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## Chapter 11

### Summary of Conclusions and Recommendations

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In the preceding chapters, and in the correspondence with the CMC and others, we have set out our concerns, and have either stated or foreshadowed the recommendations that we make, and our reasons for them. To the extent we believe necessary, we summarize and supplement those reasons in this Chapter.

No one suggested, and we did not contemplate, the abolition of a body or bodies with the responsibility of uncovering and investigating official misconduct, police misconduct and major crime. Several matters, however, became apparent to us early in our work. They raised questions whether:

- a. there was a burgeoning and excessive “integrity industry” in this State;
- b. if there were, was it effective, efficient and economically conducted or even necessary;
- c. what we will call “integrity” needed to be taught repeatedly;
- d. such education as may be necessary is a function best carried out by the CMC;
- e. the CMC truly needs a research function.

Our recommendations show how we seek to answer these and other questions.

Also obvious early was the very high number of complaints processed by the CMC. As we suspected, the vast majority of them were trivial, vexatious, or misdirected. The CMC employed, the Chairperson said, a system of triage, which usually resulted, in practice, in devolution. The reception and disposition of so many such complaints are functions that have to be performed by someone. That comes at a considerable public expense. We have concluded that ways should be found to deter baseless complaints, not least so that proper and sufficient attention can be given to the genuine and substantial ones.

Our recommendations to achieve efficiency, effectiveness and deterrence are these:

- a. the CMC cease to publish on its website a misleading online complaint lodgement form and description of “official misconduct”;

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- b. clear explanations publicly and internally by the CMC and managers in all departments of Government of what can and cannot be a valid complaint fit for consideration by the CMC;
  - c. the requirement of honesty of belief and purpose, and a real basis for a suspicion (verified by statutory declaration in a prescribed form) in support of a complaint;
  - d. the provision of a deterrent penalty for the making of a baseless complaint;
  - e. application of the law with some vigour by the CMC to complainants liable; and
  - f. a strengthening of the obligation of managers within departments to take reasonable steps to prevent official misconduct and to manage in such a way as to reduce, and deal with complaints internally.

The CMC, more than once, has claimed inadequacy of resources as a reason for not undertaking some investigations. Resources of the State and its taxpayers are not unlimited. The CMC must focus on the most important matters and deploy its resources accordingly. We do not have the skills, experience or internal access to the CMC to explore how better it might deploy its resources. We have seen enough however to conclude that the whole structure and organisation of the CMC should be examined, and by a body best fitted to do so. We think that, consistent with the long history of the role of such Commissions in the Westminster System, that body ought to be the Public Service Commission. We think that the Commission can do that without compromising covert or other operations, or trespassing upon confidential areas of the CMC. Appropriate legislation to enable that should be enacted. We make recommendations directed to that end.

This is not to imply or criticize in any way the role of the Parliamentary Committee. That Committee does not however have the resources, the large amount of time necessary, the experience, or indeed we believe the required expertise to restructure an organisation such as the CMC.

The CMC is unique among its comparable institutions in Australia in combining misconduct and major crime functions. Several submissions pressed upon us that the CMC's functions should be divided between two organisations as they formerly were. We thought that these submissions had weight but do not recommend accordingly for three reasons. First, we hesitate to replace one bureaucracy with two. Secondly whether there should be such a division or not would be more apparent after the Public Service Commission has done its work. The Public Service Commission should carefully consider the advantages and

disadvantages from an administrative point of view. Provision could, if thought necessary, be made for the Public Service Commission to report its findings and proposals to the Parliamentary Committee as well as to the Executive Government. Thirdly we can see that intelligence gathered in one operation may, if the whole organisation is functioning well, more readily be used for other operations. Division could however (we cannot on our own state of knowledge be certain about this) contribute to a restoration of good focus upon the important or serious matters, a focus which reliable, informed people tell us, and on the basis of our researches and work generally, has been lost. Distraction by, for example, the performance of “educative” functions and the need to process the trivial, have contributed to this.

We have no recommendations to make about the roles of the Integrity Commissioner and, subject to one matter, the Parliamentary Commissioner. We think what they do is useful and should continue to be done.

