Parliamentary Committees

Report on a complaint by Mr Scott Flavell

Report No. 91

Parliamentary Crime and Misconduct Committee

May 2013

Parliamentary Crime and Misconduct Committee

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Chair's Foreword

In July 2011, Mr Scott Flavell provided a submission to the former Parliamentary Crime and Misconduct Committee's three yearly review of the Crime and Misconduct Commission (CMC). The former Committee considered Mr Flavell's submission in light of its review and decided to also accept it as a complaint about the conduct of the CMC.

Mr Flavell's submission and complaint focuses on the conduct of the CMC in relation to its investigation, public hearings and subsequent report to the Parliament on Mr Flavell's conduct whilst employed as Director-General of the then Department of Education and Training (DET). In its 2008 report, *Public Duty, Private Interests*, the CMC found that Mr Flavell had a conflict of interest between his personal interests in a private company and his employment and responsibilities as the Director-General of DET.

In relation to the complaint made by Mr Flavell, the Parliamentary Commissioner found that, whilst the CMC may have afforded more natural justice to Mr Flavell by seeking a submission from him prior to deciding whether to hold a public hearing, the CMC did not act inappropriately in its handling of its investigation and the holding of public hearings regarding its investigation of Mr Flavell's conduct.

The Committee notes in this report that Mr Flavell provided a submission to the Independent Advisory Panel which recently reviewed the Crime and Misconduct Act. That Advisory Panel, in its report to the Attorney-General, appears to have relied upon the submission of Mr Flavell. The Committee has not had access to Mr Flavell's submission to that panel and cannot comment on its content, but considers that it will likely contain similar concerns from Mr Flavell as were submitted to the Committee: namely that the CMC had insufficient justification to hold the public hearings in relation to its investigation into his conduct, that he was subjected to media scrutiny, and that the CMC acted inappropriately by using the investigation to pursue a policy reform agenda irrelevant to his circumstances. It is of some concern that the Advisory Panel appears to have relied upon Mr Flavell's submission without reference to the CMC for corroboration or rebuttal of Mr Flavell's statements.

It is clear that the CMC investigation and subsequent report outlined a gap in the accountability of senior officers employed by the State. The CMC recommendations led to amendment of the Criminal Code to insert section 92A which created the offence of 'Misconduct in relation to public office' to prohibit any public officer from abusing their office to dishonestly obtain a benefit for themselves or another, or cause a detriment to another. That section also prohibits former public officers from using any information gained because of their former position, to dishonestly gain a benefit or cause a detriment. As noted in this report, a review of the Explanatory Notes of the relevant bill, and the Hansard of the Parliamentary debate on that bill shows a clear correlation between the conduct of Mr Flavell, the CMC investigation report and recommendations, and the subsequent amendment of the Criminal Code.

Mr Flavell is clearly aggrieved at the investigation and report of the CMC regarding his actions whilst Director-General of DET. However, his disagreement with the actions and recommendations of the CMC does not render the conduct of the CMC inappropriate.

Conversely, it was the actions of Mr Flavell that contributed to a change in the law in Queensland to prevent such conduct from the State's employees, particularly senior officials with access to significant departmental information and resources and cabinet material.

I thank the members of the Committee for their diligent consideration of this matter and the Committee secretariat for its assistance.

I commend the Committee's report to the House.

Mrs Liz Cunningham MP
Chair

May 2013

1. Introduction

This report provides information on the Parliamentary Crime and Misconduct Committee's (the Committee) consideration of a complaint from Mr Scott Flavell about the conduct of the Crime and Misconduct Commission (CMC).

The Committee has resolved to table this report appending a report of the Parliamentary Crime and Misconduct Commissioner in the Legislative Assembly. It is the practice of the Committee when tabling such a report to provide some background detail regarding the role and powers of both the Committee and the Parliamentary Commissioner.

1.1. The Committee

The Committee monitors and reviews the performance of the functions of the CMC. The Committee is established under the *Crime and Misconduct Act 2001* (CM Act) as a bipartisan committee of the Queensland Legislative Assembly. It has the following functions:

- to monitor and review the performance of the CMC's functions;
- to report to the Legislative Assembly where appropriate on any matters relevant to the Commission, the performance of the Commission's functions or the exercise of the powers of the Commission;
- to examine reports of the CMC;
- to participate in the appointment of commissioners;
- to conduct a review of the activities of the CMC at the end of the Committee's term (the Three Year Review); and
- to issue guidelines and give directions to the CMC where appropriate.

The Committee also receives and deals with complaints and other concerns about the conduct or activities of the CMC or an officer or former officer of the CMC.

1.2. The Parliamentary Crime and Misconduct Commissioner

The Committee is assisted in its oversight process by the Parliamentary Commissioner, Mr Paul Favell, who was appointed on a part-time basis in August 2011.

The Parliamentary Commissioner has a number of functions under the CM Act. These include, as required by the Committee:

- conducting audits of records kept by, and operational files held by, the CMC;
- investigating complaints made about, or concerns expressed about, the CMC;
- independently investigating allegations of possible unauthorised disclosure of information that is, under the CM Act, to be treated as confidential;
- reporting to the Committee on the results of carrying out the functions of the Parliamentary Commissioner; and
- performing other functions the Committee considers necessary or desirable.

