

CCC - ICG Sub 3
CRIME AND MISCONDUCT COMMISSION

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22 October 2013



The Honourable Nick Goiran MLC
Chairman
Joint Standing Committee on the Corruption and Crime Commission
Parliament House
PERTH WA 6000

Dear Mr Goiran

**RE: INVITATION TO MAKE A SUBMISSION TO THE JOINT
STANDING COMMITTEE'S INQUIRY**

Thank you for the invitation in your letter dated 29 August 2013 to make a submission to the Joint Standing Committee on the Corruption and Crime Commission (Committee) in its Inquiry into the role played by the Corruption and Crime Commission (CCC) in Western Australia's Integrity Coordinating Group (ICG).

The Queensland analogue to the ICG is the Integrity Committee, consisting of the following officers:

- The Queensland Integrity Commissioner;
- The Information Commissioner;
- The Queensland Ombudsman;
- The Queensland Auditor-General;
- The Attorney-General; and
- The Chairperson of the Crime and Misconduct Commission (CMC).

Since 2001 this group has met informally, three or four times a year. The Chief Executive of the Public Service Commission ceased involvement in the committee following changes to its governance and responsibilities. The group discusses a wide range of ethical and integrity issues, and shares information about their activities.

As you may be aware the issue of jurisdictional overlap between integrity agencies was the subject of consideration in the recent Report of the Independent Advisory Panel entitled *Review of the Crime and Misconduct Act and Related Matters* tabled in the Legislative Assembly on 18 April 2013¹. This submission in large part replicates the submissions made to that Review.

I intend to address some of the Inquiry terms of reference below. The first three will be addressed together:

(a) The role played by the CCC within the State's ICG;

¹ The report can be found at:
<http://www.parliament.qld.gov.au/apps/TabledPapers/RelatedDocs.asp?RefNo=5413T2447>

- (b) The extent of any jurisdictional overlap between the CCC and other members of the ICG; and
- (c) How the CCC handles instances of jurisdictional overlap with other members of the ICG.

The CMC is subject to a number of relevant statutory commands. Section 59 of the *Crime and Misconduct Act 2001* (CM Act) requires us to work cooperatively with other organisations to avoid needless duplication. Section 34(a) requires us, to the greatest extent practicable, to work cooperatively to prevent and deal with misconduct. Section 34(b) sets out our role in building capacity within units of public administration to deal with cases of misconduct. Section 34(c) sets out the devolution principle, which interacts with s34(b) and (d), so that in considering the public interest, it is necessary for us to consider the capacity and resources of a unit of public administration to deal with misconduct. Section 35(2) requires us, in considering how we perform our misconduct functions, to liaise whenever possible with a relevant public official.

The model of the CM Act thus inescapably compels us to cooperate. To understand the details of how that is done, practical considerations are important. For present purposes, I pass over police related issues, which do not appear to be a particular focus of your present interest.

Corruption is a crime of complicity. In contrast to more common crimes like assault, rape, robbery, etc, where there is usually a traditional complainant who is a witness to what occurred and is strongly motivated to speak out, corruption occurs in secret, and the only direct witnesses to it are complicit and thus strongly motivated not to speak about it. A consequence of this is that complaints to the CMC are never by people in the inner circle, only by those who sense they have been the subject of some adverse or unfair treatment by some public official. They may draw the inference that corruption lies behind that treatment, and often that inference draws a long bow, but that is a typical starting point for us to consider whether we should investigate. Upon examination (the extent of which depends on the circumstances) it may be that all that has happened is maladministration. In such a case, the matter is properly one for the Ombudsman. But sometimes maladministration is sufficiently egregious that it involves, as a matter of judgment, the prospect that the person responsible could be dismissed or disciplined, so disciplinary processes and the prospect of official misconduct are engaged, either for the CMC or the department employing the relevant public servant.

However, the Ombudsman's function is not primarily punitive in nature. His task is to resolve disputes about administrative conduct. He is not equipped to investigate matters in the way the CMC is. Nevertheless, it is clear that the same administrative conduct can give rise both to an issue requiring resolution by the Ombudsman (which the CMC is not equipped to undertake) *and* a disciplinary issue (which the Ombudsman is not equipped to undertake), in the same way that trust account misfeasance by a solicitor can simultaneously have consequences that engage legal regulatory authorities and the police. Thus, it is necessary for there to be dialogue on a case by case basis about how to advance matters in the sorts of cases I mentioned above, where the complainant suspects but cannot know corruption has occurred.

Similar issues arise with respect to the Queensland Audit Office (QAO). That office's routine work does not proceed on the basis that it expects to turn up fraud. It does not actively look for fraud; if it sees it, it will report it, but that is not its primary goal. Its investigative powers are limited, and its expertise is in a relatively narrow space. Nevertheless, that expertise is of obvious value if fraud or corruption emerges. The same conduct can raise issues that trigger both the QAO's interest and the CMC's. Once again, it is a matter of dialogue between the CMC and the QAO to ensure that there is no duplication of effort, and to maximise the opportunities available to take advantage of each other's work where possible. If the QAO, in performing its task, goes to the trouble of exhaustively isolating bank account details, internal accounting documents, policy documents and the like, the CMC investigators are relieved of the burden of doing so.

The above examples illustrate the way in which the issue arises with other organisations.