The recommendation we make in relation to the Parliamentary Commissioner arises out of our concerns about the way in which the CMC investigated complaints about internal matters. When we raised one such matter with the CMC, the Chairperson said in response, among other things, that because the CMC is not a “unit of public administration”, the CMC’s own coercive power cannot be used to further an internal investigation. This situation is unsatisfactory. We think that the Parliamentary Commissioner should be given resources and the same sorts of coercive powers as the CMC or the Auditor-General to deal with a complaint of internal misconduct. The Parliamentary Commissioner should be obliged to make an investigation in such cases and to report on it to the Parliamentary Committee. The investigation itself should be independently undertaken by the Parliamentary Commissioner who should be provided with sufficient resources to do so as and when required.

Honesty and fairness (“integrity”) are, we think, closely related to diligence. Laxity in the performance of one’s duties is itself a failure honestly to perform them. It is also the proper role of the Public Service Commission to promote diligence in the public sector. We have come to the view that the Public Service Commission, rather than the CMC, should be responsible for ensuring the proper performance of these closely related elements of good public administration. The CMC should accordingly be divested of its general preventative and educative functions.

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One set of recommendations relates to publicity. Other States have, as our comparison in Chapter 4 shows, made clearer and better provision in relation to this. There is reason to believe that people do on occasions seek to use complaints to the CMC and publicity about them for their own purposes, causing reputations to be traduced and the victims without a certain or expeditious remedy in defamation.

We are of the view that official misconduct should be defined for the purpose, not only of reducing the number of misconduct complaints, but also to enable the prioritisation of the important over the lesser by the CMC in carrying out its functions.

We cannot understand why the Parliamentary Committee's hearings and consultations with the CMC are, and have been for many years, held in private (except for the triennial review which it undertakes pursuant to the *Crime and Misconduct Act*); that is, until the one being conducted as we write. This contradicts we think the principle of transparency for which the CMC claims to stand and insists upon for others. The revelation of any criminal intelligence and other confidential matter could be made in private. Consistently with our other recommendations moreover, the fact or substance of a complaint, or its investigation would be exempt from disclosure. The rest we think should, as with the proceedings of other Committees of Parliament, here and elsewhere, including federally, be in public. We recommend that the *Crime and Misconduct Act* be amended to give effect to that.

There are, in our opinion, several other problems with the CMC's performance. It appears to have embraced bureaucracy and bureaucratic language and practices too eagerly. As our correspondence shows, it justifies circumlocution as acceptable bureaucratic jargon. It seems to have a large administrative staff. The Public Service Commission should look closely at this. Divestment of non-core functions alone, should reduce the number of these.

As to that we think that the research function of the CMC should be reduced and sharpened. We recommend that research by the CMC should be confined to research in relation to a particular matter or matters as sanctioned for a specific inquiry, before commencement, by the Attorney-General and Minister for Justice.

We saw the letter that the Chairperson wrote to the Attorney-General, requesting amendment to the *Crime and Misconduct Act* to reduce the damage done by the CMC's own ineptitude with respect to confidential Fitzgerald Inquiry documents. The request was

conditioned by a requirement of the Chairperson that he see the legislation before it was introduced or enacted: a large, if not to say presumptuous demand, we think in the circumstances. The CMC lacks insight into its position in relation to constitutional government and the exercise of its own powers. It seems resistant to any suggestion that there may be better ways of doing its work and organising its affairs than it currently does.

We had the impression that the CMC would much have preferred to frame the questions that it was willing to answer, to the questions we chose to ask. An instance of this was its repeated request that we submit to a lengthy presentation by it at the beginning of our work. When we did seek a presentation later it was petulantly refused because we had been unwilling to receive it at a time of the CMC's choosing.

We also thought the CMC overly sensitive to criticism. At one stage we were told, that our criticism of a CMC recommendation (to the effect that as a matter of public interest, different courses should be or should have been adopted) could "undermine" the responsibility of the Parliamentary Committee's oversight of the CMC. In asserting this, the CMC did not, we think, take into account the Constitutional freedom of political communication which allows we believe, criticism of a body such as the CMC, members of Parliament, the Parliament itself, and its committees, including the Parliamentary Committee.