To assist in the performance of these functions, the Parliamentary Commissioner has wide powers. Any decision by the Committee to ask the Parliamentary Commissioner to investigate or review and report on a matter must have the bipartisan support of the Committee.

The Parliamentary Commissioner has further responsibilities under the CM Act and the *Police Powers and Responsibilities Act 2000*, following amendments made by the *Cross-Border Law Enforcement Legislation Amendment Act 2005*.

These include:

- inspecting the records of the CMC to determine the extent of the CMC's compliance with legislative requirements relating to surveillance device warrants, retrieval warrants and emergency authorisations;
- reporting to the PCMC at six monthly intervals on the results of such inspections;
- inspecting the records of the CMC at least once every 12 months to determine the extent of the CMC's compliance with legislative requirements relating to controlled operations;
- reporting annually on the activities of the CMC under the controlled operations provisions to the Chair of the PCMC; and
- auditing the CMC's records relating to assumed identities at least once every six months.

The CMC was declared an eligible agency under the Commonwealth telecommunications legislation on 7 July 2009; the Parliamentary Commissioner is the inspection entity under the *Telecommunications Interception Act 2009*. As the inspection entity, the Parliamentary Commissioner must conduct six-monthly inspections of the CMC's telecommunications interception records and provide an annual report to the Attorney-General.

2. Mr Flavell's complaint to the Committee

On 27 July 2011, Mr Scott Flavell wrote to the former Committee to make a submission to the Committee's Three Yearly Review of the CMC. Mr Flavell made eight complaints about the CMC's conduct in its investigation, its public hearings and its report about his conduct when he was the Director-General of the (then) Department of Education and Training (DET). The CMC report, *Public Duty, Private Interests*, was tabled in the Parliament in December 2008.[1]

Mr Flavell's complaints about the CMC, which were set out in his submission, were:

1. the CMC had a conflict of interest by undertaking the investigation jointly with the (then) Department of Education, Training and the Arts (DETA), as DETA had an interest to proceed with an investigation into Mr Flavell as it had previously taken pre-emptive action against his company based on the allegations under investigation;

2. the CMC held public hearings based on allegations that Mr Flavell breached the Criminal Code which were then found unsubstantiated;

3. the CMC had insufficient justification to hold the public hearings which led to media scrutiny of Mr Flavell, and the CMC acted inappropriately by using the investigation to pursue a policy reform agenda irrelevant to his circumstances;

[1] Crime and Misconduct Commission, *Public Duty, Private Interests: Issues in pre-separation conduct and post-separation employment for the Queensland public sector, A report arising from the investigation into the conduct of former Director-General Scott Flavell*, December 2008, available at: http://www.cmc.qld.gov.au/research-and-publications.

4. the CMC's assessment of the document which Mr Flavell was alleged to have disclosed contrary to section 85 of the Criminal Code, was by a junior public service officer with no relevant experience in the portfolio, and that the confidentiality had been determined at face value with no regard to the content of the document;

5. inconsistent position with other public inquiries: the CMC found that he breached section 85 of the Criminal Code by releasing a document before it had been endorsed by the Executive Council, when it found that a Minister who released similar documents prior to Executive Council approval were of interest but not relevant;

6. errors in commercial analysis: the CMC's case was naïve and based on the incorrect assumption that Mr Flavell conspired to establish the company before listing the company on the ASX to make a windfall return;

7. declaration of pecuniary interests: the CMC continued to falsely claim that Mr Flavell did not submit a register of pecuniary interests to his Minister, which is incorrect and damaging, and that the CMC has been requested to retract; and

8. biased analysis: the final CMC report contains numerous errors, inconsistencies and statements not substantiated by evidence, that the report is hearsay and an attempt to justify an expensive, unnecessary process.

The former Committee resolved to accept Mr Flavell's submission to the Three Yearly Review of the CMC as a complaint about the conduct of the CMC. In November 2011, the former Committee wrote to the CMC to request a report, addressing each of the concerns raised by Mr Flavell.

On 13 May 2013, the Committee received an email from Mr Flavell in which he advised that he wished to withdraw his complaint about the CMC given that the policy intention of his initial submission to the former Committee's Three Yearly review of the CMC had been surpassed by changes in Government, and the review of the CMC by the Independent Advisory Panel, and the Committee's recommendations set out in its report no. 90. He also alleged that the process used by the Committee and the Parliamentary Commissioner was not transparent.

The Committee considers that, notwithstanding Mr Flavell's withdrawal of his complaint, this is a matter which should be brought to the attention of the House.

3. Committee Consideration

The Committee received the CMC's report on Mr Flavell's complaint in November 2012, nearly a year after it was requested. The CMC report addressed each of the concerns raised by Mr Flavell. The CMC advised that the delay in providing this report to the Committee was due to a number of CMC officers involved in the investigation and report no longer working at the CMC.

Given that this was a significant investigation that resulted in public hearings and a public report, the Committee considers that there should be clear written records of the decisions made by the Commission. A timely report to the Committee on such an investigation and report should not only be possible when the staff involved in the investigation are readily available.

