sound managerial control. The Internal Auditor acts independently of, but works cooperatively with, the Audit Committee and has a standing invitation to attend committee meetings. The function also liaises regularly with the Queensland Audit Office (QAO) to ensure that there is adequate audit coverage across the organisation.

## **E. Dealing with Misconduct**

Experience in Queensland and elsewhere suggests that for the public sector to ensure a strong culture of integrity and minimise the risk of misconduct, public sector managers themselves must take responsibility for the culture and behaviour of their staff and for preventing misconduct.

For this reason, the CMC does more than simply focus on investigating serious cases of possible misconduct. Our misconduct function comprises:

- an effective and efficient complaints-handling process
- a robust monitoring regime
- investigations
- a concerted program of capacity-building and research activities, with a strong prevention focus.

All our activities are focused on improving public sector conduct.

### **Receiving complaints**

Last financial year, 3678 misconduct complaint matters were assessed by the CMC.

The matters received contained over 9000 separate allegations of misconduct (one complaint may consist of a number of allegations). Of these allegations 56 per cent related to police, 32 per cent to public sector agencies, 10 per cent to local government, and 2 per cent to the remainder (primarily politicians).

### **Assessment of complaints**

Eighty-two (82) per cent of all complaints were referred to the relevant agency to deal with, subject to monitoring by the CMC. Twelve (12) per cent of these complaints were monitored through review.

Sixteen (16) per cent of all complaints were determined by us to warrant no further action. Less than two (2) per cent of all complaints were retained by us for investigation.

## **Why we refer matters to agencies**

There are several reasons for referring complaints to the relevant agency to deal with.

Receiving and assessing complaints gives us an insight into the culture and performance of public sector agencies. It also reassures the public that an oversight body is being made aware of issues as they arise.

Of the complaints we receive, a significant percentage come from public sector agencies. In part, this is because there is a low threshold for referral — by law, there need only be a suspicion of official misconduct for an agency to be obliged to report it to us. On closer examination of the complaints, many of them clearly do not involve official misconduct.

Managing complaints is not only about dealing with inappropriate conduct by agency employees. It is also an opportunity to identify and address any wider systemic issues such as agency-wide policy or procedural deficiencies, an inappropriate workplace culture, or a failure of standards.

More and more, agencies are accepting responsibility for managing the culture and conduct of their staff. That is why, wherever possible, we refer complaints to the relevant agency to deal with.

## **Monitoring of agencies**

To maintain the integrity of the complaints process, and to safeguard public confidence in it, the CMC monitors how public sector agencies handle the complaints that we refer to them. This may involve:

- overseeing an agency's investigation while it is taking place (including, on occasions, assisting in interviewing witnesses), or
- reviewing the finalised investigation report before any disciplinary or other managerial action is taken, or
- after the matter was finalised, reviewing how the agency dealt with the complaint, or
- general or targeted auditing of the way agencies have dealt with complaints that we have referred to them; or
- conducting quality assurance reviews.

Our reviews focus on individual complaints that are referred to agencies but which have been identified at our assessment stage as warranting scrutiny. (Reasons for this could include the need to maintain public confidence, or to follow up on possible systemic issues.) In reviewing the complaint, we focus on compliance and integrity in the way in which the complaints are resolved, prevention issues and any capacity deficiencies that the agency may have.

Our audits focus on such things as compliance with standards, integrity of the manner in which complaints are dealt with generally, timeliness, and the way in which an agency is dealing with particular types of alleged conduct, for example, reprisals against whistleblowers. The samples of complaints selected for these audits are taken from those referred to the agency to deal with, and which we have not individually reviewed ourselves.

Our quality assurance reviews look at an agency's integrity framework, including its policies, code of conduct, complaints and records management systems, and training and internal monitoring systems.

## **Misconduct investigations**

We concentrate our efforts on matters such as major fraud within government agencies, police corruption and sensitive political matters. As part of the investigation process, we focus on identifying agencies' systemic or procedural weaknesses and develop recommendations to help them prevent recurrences.

A successful conclusion to a CMC investigation may be the bringing of criminal charges or, just as importantly, the clearing of a person's name or the restoring of public confidence in a public sector activity or agency, a politician or the police.

In our pursuit of corruption and other serious misconduct, we use specialised resources in intelligence, financial analysis and forensic computing as well as proactive and covert investigative techniques.

We also have power to:

- require a person to produce records or other things relevant to a CMC investigation
- enter a public sector agency, inspect any record or other thing in those premises, and seize or take copies of any record or thing that is relevant to a CMC investigation

- summons a person to attend a hearing to give evidence and produce such records or things as are referred to in the summons
- apply to a magistrate for a warrant to enter and search premises
- apply to a judge for a warrant to use surveillance devices
- hold coercive hearings. The CMC is the only Queensland law enforcement agency with the power to conduct coercive hearings — that is, to require witnesses to attend hearings and answer questions even where the answers tend to incriminate the witness. Such answers cannot, however, be used against them in civil or criminal proceedings, unless those proceedings relate to the falseness of the answers.

The hearings power is a potent investigative tool because it greatly enhances our ability to break through the ‘wall of silence’ that frequently characterises major crime and misconduct.

We increasingly conduct investigations cooperatively with agencies in order to build their capacity to investigate and deal with potential misconduct matters. This may involve providing agencies with investigators to conduct interviews and financial investigators to obtain documents from third parties using our ‘notice to discover information’ powers. It could also include an officer from the agency being embedded in the CMC’s multidisciplinary team.

## **Capacity Building and Prevention**

The CMC seeks to build capacity to prevent and deal with misconduct through a variety of projects and ongoing activities, including providing advice, support, relevant resources; conducting workshops and information sessions; meeting with chief executives and senior managers in public sector agencies; conducting outreach activities (such as liaison meetings and visiting rural and regional areas); working with other oversight agencies, working with Indigenous communities, and conducting research.

The CMC also seeks to build capacity of agencies through the production of materials focussed on a range of misconduct risk areas. Their aim is to provide an authoritative misconduct prevention advisory resource, and to help agencies formulate strategies to minimise the risks associated with those areas. We currently produce resources such as research papers, guides, toolkits, training materials, manuals, articles and advisory pamphlets on prevention and dealing with misconduct. These resources have been made available to all public sector agencies via hard copy and have also been placed on our website, or in some cases, the website of collaborating agencies.

Wherever possible we collaborate with other lead agencies in producing our material.

The primary objective of outreach activities is to provide an opportunity for people who would not otherwise get the chance to have direct access to us to obtain prevention advice. The programs discussed in this section allow us to provide direct and immediate advice and information on issues of importance to agency and community representatives in a structured yet informal and relaxed way.

The Chairperson in conjunction with senior CMC officers have a program of visiting individual Directors-General and Chief Executives to discuss matters of mutual interest. The visits focus on the joint responsibility of the CMC and the agency to develop a strong culture of integrity and reduce misconduct, and the practical implementation of that joint responsibility, such as dealing with complaints and developing and implementing prevention strategies. The importance of the partnership approach and clear and strong lines of communication is emphasised. Any emerging trends or issues are also discussed. A point is made of visiting new appointees to these roles.