It is now a matter of public record that the CMC failed badly in "information management" in relation to the Fitzgerald Inquiry documents. It may even be that a worse failure was the CMC's continuing default over many months in repairing (so far as it could repair it) damage that the release could cause, and not transparently revealing voluntarily what had happened. It is an irony we think that the CMC rebuked us for suggesting that the bureaucratic term "information management" had an Orwellian ring to it. The failure to disclose these events earlier by the CMC is a serious reflection on its own transparency. How can it claim a right to educate others in integrity when it itself has been shown to be lacking in transparency?

There were other problems with the CMC that we encountered in our work. It made a claim that we had given an assurance (about the provision to it of a draft report and recommendations) when we had not done so. It was fortunate that our Counsel had made a contemporaneous note of what in fact we had said. The CMC claimed confidentiality in some letters to us which we did not think was entirely warranted but which we are bound to accept by reason of section 213 of the *Crime and Misconduct Act*. For our part, we would

have no objection to the full public exposure of everything passing between the CMC and us, and others. The difficulty is that we cannot unqualifiedly do that because neither we nor our informants and submitters have the protection of persons giving evidence to, or conducting Commissions of Inquiry.

In our Report, we deal extensively with publicity, in particular publicity engendered by the CMC and the problem of public release of the fact that the CMC is investigating a matter or a person. That should not occur for the reasons which we have given. It should be an offence for *any* person (including the CMC and its staff) to reveal or disclose to any other person the fact or subject of a complaint, or that a matter or person is under investigation by the CMC, unless and until the investigation is concluded, and then, if a person is cleared by an investigation or is not further proceeded against, only with the prior written consent of the relevant person.

The CMC has no need to, and should not set out to court the media. There has been a tendency for regulatory bodies and their senior staff to be influenced in what they do by a desire for approbation by the media. The temptation to do so should be resisted. The CMC needs only a very small media staff. We can see a need for no more than one media officer and recommend that budgetary allocations ensure that. This is no criticism of the media. They are entitled to proceed critically or otherwise as they wish. We acknowledge the assistance we derived in doing our work by the media's publication of matters of interest to us, and their generally restrained approach to the avalanche of sensitive documents released by or at the behest of the CMC.

The CMC responded to enquiries that we made about media officers in its letter of 19 March 2013, paragraphs 6, 7 and 8. Those responses we think show that there is no need for more than one media officer. Obviously much of the role of the three persons engaged in media work are in fact engaged in promoting the CMC and its publications and reports, and we think, fairly obviously in the dangerous and unnecessary task of courting the media, the matter to which we refer at length in Chapter 6. Incidentally, the job description of the "editor" of assisting the "communications manager" is in the typically verbose form which the CMC has embraced:

*Provision of expert editorial input and advice into the writing and production of publications, the website and other resources to ensure that they are consistent with the CMC style and publishing objectives.*

Later, there is a reference to an “*agreed level of quality so that stated business benefits are realised*”. What exactly are the “business benefits” which the CMC is supposedly in the business of achieving?

A reduction in educative functions will reduce the number of publications by the CMC and in consequence the need for people to write and edit them. We have read some of these publications, such as its “*Councillor Conduct Guide*” and “*Ethics, integrity and elected officials – state government*”, which are orthodox and useful distillations of information and law, but otherwise unremarkable and a few days work for one competent lawyer. (Even still, the author of those publications could not resist referring to the relevant Acts as “resources” and as sources of “advice”). There is a noticeable emphasis on presentation (including in the Annual Report), and a preoccupation with public image rather than performance. The duties of the Communications Manager, for example, include “*support[ing] the reputation management of the CMC by provision of authoritative strategic advice to the Chairperson*”. The role of “Media Advisor” is one which is said to require “*develop[ing] and manag[ing] effective working relationships with mainstream and specialist media to maximise proactive media coverage of the CMC’s work*”. The duties of the Media Officer read rather like a duty to impart spin, for example: “*Handle daily media calls and manage complex and sensitive media issues, including developing media responses to maintain the CMC’s reputation*” and “*proactively develop, coordinate and manage media strategies and publicity opportunities in line with the CMC’s strategic priorities*”.