At its meeting on 15 February 2013, the Committee considered Mr Flavell's complaint and the CMC report. Given the likely damage to Mr Flavell's reputation resulting from the CMC investigation, including its public hearings and public report, the Committee determined to request that the Parliamentary Commissioner investigate and report to the Committee on the matter. The Committee requested that in his investigation of this matter, the Parliamentary Commissioner take into consideration Mr Flavell's complaint and the report from the CMC.

The Parliamentary Commissioner delivered his report to the Committee on this matter on 17 April 2013, as requested. Upon considering the Parliamentary Commissioner's report, the Committee determined that this is a matter that should be brought to the attention of the House. This is particularly so given the prominence Mr Flavell's matter has in the report of the Independent Advisory Panel (the Panel) which reviewed the Crime and Misconduct Act and related matters, discussed below.[2]

4. The report of the Independent Advisory Panel

The Panel's report states, 'Mr Scott Flavell, the former Director-General of the Department of Education, Employment and Training, made a submission concerning his treatment by the CMC after allegations were made against him which were found to have no substance. His submission alleges serious deficiencies in the investigation to which he was subjected. The facts of his case justify, we think, some concerns we have about the way in which a regulatory body's use of, and failure to exercise caution with respect to publicity, may distract that body from its proper functions.'

The Panel's report notes that Mr Flavell asserts that the CMC undertook the investigation and pursued a public hearing on the 'problematic basis that there was a public interest in pre- and post-employment separation of senior public servants'...and that the CMC used its investigation into him to pursue a policy reform agenda which had no relevance to his circumstances. However, the Committee believes that there was and continues to be a public interest in such matters.

Whilst the Committee is not aware of the detail of Mr Flavell's submission to the Advisory Panel, based on Mr Flavell's complaint to the Committee, the Committee found Mr Flavell's concerns baseless.

The Committee considers Mr Flavell's ongoing concerns reflect his refusal to accept that the CMC's investigation and public hearings in relation to his conduct were justified. As concluded by the Parliamentary Commissioner, Mr Flavell misconceives the functions, objectives and obligations of the CMC.

Mr Flavell's complaint, that the CMC's investigation, public hearings and subsequent report into allegations against him were the result of poor process, is flawed. The CMC investigation was to gather evidence; it did so and concluded that whilst there were no criminal charges that could be laid, the CMC found that his conduct fell below that expected of a Director-General of a State Department.

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[2] Review of the Crime and Misconduct Act and related matters, *Report of the Independent Advisory Panel,* Redacted Version, Tabled 18 April 2013, available at: http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T2447.pdf

The Committee is concerned that the Panel relied upon Mr Flavell's submission to 'emphasise the need for the CMC to exercise its power to convene public hearings and compel persons to appear before it at such hearings with great care.' The Parliamentary Commissioner found that the CMC did not act inappropriately in its investigation or public hearings relating to Mr Flavell.

The Committee sought the CMC's views on the comments of the Panel in its report; the CMC response is included at **Appendix C**. The CMC advised that the Panel did not provide a copy of Mr Flavell's submission, nor did it seek any comment from the CMC on Mr Flavell's submission prior to the release of the Panel's report.

Additionally, the Panel states that the former Parliamentary Crime and Misconduct Committee made reference in its report no 86, Three Yearly Review of the Crime and Misconduct Commission, to 'the insertion of a new offence of misconduct in public office into the Criminal Code' but the Panel considered that there is no suggestion that such amendment was in any way specifically a result of the Flavell investigation.

The Committee disagrees.

Chapter 5 of the CMC report commences with: '*Our investigation has led us to suggest two legislative reforms: the first relating to an offence of misconduct in public office, and the second relating to conflicts of interest*.' The CMC report then goes on to discuss the legislative reform and recommend the amendment of the Criminal Code.

Section 92A of the Criminal Code was inserted by the Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Bill 2009. The Explanatory Notes to this Bill clearly state that the clause was to implement the recommendations of the CMC Public Duties, Private Interests report.

Hansard shows that the Bill enjoyed bi-partisan support in the Parliament and there was debate on the actions of Mr Flavell, and the subsequent CMC investigation and report, which identified the gap in the then current state of the Criminal Code and the need to create this offence.

The Committee considers there was a clear correlation between the recommendations in the CMC's Public duty, Private interests report flowing from the actions of Mr Flavell, and the subsequent insertion of section 92A of the Criminal Code.

5. Reports considered by the Committee

The report of the Parliamentary Commissioner, which is not a report of the Committee, speaks for itself. The Parliamentary Commissioner's report is attached at **Appendix A**.

Additionally, Mr Flavell raised concern that he was not provided with a copy of the CMC's report to the Committee on his complaint. The CMC's report to the Committee, dated November 2012, which is also not a report of the Committee, is attached at **Appendix B**.

APPENDIX A:
REPORT OF THE PARLIAMENTARY CRIME AND MISCONDUCT COMMISSIONER

REPORT ON THE INVESTIGATION OF THE APPROPRIATENESS OF THE CRIME AND MISCONDUCT COMMISSION'S HANDLING OF AN INVESTIGATION OF THE CONDUCT OF MR SCOTT FLAVELL

OFFICE OF THE
PARLIAMENTARY CRIME & MISCONDUCT COMMISSIONER

APRIL 2013

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INTRODUCTION

The complainant in this matter is Mr Scott Flavell. Mr Flavell was the Director-General of the Department of Employment and Training (DET) from 19 February 2004 until his resignation on 15 September 2006.

