

DJAG provided us with information relating to its internal publication which, subject to our preference for simple language, we thought acceptable and of sufficient clarity to enable any appropriately literate official to read and understand readily, and to provide a sufficient explanation of their obligations without the need for further education.

We were also provided with role descriptions of the various members of the ESU. Nothing in these role descriptions caused us to alter the views which we have formed and which we have set out above.

Frauds within Queensland Health

Despite the proliferation of integrity agencies and units to which we have referred, a series of frauds on a monumental scale were able to be perpetrated in the Health Department recently with ridiculous ease. Because these frauds amounted in total to about \$16 million or so they understandably attracted a great deal of public interest and concern. We specifically asked the CMC about them. Everything we learned suggested an ineffectiveness of the offices and agencies established to prevent frauds, and their distraction from the task of looking out for fraud, rather than talking or writing before or afterwards about how it happened and how to prevent it. The extraordinary story of what happened shows that there was a failure at about every point of responsibility, and on the part of persons who should have been able to prevent it, both alone and in combination. The perpetrator Barlow, having now been sentenced, there may be no need – it is for the Attorney-General to determine any need – for continued confidentiality³⁹⁰.

The appropriate starting point we think is August 2010. In that month the CMC received an anonymous complaint about the offender Barlow. The CMC sought to explain to us that “*in line with policy and procedures at the time, the CMC referred the matter to Queensland Health to deal with it*”. A complaint of fraud is a complaint of very serious criminal conduct, particularly fraud as an employee. We were not told specifically what information was provided at the time. It remains unexplained why the CMC did not investigate the matter then itself.

³⁹⁰ The CMC did not provide them to us but we were able to obtain from the Court file, copies of affidavits filed in proceedings for the confiscation of the proceeds of Barlow’s crimes. Those affidavits disclose that Barlow made many, and extravagant, gifts to colleagues in the Health Department. We do not know whether in the circumstances they were guilty of misconduct, but we think it extraordinary that if they may have been, that any investigations of them have not been concluded.

The CMC informed us that, following its referral of the matter to the Department, the Department's Ethical Standards Unit, including Barlow's supervisor, and a police officer attached to the ESU, investigated. No explanation was offered as to why the ESU did not uncover the fraud then. The matter was said (we do not know when) to have been then finalised as "unsubstantiated".

Subsequently, and clearly long after the event, the CMC investigated the investigation. Not surprisingly, the CMC found that the relevant officials failed to discharge their duties properly. That seems to us to be obvious, but this finding of the CMC overlooked its own decision not to investigate the matter itself or intervene in any useful way up to this point in time.

The investigation belatedly undertaken by the CMC of this affair yielded a report of 120 pages. That report has not, so far as we are aware, been made public. We can only speculate about its contents, what utility it now has, and how much time and effort at public expense went into its production.

The Annual Report of the CMC strongly implies that in securing \$12m (part of the proceeds), the CMC was acting efficiently and quickly. A fairer picture would have been presented if the Report had also disclosed the earlier failures to which we have referred in this Chapter (see also the sparse information stated in page 32 of the Annual Report).

Our letter of 18 March 2013 sought further information concerning the calculation of the sum of \$12.039m. Our correspondence regarding it appears in the relevant Appendix.

The comedy of errors does not end there. In December 2010, an internal audit unit at Queensland Health undertook an examination of the use of corporate credit cards. Barlow was a user chosen at random. A number of suspects were identified. Barlow failed to provide documents in support of his use. An internal auditor referred the matter to the ESU who in turn routinely reported the matter to the CMC. But once again, the CMC chose to return it, rather like a ricocheting pin ball in a public service pin ball machine, to the ESU.

There must be a question then as to why the Auditor-General did not in fact have an appropriate system in place to prevent frauds or at least to alert people to them before the frauds occurred. In August 2011, the Auditor-General did apparently query one of the fraudulent transactions. The CMC says that Queensland Health failed properly to investigate

the transaction. The CMC goes on to say that “*in defence of Queensland Health, in March 2011 the Deputy Director-General had organised for an internal audit of grants to be scheduled for the next financial year*” [our emphasis], a classic case we would have thought, of slamming a stable door after the horse has bolted.

We took up this matter with the Auditor-General. Our correspondence with him is attached to our report in **Appendix 2A**. It will be a question for those who read our report to make their own judgments about the Auditor-General’s role, its sufficiency or otherwise and as to whether the Auditor-General’s obligations should be re-stated, changed or expanded. We simply do not have the time to go into this as deeply as we would have liked.