Implementation of recommendations for reform are often resisted, sometimes aggressively, sometimes passively, the latter often more effective than the former. We recommend that the Executive appoint a panel of four people, the Public Service Commissioner, the Chairperson of the CMC, a senior lawyer, and one other person independent of the Public Service and who has not served in it, to implement such recommendations as we make and the Government may choose to adopt, to oversee and press their implementation. The two other than the Public Service Commissioner and the Chairperson for the CMC should report directly to the Attorney-General and Minister for Justice and the Premier.

The CMC, divested of its educative, and reduced in its research functions, should have the resources to, and should engage a skilled forensic accountant, and a civil lawyer knowledgeable and well-practised in commercial, property, equity and trusts law. If it can

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satisfy the Executive or the Implementation Panel that it has done this, the CMC should take over and exercise and administer the Criminal Proceeds Confiscation legislation which the DPP wishes to relinquish, except in cases requiring urgent attention in the course of or immediately before or after Court hearings.

The Departments of the Public Service should reduce their Ethical Standards Units. Reasonably rigorous standards henceforth to be required of managers will reduce the need for these.

We do not recommend any particular changes in relation to the oversight by the CMC of the Police Service. We think that a vital role, requiring close attention and the appropriate deployment of resources by the CMC. It will be for the Executive, and perhaps ultimately the Parliament, to decide which of the SETS recommendations should be adopted. We have expressed views on such of these as we can and should in Chapter 9.

We have no particular recommendation to make with respect to local authorities, as only 8 per cent of complaints received by the CMC related to these. If our recommendations regarding education are accepted, then the Public Service Commission should have the responsibility of providing such education to these authorities as is required. Amendments, if necessary, to that effect should be made to relevant legislation.

We asked the CMC about the matter which has become notorious, concerning the shredding of Fitzgerald Inquiry documents, the authorisation of the wholesale release of others and the failure to take any steps, so far as any could be effectively taken to remedy or limit the problem, and the failure to inform the Parliamentary Committee or the government of these failures. We have not pressed our inquiries out of deference to the Parliamentary Committee which we expect will form a view about the relevant conduct, and the application or otherwise of section 329 of the *Crime and Misconduct Act*.

We emphasize that where in our recommendations there appear proposed amendments to legislation, the proposals are in early draft form only. We offer them as a guide only and to indicate the substance of desirable legislative changes. They will need refinement and checking to ensure harmonization with the *Crime and Misconduct Act*, and other relevant law.

## **The Recommendations**

### **Recommendation 1**

There should be an administrative re-structure of the CMC to be conducted by the Public Service Commissioner. The reasons for this are the divestment of education and some research functions from it, its increasing bureaucratisation, its loss of prioritisation of focus, the likely reduction in complaints, and the possible division of its functions between two bodies if that is administratively justifiable, likely to save expense and can be done without in any way compromising the important core functions which the CMC now has.

The CMC should in all respects be bound to cooperate.

### **Recommendation 2**

It ought to be a condition of employment of persons performing management or supervisory roles within public service agencies that they take all reasonable steps to ensure that staff under their management or supervision do not commit any act of official misconduct. A failure to take reasonable steps to prevent that should itself be ground for termination of the supervisor's or manager's employment. We do not think that the current provisions in the *Public Service Act 2008 (Qld)* adequate to achieve this result.

The *Public Service Act 2008 (Qld)* ought to be amended along these lines:

#### ***12N Additional responsibilities of chief executive officers and managers***

*(1) In this section—*

***manager** means a person working in a unit of public administration whose duties involve or include the supervision or management of other persons working in a unit of public administration (the **staff**);*

*(2) It is a condition of the employment of a manager that the manager, at all times during the course of his or her employment, take all reasonable steps in the supervision or management of staff to make sure that such staff do not commit any act of official misconduct.*

*(3) Breach by a manager of the condition in s 12N(2) shall be deemed to be official misconduct.*

### **Recommendation 3**

There must be a large reduction in the matters going to, and being dealt with (even for the purposes of devolution) by the CMC.