On 29 May 2007 a complaint was made to the Crime and Misconduct Commission (CMC) about the activities of Mr Flavell during the time he was Director-General of DET. The CMC assessed the complaint as raising a reasonable suspicion that the allegations, if proved, may involve official misconduct.

The CMC initially referred the complaint to the Department of Employment, Training and the Arts (DETA – the successor to DET) for investigation but subsequently undertook a joint investigation with DETA.

Section 15 of the *Crime and Misconduct Act 2001* (the Act) defines the meaning of official misconduct as follows:

> *Official misconduct is conduct that could, 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.*

Although Mr Flavell had left the public sector by this stage, section 16(1)(c) of the Act states that:

> *(1) Conduct may be official misconduct even though –*
>
> *(c) a person involved in the conduct is no longer the holder of an appointment.*

Since Mr Flavell was no longer the holder of an appointment in a unit of public administration and no disciplinary action was available should official misconduct be proven, the CMC's investigation related only to the first limb section 15 of the Act – establishing whether the conduct could, if proved, be a criminal offence. That was entirely a decision for the Commission.

The investigation involved interviews with relevant persons, the issue of notices to discover under section 75 of the *Crime and Misconduct Act*, a forensic review of email communication between Mr Flavell and relevant persons and closed and public investigative hearings.

In accordance with section 69 of the Act, in December 2008 the CMC produced a report entitled *Public duty, private interests: Issues in pre-separation conduct and post-separation employment for the Queensland public sector. A report arising from the investigation into the conduct of former Director-General Scott Flavell.* The report was provided to the chairperson of the Parliamentary Crime and Misconduct Committee (the Committee), the Speaker and the Attorney-General in accordance with section 69(3) of the Act.

In a letter to the Committee dated 27 July 2011, Mr Flavell provided what he submitted to be evidence of inappropriate conduct by the CMC, DETA and their officers in the conduct of the investigation of the allegations against him.

TERMS OF REFERENCE

Under a covering letter dated 15 February 2013, the Committee provided the original complaint from Mr Flavell (received as a submission to the Committee's Three Yearly Review of the CMC), further information Mr Flavell had subsequently provided and a report dated 29 November 2012 prepared by the CMC in response to Mr Flavell's complaint. The Committee considered the CMC report on Mr Flavell's complaint at a meeting on 15 February 2013, and in accordance with section 295(3) of the *Crime and Misconduct Act 2001* resolved:

> *Given the significant impact of the CMC investigation, public hearings and report upon the complainant's reputation the Committee requests, pursuant to section 295(2)(d) of the Crime and Misconduct Act 2001, the [Parliamentary Crime and Misconduct Commissioner] investigate and provide a report to the Committee by 15 March 2013.*
>
> *In particular the Committee seeks a brief report on the appropriateness of the CMC's handling of this matter pursuant to its powers and discretions under the Crime and Misconduct Act 2001, including its decisions to hold public hearings and the subsequent report (required to be published under section 69 of the CM Act), which focussed on Mr Flavell's conduct whilst also commenting on general issues around post-separation employment.*

Subsequently, the Committee advised me that the report was requested for 17 April 2013.

RESULTS OF INVESTIGATION

In his letter to the Committee of 27 July 2011 and the "Supporting Information for Allegations" provided therewith, Mr Flavell listed what he submitted to be *"evidence of inappropriate conduct on the part of the CMC/DETA and its officers"* in eight key areas. I have addressed each of these eight areas under the most relevant of the Committee's terms of reference.

The appropriateness of the CMC's handling of this matter pursuant to its powers and discretions under the Crime and Misconduct Act 2001.

1 Conflict of interest

Mr Flavell asserts that *"[In] conducting the investigation jointly with the Department of Education and Training, the CMC has exposed the investigation to a serious conflict of interest."* He states that DETA took pre-emptive action against his company, Careers Australia Group (CAG), based on the allegations under investigation and that *"a reasonable person would conclude DETA had an interest to proceed with an investigation to justify its pre-emptive and unlawful actions… The CMC acted inappropriately in establishing this investigation jointly with DETA, without considering the conflict of interest implications."*

To determine whether DETA's involvement in a joint investigation with the CMC could constitute an actual or apparent conflict of interest or perceived bias, the test to be applied is *"whether a fair-minded and **informed** person might apprehend or suspect that bias existed"* on the part of the Department. [1] (Emphasis added.) The notion that the fair-minded person be "informed" means it is necessary to ascertain the nature of DETA's involvement in the investigation.

According to the CMC, DETA's role in the joint investigation was to provide access to records as required. The CMC report to the Committee of 29 November 2012 states that:

> *The investigation was conducted by a team of CMC officers consisting of about 7-8 personnel, under the leadership of Supt Tony Cross. Contrary to Mr Flavell's assertion, the bulk of the investigation work was not undertaken by Dr Paul Collings. He was a DETA employee, attached to the CMC as a Senior Investigator, to explain the workings of User Choice and other training strategies and to participate in interviews as a TAFE expert…By far the largest part of the investigative work fell to the CMC's Forensic Computing Unit, in searching and sorting the data obtained from CAG. Lawyers, intelligence analysts and financial investigators were also heavily involved. Although Operation Proxy was nominally a joint investigation, operational matters were not discussed with DETA at officer level. DETA can not in any sense be said to have 'conducted a significant part of the investigation on behalf of the CMC.'*

An inspection of the CMC's files relating to the complaint against Mr Flavell has established that this was indeed the case.