Despite the best efforts of the CMC to explain what happened, as if the matters were commonplace, we do not see how any explanation could justify so many managerial and other failures concerning conduct which should have been obvious and which continued despite so many warning signs. Some attempt is made to justify what happened because the money which was defrauded came from a fund initially under the responsible Minister’s discretionary control, and subsequently transferred to the control of a Director-General. We do not understand how that can possibly provide a satisfactory excuse for anyone at any level.

The Health Department, in response to our inquiry why the ESU acted as it did and failed properly to consider the complaint which ought to have brought this matter to light (even if financial and management systems were inadequate to do so), told us that “*there are too many factors at play to ascribe blame upon any officer of the ESU*”³⁹¹.

Plainly, people who should have been managing were not managing. Barlow, the culprit, was, after all, not a very senior official. How was it possible that in any properly managed department he could get away with what he did for so long? He was living in a very lavish way. He had a poor attendance record and he worked late at night without supervision. He failed to comply with policies and procedures. There seems to us to have been no serious oversight by his overseers. Weak internal controls surrounding journal transfers and poor budget adjustments assisted Barlow to hide his frauds. Where was the Queensland Auditor-General when these deficiencies were allowed to occur? Where were the financial controls within the Health Department?

³⁹¹ Letter dated 29 November 2012.

No one involved should be proud of their conduct or in our opinion can justify or excuse what happened here. What we have set out here is, in substance, the summary (as provided to us) of the CMC's lengthy report. Perhaps such a lengthy report is a consequence of the fact that when, finally, the frauds were uncovered, they then attracted the attention of those whose job it was to prevent them. We do not know how many people, but we have good reason to believe that a very large number of people, far more than ought to have been involved, then became involved in trying to explain – we will resist the temptation to say explain away – what had happened.

The money taken initially formed part of a discretionary Ministerial fund. Such funds, we would have thought, for obvious reasons, are ones which are likely to be controversial in their application, and would have been subject to particular scrutiny. If the managers had been doing their job, it is difficult to believe any of this would have happened.

The Queensland Nurses' Union made a detailed submission which complained of the disparity between the rigour applied to the investigation and prosecution of its members for alleged payroll fraud (following a failed attempt by the State Government to implement a new payroll computer system which resulted in widespread under and over payments to workers³⁹²), and the apparent lack of diligence in the investigation into the affairs of Mr Barlow. The Nurses' Union submitted that such a glaring disparity was difficult to reconcile, and suggested that the same effort ought to have been applied to ensuring the proper implementation of the payroll system as was applied to investigating nurses for alleged payroll fraud. We do not overlook that the CMC did not itself instigate the prosecution of nurses. Its role was, according to its response to us of 20 December 2012, partly advisory and as a member of a de facto committee of various agencies. Even so the Nurses' Union submission exposes in our view a tendency, when lines of responsibility are blurred, for the more difficult cases to be avoided, and for cases which might be seen as easier targets to be pursued. The overpayments of nurses were not a result of the commission of any serious crime. The CMC's resources, scarce according to the CMC, would have been better employed elsewhere.

³⁹² The State Government, on 1 February 2013, commissioned the Hon Mr Chesterman under the *Commissions of Inquiry Act 1950 (Qld)* to inquire into the implementation of the Queensland Health payroll system.

The codes of conduct, all of the many words written, all of the lunch time and other sessions of education, all of the activities and good intentions relating to the formation of ethical standards units and their roles and responsibilities, and the Public Service Commission's and the Auditor-General's oversight functions, appear to have been, in the Barlow affair, irrelevant and futile.

The conclusions we draw from the sorry affair are these: managers should do their job (which is to manage) and should be responsible for what occurs in their Departments. An amendment to legislation should be made to make managers clearly responsible and liable to termination of their services for failures in management. This is the best remedy for this kind of administrative failure. The current legislation lacks both clarity and bite.

CMC functions

The provisions of the *Crime and Misconduct Act* that are relevant to the CMC's preventative and educative functions in relation to misconduct are described as follows³⁹³:

Section 4 Act's purposes

- (1) *The main purposes of this Act are—*
- (a) ...
 - (b) *to continuously improve the integrity of, and to reduce the incidence of misconduct in, the public sector.*

23 Commission's prevention function

The commission has a function (its prevention function) of helping to prevent ... misconduct.

24 How commission performs its prevention function

Without limiting the way the commission may perform its prevention function, the commission performs its function by –

- ...
- (c) *analysing systems used within units of public administration to prevent misconduct; and*
- (d) *using information it gathers from any source in support of its prevention function; and*
- (e) *providing information to, consulting with, and making recommendations to, units of public administration; and*
- (f) *providing information relevant to its prevention function to the general community; and ...*
- (h) *generally increasing the capacity of units of public administration to prevent misconduct by providing advice and training to the units and, if asked, other entities; and*

³⁹³ *Crime and Misconduct Act* ss 4 and 24.