### **Recommendation 3A**

The *Crime and Misconduct Act* should be amended in the manner indicated below so as to raise the threshold of what conduct constitutes “official misconduct”:

***Meaning of conduct***

***Conduct*** includes neglect, failure and inaction.

***Meaning of misconduct***

***Misconduct*** is conduct, or a conspiracy or attempt to engage in conduct, that would, 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 in a unit of public administration.

***Meaning of official misconduct***

***Official misconduct*** is misconduct that—

- (a) affects, or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers of a unit of public administration or any person holding an appointment in a unit of public administration; or
- (b) is engaged in by a person who holds, or at the time held, an appointment in a unit of public administration and which 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.

The term “misconduct”, wherever it appears in the Act apart from the term “official misconduct” or “police misconduct”, should be replaced by “official misconduct or police misconduct”. The definition of “police misconduct” should be amended by the substitution of the word “behaviour” for the word “conduct”.

### **Recommendation 3B**

The *Crime and Misconduct Act* should be amended to require all complaints to be accompanied by a statutory declaration (or, in case of urgency, within 7 days of a complaint) to the effect that:

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- a. the complainant has read and understands the relevant sections (setting them out in the declaration) of the *Crime and Misconduct Act*;
  - b. that the complaint is not a baseless one; and
  - c. that the complainant will keep the matters the subject of the complaint (and its making) confidential for all purposes unless and until a decision is made upon it that results in a criminal prosecution or proceedings in respect of it in QCAT.

We emphasise that the statutory declaration should quote the definitions of “official misconduct” and “baseless complaint”.

### **Recommendation 3C**

The CMC should be required to replace the present online complaint lodgement system with one that accurately states all of the relevant legal requirements for the making of a genuine and not baseless complaint, including an accurate statement of the definition of official misconduct and police misconduct under the *Crime and Misconduct Act*. The CMC should also be required to ensure that all of its online and printed publications accurately and not misleadingly state the relevant legal requirements for the existence of official misconduct or police misconduct.

### **Recommendation 3D**

The *Crime and Misconduct Act* should be amended to enable and ensure the prosecution of those who make baseless complaints. Baseless complaints should be defined in the Act to mean:

- a. complaints that are malicious, vexatious, reckless or exclusively vindictive; or
- b. complaints not made on the basis of something seen or heard by the complainant (and not made on the basis of information provided by a credible person claiming to have seen or heard something sufficient to form a basis for a complaint); or
- c. complaints made without reference to, and consideration of the definitions of “official misconduct” and “police misconduct” in the *Crime and Misconduct Act*.

There should be a substantial penalty for infringement of this law. Further provision should be made for compensation to be ordered by a Court of appropriate jurisdiction to be paid by the maker of a baseless complaint in respect of costs and expenses reasonably incurred by the CMC and by the subject of a baseless complaint in responding to or dealing with it.

**Recommendation 3E**

The *Crime and Misconduct Act* should be amended to raise the threshold for mandatory notification of matters to the CMC by public officials. Section 38 ought to be amended so that the duty arises only where the public official “*reasonably suspects*” that a complaint involves or may involve official misconduct.

**Recommendation 3F**

The CMC should be obliged to instigate prosecutions for egregious cases of baseless complaints.

**Recommendation 4**

The CMC’s preventative function should cease, except for such advice and education as may be appropriate and incidental to matters uncovered or found by the CMC in the course of an investigation. The remaining preventative functions should largely be undertaken by the Public Service Commission, except that we wish to make it clear that we are not recommending the recruitment of any substantial additional number of people to perform these functions there. We reiterate that integrity, to the extent necessary, should be taught as an obvious element of overall diligence: “integrity” has become its own over-elaborate industry involving repetition of the obvious, and clothing it in a morass of high-flown aspirational and often bureaucratic language. The provisions of the *Public Service Act* should be accordingly amended.