On the basis that DETA's involvement was of an investigative rather than decision-making nature, it cannot be said that the CMC has exposed the investigation to a serious conflict of interest. Nor

[1] Webb v R (1994) 181 CLR 41 at 52 as applied in R v Gately [2010] QCA 166. Also see Re Minister for Immigration and Multicultural Affairs; Ex parte Epeabaka (2001) 206 CLR 128 at 150 per Kirby J citing Newfoundland Telephone Co v Board of Commissioners of Public Utilities [1992] 1 SCR 623.

can it be properly said that because DETA took certain action against CAG quite separately from the investigation, all DETA officers should thereby be precluded from involvement in the investigation of allegations against Mr Flavell on the basis of apprehended bias or conflict of interest.

Furthermore, I do not consider that the CMC acted inappropriately in establishing this investigation jointly with DETA since, in so doing, the CMC acted wholly in accordance with Parliament's intention as set out in section 34 of the Act.

It is difficult to argue against DETA's involvement in the misconduct investigation when section 34(a) of the Act expressly states that *"the commission and units of public administration should work cooperatively to deal with misconduct."* Of course this principle of cooperation is subject to the public interest principle in section 34(d) which imposes upon the CMC a responsibility to promote public confidence in the way misconduct is dealt with if misconduct does happen within a unit of public administration.

To that end, it can be noted that the CMC took the lead role in the investigation with DETA officers providing technical support. It is understandable that DETA would have a lesser role in the investigation since, as Mr Flavell had left the department, the investigation was directed at establishing whether his actions constituted criminal offences rather than disciplinary breaches.

I also note the CMC's comment at page 8 of its *"Public duty, private interests"* report that, *"In light of the role of the CMC to build capacity in units of public administration and because of the technical nature of the information and documents to be considered, the CMC and DETA agreed to conduct a joint investigation."*

Considering that DETA's involvement in the investigation was merely in relation to the technical aspects of the department's operational matters, I do not consider that a fair-minded and informed person would apprehend or suspect that the investigation was biased or that DETA's involvement in the investigation would constitute a conflict of interest as Mr Flavell asserts.

2 Poor investigative procedure

Mr Flavell states that *"the CMC alleged several breaches of the criminal code and decided to conduct public hearings before obtaining crucial and basic evidence which demonstrated the allegations were false…The CMC acted inappropriately by basing an investigation on evidence it did not adequately test for accuracy."*

I should observe from the start that the purpose of conducting an investigation is to gather evidence. The hearings were conducted by the CMC as part of the investigative process, to test the accuracy or veracity of the evidence already gathered and to attempt to obtain further evidence. In relation to the gathering of further evidence, it should be noted that early in the investigation, several important witnesses had declined to be interviewed or be further interviewed by the CMC. The CMC considered that investigative hearings would therefore be necessary to advance the investigation.

Mr Flavell states that the CMC relied on the accuracy of a November 2006 shareholders' agreement which recorded that an agreement to establish the company had been reached in June 2006, to support the allegation that he held a personal private interest in CAG whilst still employed by DET. Mr Flavell subsequently gave evidence that the date of June 2006 was inaccurate and that the first discussion with CAG regarding his investment in the company occurred in late September 2006 – after he had resigned from his position at DET. (Other persons involved in CAG have given similar evidence.)

However, I agree with the comments of the CMC Chairperson in his report to the Committee of 29 November 2012:

> *Although the actual date of the agreement remains unresolved, the CMC's investigators were faced with a subscription agreement which on its face was prepared by lawyers, executed by the Directors and clearly identified Mr Flavell as a subscriber, at a time he was Director-General – a prima facie conflict of duty and interest.* (Page 4)

Furthermore, prior to the decision to hold hearings, the CMC had also gathered a significant amount of other evidence which established that Mr Flavell had:

- made 162 telephone calls to Mr Wills (CAG's former Director and Chairman) from his departmental telephone in the period from December 2004 until his departure from DET;
- telephoned a training organisation in financial difficulties inquiring about the purchase of the business;
- provided at least nine documents to CAG or associated persons and entities which documents the CMC (initially) thought to be confidential and/or which represented a substantial investment of departmental resources and were the intellectual property of the department;
- prepared for the future company (CAG) a number of planning documents derived from existing TAFE and private sector intellectual property without permission;
- inappropriately disclosed to Mr Wills that a registered training organisation was in financial difficulties, prompting Mr Wills and another CAG officer to offer to negotiate to purchase it;
- provided a departmental Ministerial briefing note to Mr Wills listing proposed recipients of User Choice Funding for registered training organisations and the value of each funding contract the day before the Minister approved the funding; and
- prepared a business plan for CAG proposing the establishment of a mining services registered training organisation in Central Queensland and noting that "we" could damage Central Queensland TAFE's viability by "poaching" the Manager of the TAFE resulting in its "collapse".