This is the sense in which ‘overlap’ largely arises – the manner in which the same conduct can give rise to multiple consequences. It is operationally inevitable that it should occur, for the reasons I have mentioned. There is the added serendipitous advantage that where it does occur, the fact that different organisations cooperate to attend to different aspects of some piece of conduct helps to reduce the likelihood of something important slipping between the cracks.

In order to have a proper appreciation of how this occurs operationally, it is necessary to have some understanding of our internal processes. Subject to expedited referrals under s40 of the CM Act, all matters that come to us by way of complaint, whether they come directly to us or are referred by departments are first assessed by CMC staff. This process is referred to in s35(1)(a) and s46(1)(a) of the CM Act. It is a relatively brief process. Our internal benchmarks indicate that 88% of assessments are completed within 4 weeks, against a target of 85%. It is typically at this stage that the interests of other stakeholders such as the Ombudsman are identified, if they are present. Where such an identification occurs, there is a negotiation between us and the other stakeholders designed to maximise efficiency. Depending on the circumstances, it may be that the matter is referred to the Ombudsman entirely, with a brief to notify us if any evidence of official misconduct emerges. All sorts of variations are possible, and the process is conducted with an eye to the seriousness of the conduct alleged and the likelihood of evidence emerging to support it.

Sometimes, a matter is assessed as being sufficiently serious to require investigation (the process referred to in s35(1)(f) of the CM Act). In such cases, there is negotiation among the stakeholders determining who will play which role. All this is done with a view to reducing duplication and maximising the skills available.

In addition to the agencies or statutory office holders mentioned above that discharge integrity functions in Queensland, other officers of various agencies also meet regularly to discuss matters of mutual interest. For example, the CMC’s Director of Integrity Services is the CMC’s representative for the Queensland Public Sector Ethics Network (QPSSEN). The former QPSSEN was originally established as a specialist practitioner forum to assist in the effective administration of the *Public Sector Ethics Act 1994* and the *Whistleblowers Protection Act 1994*. QPSSEN in its current form provides a consultative forum to effectively identify ethics issues and develop strategies which promote the government’s integrity agenda across the sector.

The Director Integrity Services, or our Principal Prevention Adviser, also participate in a specialist practitioner forum established by the Public Service Commission (PSC) to assist in the effective administration of the *Public Interest Disclosure Act 2010* (PIDA). The purpose of this group, the Public Interest Disclosure (PID) Coordinators Network, is to provide a consultative forum to effectively implement the requirements of the PIDA and allow agencies to share PID related knowledge and resources in a cooperative and collaborative manner.

Additionally, officers of the above agencies will liaise where necessary on particular operational matters, in order to share relevant information and to avoid duplication of effort. A useful example of this is the investigations conducted by the CMC and the QAO in 2003 concerning the then Member of Parliament, the Honourable Ken Hayward. The background to these concurrent investigations, and the approach adopted by the agencies in conducting them, is explained in the CMC’s public report² on the matter, which can be viewed at <http://www.cmc.qld.gov.au/research-and-publications/research-and-publications-1/research-and-publications/browse-by-topic-1/investigations>.

Attachment 1 details the coverage of the primary Integrity Agencies, over a number of integrity related topics. Where a cell within that table has more than one colour this means that there is overlapping jurisdiction or interest in the relevant topic.

(f) the model used by other misconduct and anti-corruption agencies in establishing their relationships with other agencies within their jurisdiction

² See specifically pages xiv and 6 of the report, regarding the investigation and methodology.

The CMC has in place a number of liaison agreements and Memoranda of Understanding (MOU) with agencies where a general jurisdiction overlaps. An example is the MOU relating to Serious Adverse Health Incidents involving the Health Quality and Complaints Commission, the Australian Health Practitioner Regulation Agency, the Office of Health Practitioner Registration Board, the State Coroner, the CMC, the QPS, the Ombudsman and the Commission for Children and Young People and Child Guardian.

Attachment 2 outlines a number of such agreements that are in place.

The actual involvement of a particular agency at a specific time is outlined in the agreement or MOU to acknowledge the legitimacy of the overlapping jurisdiction, but with a focus on reducing the duplication of effort and/or resourcing. These MOUs and agreements also work to demonstrate our knowledge and understanding of the roles and responsibilities of other Integrity Agencies, in order for us to give effect to s 59 of the CM Act.

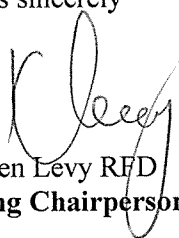
The exclusive jurisdiction of the CMC

The CMC generally has a wider jurisdiction than other Integrity Agencies in Queensland. Of particular note in this context is that the Qld Ombudsman's jurisdiction is limited with respect to the QPS (sections 7(2), 16(2)(c) and (d) of the *Ombudsman Act 2001*); the Courts (sections 9(2)(c) and (d) *Ombudsman Act 2001*); Ministerial decisions (section 16(1)(a) *Ombudsman Act 2001*); and Tribunals (section 16(2)(a) *Ombudsman Act 2001*).

Of further note is that the CMC's jurisdiction includes the Legislative Assembly, Parliamentary Service and Executive Council (s20 of the CM Act).

Thank you for the invitation to make a submission to the Inquiry. If you require clarification of any aspect of this submission please contact Mr Rob Hutchings, General Counsel, on (07) 3360 6273.

Yours sincerely



Dr Ken Levy RFD
Acting Chairperson

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