Such functions therefore as the CMC presently exercises under sections 24(c), 24(e), 24(h), 33(a) and section 34(b) of the *Crime and Misconduct Act*, ought to be transferred to the Public Service Commission. There should be inserted into the *Crime and Misconduct Act* the following provision:

*When, in the course of carrying out its other functions under this Act, it comes to the notice of the Commission that conduct in the public sector may be improved, the Chairperson may notify the appropriate manager in the relevant part of the public sector of the possibility of improvement and ways and means of improvement.*

Section 12(c) of the *Ombudsman Act* should be repealed to remove from the Ombudsman general responsibility for administrative practices and procedures.

**Recommendation 5**

In order to improve standards of conduct and diligence, and in replacement in part at least of Ethical Standards Units, there ought be established with the Public Service Commission an Inspectorate empowered to inspect as it sees fit, whether without notice or otherwise, any or all Departments and agencies of Government, and to have similar coercive powers to the Auditor-General's much along the lines of the Federal public service Inspectorate which existed in the past.

**Recommendation 6**

With the assumption of true managerial responsibility, and sanctions for failure to accept it, the need for ethical standards units within Departments should disappear or at least be greatly reduced. So too the emphasis upon unnecessary and duplicated integrity education will reduce. We recommend an orderly reduction in Ethical Standards Units and their numbers.

**Recommendation 7**

Save for urgent applications in pending matters, the powers of the Director of Public Prosecution under the *Criminal Proceeds Confiscation Act* for the criminal proceeds confiscation regime (which the Director does not wish to retain) ought, subject to this condition, vest in the CMC. The condition is that the CMC satisfy the Executive Government that it has within it the legal and accounting capacity extending to a knowledge of accounts, financial affairs, commercial law, property law, trusts, equity and tracing to administer the regime. If that condition is satisfied, such procedural and legislative changes as may be necessary should be made.

**Recommendation 8**

The law should be that it is an offence for any person (including an officer of the CMC) to disclose that a complaint has been made to the CMC, the nature or substance or the subject of a complaint, or the fact of any investigation by the CMC subject only to three exceptions. The first exception should be that, in the case of a public investigation, fair reporting of, and debate about it, will be permissible. The second exception should be as authorised by the Supreme Court in advance of publication or disclosure if there be a compelling public interest in such publication or disclosure. The third is the case of a person cleared or not proceeded against who authorises in writing disclosure of it. Disclosure could of course occur if otherwise required by law, such as by Court processes or Court order.

The restriction upon publication or disclosure should be permanent in the case of no further action by the CMC, an absence of any finding against, or a “clearance” of a person or persons, unless that person or persons make the publication or disclosure themselves or give prior written consent to it. If, however, the investigation leads to criminal proceedings or disciplinary proceedings in QCAT, then, from the time of commencement of those proceedings, no restrictions on publication or disclosure should remain.

There should be a suitable deterrent penalty for unlawful publication or disclosure by anyone.

### **Recommendation 9**

Consideration should be given to the harmonization of the Standing Orders of the Parliamentary Committee with such new provisions as are introduced into the *Crime and Misconduct Act* regarding the confidentiality of complaints.

### **Recommendation 10**

The *Right to Information Act* ought to be amended to restrict Departments and agencies (including the Information Commissioner) from being required to give reasons for refusal to produce documents, the restriction to remain in place for 9 months. Reasons should only be obligatory if and when the complaint results in criminal proceedings or proceedings in QCAT; or, the subject or subjects of a complaint, authorise in writing the publication or disclosure of the complaint. The exception to this would be if the Supreme Court earlier determines there to be a compelling public interest in the disclosure of the reasons. We have selected 9 months on the basis that by then the CMC should have completed any investigation it undertakes.

The excuse from the requirement to give reasons must be general because if it is confined to reasons in respect of a CMC investigation, then not giving reasons would immediately identify that the matter was under investigation by the CMC and defeat the purpose of the provision. We recognise that this is a far-reaching provision but cannot see any other solution that would prevent leakage of information about the existence, content or subject of a current complaint or investigation. The severity of the provision is tempered by two important qualifications that we recommend apply, namely that the embargo is limited to a 9

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month period, and that it be subject to contrary order by the Supreme Court in situations of compelling public interest.