In my view, such evidence was more than a sufficient basis upon which to conduct hearings. As stated above, the hearings would test the strength of this evidence and, further, provide Mr Flavell the opportunity to contradict or explain it.

Mr Flavell asserts that *"Given the evidence adduced before the public hearing it is obvious the CMC did not have sufficient evidence to substantiate its serious allegations in its 16 May 2008 advice to the Commission."* (The advice, prepared on 14 May 2008 for the Commission's meeting of 16 May 2008 was a "Submission to the Crime and Misconduct Commission" on the issue of whether to hold public hearings or closed hearings.) That assertion demonstrates a lack of proper understanding of the investigation process. A public hearing was held after the commission resolved to have such a hearing on 16 May 2008. Because there was certain evidence at that hearing does not mean the investigation was not appropriate. The assertions by Mr Flavell seem to misunderstand the nature and function of the investigation.

Whilst the 14 May 2008 Submission to the Crime and Misconduct Commission contemplated the possibility that no criminal prosecution might result from the hearing, it was also noted that the hearings might encourage the provision of further evidence from other individuals or organisations of similar conduct by Mr Flavell exposing the full extent of his conduct.

It is certainly the case that, ultimately, based on the advice from the Director of Public Prosecutions, the CMC did not have sufficient evidence to substantiate its serious allegations - if it did, Mr Flavell would have faced criminal proceedings. However, it does not follow that the decision to investigate the allegations was in anyway inappropriate. An alternative view to that expressed by Mr Flavell is that the purpose of the investigative hearing was achieved – he was able to provide his version of the events and the evidence was tested and found wanting.

The appropriateness of the CMC's decision to hold public hearings

3 Insufficient justification for public hearings

Mr Flavell states that *"the justification for the public hearings and the subsequent detailing of false allegations of criminal conduct against me in full media scrutiny was that the matters of pre and post employment separation* [sic] *from the public service were in the public interest."* He asserts (a) that there was no basis to hold public hearings on this matter; (b) that, in holding public hearings, he was denied procedural fairness and natural justice; and (c) that none of the recommendations in the CMC report had any relevance to his situation and actions.

(a) Pursuant to section 176(1) of the *Crime and Misconduct Act "The commission may authorise the holding of a hearing in relation to any matter relevant to the performance of its functions."* I am satisfied that the evidence mentioned above provided the Commission with more than a sufficient basis upon which to authorise the holding of investigative hearings in relation to alleged official misconduct on the part of Mr Flavell.

Section 177 of the Act deals with the issue of whether such hearings are to be open or closed. Pursuant to subsection 177(3), a decision about whether a hearing should be a public hearing cannot be delegated. The decision must be made by the Commission.

This, the third of Mr Flavell's allegations of inappropriate conduct on the part of the CMC, relates to the Commission's decision to hold public (or open) hearings.

Section 177(1) states that generally, a hearing is not open to the public, however subsection (2) sets out a number of exceptions to the general rule. Subsections (2)(a) and (b) allow the Commission to approve open hearings for crime investigations and witness protection matters (respectively) if it considers (amongst other things) that it would not be unfair to a person or contrary to the public interest.

For matters other than crime investigations and witness protection, such as the hearings in relation to alleged official misconduct on the part of Mr Flavell, different considerations apply. Subsection (2)(c) allows the Commission to approve public hearings if it considers closing the hearings to the public would be unfair to a person or contrary to the public interest.

This effectively means that whereas unfairness to a person (in opening the hearing) is always a relevant factor in considering whether to approve open hearings in crime investigations and witness protection matters under section 177(2) subsections (a) and (b), it is not necessarily relevant in considering whether to approve open hearings in misconduct investigations under section 177(2)(c), because section 177(2)(c)(i) requires consideration of unfairness to a person in closing a hearing

rather than unfairness to a person in opening a hearing. The Commission may authorise open hearings if it considers closing the hearing would be unfair to a person **or** if it considers closing the hearing would be contrary to the public interest. (Of course the CMC has a general duty under section 57 to *"at all times, act independently, impartially and fairly having regard to the purposes of this Act and the importance of protecting the public interest."*).

Section 177(2)(c) gives the Commission a discretion to open a hearing if the matters in section 177(2)(c)(i) and section 177(2)(c)(ii) apply. Unless those matters apply the discretion is not enlivened. The section is silent about any other matters which may or should be taken into account in exercising the discretion. The existence of the discretion after the Commission approves that the hearing be a public hearing is not explained.

In my view, the existence of the matter in section 177(2)(c)(ii) is not dependent on the existence of one of the matters in section 177(2)(c)(i). In other words, because the Commission considers either closing the hearing to the public would be unfair to a person or closing the hearing to the public would be contrary to the public interest, it does not therefore follow that the Commission approves the hearing be a public hearing. The matters expressed in section 177(2)(c)(i) and section 177(2)(c)(ii) are separate and independent.