Similar amendments will be required to the *Ombudsman Act* to restrain the Ombudsman from giving reasons for declining to intervene in a matter.

### **Recommendation 11**

The Parliamentary Commissioner ought to have the statutory power, and the resources, to investigate all complaints of official misconduct within the CMC and have separate power to make investigations on his or her own initiative if thought by him or her appropriate. Such investigations ought be conducted independently of, but subject to an obligation to report on them, when completed, to the Parliamentary Committee. The Parliamentary Committee's powers to make its own inquiries and investigations should remain. The Act should be amended to provide accordingly.

### **Recommendation 12**

The undertaking of non-specific research by the CMC is a distraction, and not such as to justify the expense and resources needed for it. The research undertaken by the CMC should be limited to that which is referred to the CMC by government, with the qualification that it should be at liberty to make submissions to the Attorney-General that it be permitted to research particular issues or matters on the ground that they are emergent, important and not able to be addressed by other bodies, or is research incidental to an investigation of a specific matter. No such research should be undertaken without the approval in advance from the Attorney-General.

### **Recommendation 13**

We recommend that no further Memoranda of Understanding be entered into by the CMC with other agencies, departments of Government or other bodies, and those in existence be allowed to lapse, for the reasons we have given elsewhere: in short because they are unnecessary and can lead to over-reach and confusion as to responsibilities.

### **Recommendation 14**

We are concerned about the possibility of conflicts of interest in other departments of Government. We recommend that the CMC pay close attention to the possibility of these: for example, in asking the Auditor-General to participate in an investigation of matters or events

which might earlier have come to the attention of the Auditor-General, or arguably could or should have done so.

### **Recommendation 15**

We can see no justification for other than one media liaison officer or trained media person at the CMC. Good public relations depend upon good performance, not upon self-promotion, or what some member or employee of CMC says or proclaims about it.

Whatever the role of the CMC may be, it is not to impart spin to what it bowls up to the public, but to provide, as far as is necessary, a straight up and down account of its activities. Just as good performance will gain public confidence, bad performance, as in the case of the shredded and disclosed documents, will diminish it. And all the self-promotion, coloured diagrams and glossy publications that the CMC might produce will not change a scintilla of that.

We recommend that budgetary allocations take account of this recommendation.

### **Recommendation 16**

Public meetings with, and inquiries of the CMC by, the Parliamentary Committee have, since 30 June 2010 at least, been convened only in connection with the triennial reviews it undertakes under section 282(f) of the *Crime and Misconduct Act* and the inquiry which the Parliamentary Committee was undertaking immediately before this Report was finalised concerning the inappropriate release and destruction of Fitzgerald Inquiry documents. No doubt quite a deal of what passes between the CMC and the Parliamentary Committee is sensitive or otherwise confidential. But much of it need not necessarily be. A body such as the CMC which has the role of ensuring transparency by others should itself be purer than Caesar's wife.

We recommend that the *Crime and Misconduct Act* be amended to require that the Parliamentary Committee's hearings be public, subject only to the retention of the principle of confidentiality with which we deal elsewhere in this Report, the necessity not to compromise uncompleted investigations or convert functions, and non-disclosure of the making of complaints.

### **Recommendation 17**

An Implementation Panel consisting of the Public Service Commissioner, the Chairperson of the CMC, and two others (not a current or former public servant) including a senior lawyer

reporting directly the Attorney-General and Minister for Justice and the Premier should, we think, be established.

Both self-interest on the part of some, and institutional defensiveness, will be forces of resistance to the implementation of recommendations. That is not to say that there should not be any public debate about them. We would welcome that, just as we would welcome disclosure in full of our Report, the submissions and all of our correspondence with the CMC and others (subject only to suitable protection of those who have participated and ourselves). But because such resistance can be expected and also because implementation may be effected in different ways, we recommend that such a Panel be constituted to oversee and assure as speedy an implementation as possible of such of our recommendations as are adopted.