In order to inform and assist the Commission in its deliberations as to whether to authorise public hearings or closed hearings, Mr Daniel Boyle, the CMC's Acting Director Misconduct Investigations, prepared a "Submission to the Crime and Misconduct Commission" dated 14 May 2008. In Attachment B to the submission Mr Boyle identified "Issues to consider in deciding whether hearings are to be open to the public". He stated:

> *The first limb of section 177(2)(c)(i) is of little relevance to the witnesses concerned in Operation Proxy as closing the hearing to the public is highly unlikely to cause unfairness, detriment or prejudice to any person. The investigation is already in the public arena. Operation Proxy has been reported by the local media, and members of the public are aware that Mr Flavell and Mr Wills are under investigation. A public hearing would therefore give Mr Flavell, Mr Wills and other persons associated with Careers Australia Group (CAG) an opportunity to publicly respond to the allegations and in doing so defend their personal and commercial reputations. The hearings may therefore 'dispose of suspicions, rumours and allegations'[2] which may be unjustified.* [Which is what Mr Flavell could contend, occurred.]
>
> *The significant issue is the second limb of section 177(2)(c)(i), as to whether closing the hearings to the public would be contrary to the public interest.*

Mr Boyle then proceeded to set out (at page 2) "Factors which favour holding a public hearing" and (at page 3) "Factors which do not favour holding a public hearing." The submission prepared by Mr Boyle seems fair and balanced. The Commissioners were fully briefed on all matters relevant to their consideration of whether the hearings should be open or closed pursuant to section 177(2)(c) of the Act. Possible unfairness to Mr Flavell and others in holding open hearings was addressed as one of the factors which do not favour holding a public hearing. Issues of pre and post separation employment were discussed in Mr Boyle's submission to the Commission and the public ventilation of such issues was clearly a factor in the Commission's decision. That is not inappropriate having regard to the CMC's functions and there is no evidence to conclude that the Commission's decision to conduct public hearings was driven by a policy reform agenda as Mr Flavell "assumes" at page 10 of his letter to the Committee.

[2] Hall, P (2004) Investigating Corruption and Misconduct in Public Office: page 157.

The minutes of the Committee of 18 May 2008 are as follows:

> *The Commission adopted the resolution in the submission dated 16 May 2008 to the effect that:*
>
> 1. *Pursuant to section 176 of the Crime and Misconduct Act 2001 ("the Act"), the Commission authorises the holding of a hearing in relation to the complaint concerning the alleged official misconduct of Scott Cameron Flavell at a time that he was Director-General of the Department of Education and Training, and associated official misconduct by any other person (Operation Proxy).*
>
> 2. *Pursuant to section 177(2)(c) of the Act, the Commission considers that closing the hearing would be contrary to the public interest and therefore the Commission approves that the hearing be a public hearing.*
>
> 3. *That the Chairperson determine persons required to attend to give evidence at the public hearing, and any closed hearings held.*

In my view, the expression "and therefore" in point 2 of the recorded Commission resolution does not accord with that which was required by section 177(2)(c) of the Act. It seems to draw a conclusion which I earlier said was not appropriate. That is, the conclusion does not necessarily follow from the finding that closing the hearing would be contrary to the public interest.

An inspection of the minutes of the Commission meeting of 16 May 2008 confirms that, pursuant to section 177(2)(c)(i) of the Act, the Commission considered *"that closing the hearing would be contrary to the public interest"*. In accordance with section 177(2)(c)(ii) of the Act the Commission "therefore" approved that the hearing be a public hearing. The CMC Chairperson, in his letter to the Committee of 29 November 2012, also confirmed that *"As the former Director-General, the Commission considered the public interest demanded a public hearing."* Whilst as I have said, in my view the finding required by section 177(2)(c)(i) did not mean that it followed there should be a public hearing, there nevertheless appears to have been a separate consideration of whether there should be a public hearing. In other words the use of the word "therefore" in the resolution did not mean that the appropriate consideration for the finding required by section 177(2)(c)(ii) did not occur. In my view it did.

In conclusion on this issue, I do not consider that the Commission's decision to hold public hearings in relation to Mr Flavell's conduct was inappropriate in the circumstances. It was a matter entirely within the discretion of the Commission after the matters in section 177(2)(c)(i) and section 177(2)(c)(ii) were found by the Commission to exist.

(b) As to Mr Flavell's assertion that he was denied procedural fairness by virtue of the CMC's decision to hold public hearings, the following excerpts from *"Facing the Facts - A CMC guide for dealing with suspected official misconduct in Queensland public sector agencies"* deal with the issue of a subject officer's right to a fair hearing:

> *The law of procedural fairness requires a decision-maker to listen to, and take into account, people's point of view on any matter that adversely affects them…*
>
> *The application of the requirement to inform the person of the allegation will depend on the circumstances. It will also depend on the scope of your brief as investigator — that is, whether you have been asked to make findings from your investigation, or whether that has been left up to a decision-maker.*

> *If your investigation does not involve proceedings that could directly affect the subject officer's rights or interests, then there is no need for you to inform the person of the allegations. In other words, if you are merely collecting information to give to a final decision-maker, there is no obligation on you to notify the person who is the subject of the complaint.*
>
> *However, if you are asked to make findings and recommendations about the matter, you should provide procedural fairness to the person against whom allegations have been made…*
>
> *The right to be informed about the substance of allegations or adverse comment, and the opportunity to be heard, must be given before any final decision is made, or a memorandum, letter or the like is placed on the person's file…*
>
> *There are also no hard-and-fast rules about how and when you must inform a person of the substance of any adverse comment about them. Certainly, no final decision can be made affecting a person's rights, interests or legitimate expectations without first providing them with an opportunity to respond.*

The public hearings in relation to the allegations against Mr Flavell were investigative not determinative in nature. Any final decision on the issue was to be left to the Director of Public Prosecutions. Nonetheless, Mr Flavell was provided with an opportunity to respond to the allegations throughout and subsequent to the public hearings. Moreover his counsel was able to make submissions to the Director of Public Prosecutions prior to any decision being made as to the sufficiency of evidence against Mr Flavell in respect of criminal charges. There can be no suggestion that the public hearings resulted in Mr Flavell being denied procedural fairness as he asserts.

There may be a suggestion that Mr Flavell should have been afforded procedural fairness when the determination whether to hold the hearing in public was being considered. Arguably, the Commission may have been considering making a decision contrary of the interests of Mr Flavell. A view consistent with that argument was that Mr Flavell was not afforded procedural fairness on that point.

However, Mr Flavell does not complain of lack of procedural fairness at that stage. Rather, he complains that somehow the fact of a public hearing denied him procedural fairness. That complaint is not made out.

(c) In my view, with the reservation I have expressed above, the letter from the CMC Chairperson to the Committee of 29 November 2012 adequately addresses Mr Flavell's assertion that none of the recommendations in the CMC report had any relevance to his situation and actions.

The CMC Chairperson states that,

- Recommendation 1 of the *"Public duty, private interests"* report (review of exit processes to preserve official information) arose directly out of the actions of Mr Flavell (and other DETA employees who were subsequently recruited to CAG) in failing to maintain security over official information;

- Recommendation 2 (introduction of new Criminal Code offence of misconduct in public office) was made to address the deficiencies in the Criminal Code highlighted by Mr Flavell's conduct; and

- Recommendation 5 resulted in public sector policy reforms addressing the inappropriate use by senior government officers of confidential information gained during government employment for private commercial benefit.

Those recommendations clearly had relevance to Mr Flavell's situation and actions. They are however only recommendations and are not a finding against the interest of Mr Flavell.

4 Assessment of confidential information

Mr Flavell complains that *"[t]he CMC made allegations of a breach of Section 85 of the Criminal Code, Disclosure of Official Secrets based on an assessment of the confidentiality of documents by a junior public service officer with no background in the portfolio relevant to the documents… This was the key evidence used by the CMC to allege breaches of the Criminal Code. The DPP, not surprisingly, subsequently concluded there was insufficient evidence to proceed with a criminal charge in relation to this matter. The CMC acted inappropriately by making serious allegations of breach of the Criminal Code based on evidence it knew to be unreliable."*

The CMC's allegation of breaches of section 85 of the Criminal Code was based on an assessment of the confidentiality of documents undertaken by DETA at the CMC's request. I do not consider this to be an inappropriate course of action as the CMC was entitled to accept (at least for the investigative stage of the operation) that, as they were departmental documents, DETA would be best placed to consider their confidentiality or otherwise.

The Committee would note that offences under section 85 of the Code were amongst a number of other criminal offences contemplated by the CMC prior to the public hearings.

In the *"Public duty, private interests"* report the CMC summarised the evidence as follows:

> *The evidence also disclosed many instances where Mr Flavell procured his subordinate officers within the department to provide departmental information and material which he then passed on to Mr Wills. Some of this material was claimed by the department to be commercial-in-confidence. Some was certainly material that any senior public servant would know should not be disclosed, such as User Choice allocations which still required Executive Council approval, or discussion papers for a subcommittee of COAG. Mr Flavell conceded that the User Choice material should not have been released at the time.*

Possibly prior to, and certainly by the conclusion of, the public hearings, the CMC held concerns as to DETA's assessment of the confidentiality of the documents. Nonetheless, having regard to the evidence referred to above, the lack of case law on section 85 of the Criminal Code and the wording of the section, the issue was at least arguable and the CMC took what I consider to be the appropriate course of providing a report to the Director of Public Prosecutions (DPP) pursuant to section 49 of the Act for the purposes of any prosecution proceedings the DPP considered warranted.

The Committee will note that Mr Flavell took the opportunity of having his counsel make submissions to the DPP on the issue of the confidentiality of the documents which is consistent with the notion of procedural fairness and natural justice.

Ultimately, the DPP advised the CMC that:

> *After carefully considering the report I advise that the Crown could not prove to the requisite standard, on the evidence, that Mr Flavell had a duty to keep secret the information disclosed or that the disclosure was unlawful. There are no reasonable prospects of a conviction on a charge pursuant to s.85 of the Code.*

I concur with the view expressed by the CMC Chairperson at page 8 of his letter to the Committee of 29 November 2012 as follows:

> *That the DPP took a different view on the likely prospects of securing a conviction does not mean it was inappropriate to refer the matter. Legal opinion can differ, and the anachronistic language of the section and its lack of use since enactment made definitive judgements difficult.*
>
> *While not wanting to put words in Mr Flavell's mouth, his complaint appears to proceed on the basis that the public hearing was cognate with a trial of the issues. That, of course, is not the purpose of any investigative hearing. It was but one aspect of a broader investigation which in turn informed the final report.*

5 Inconsistent position with other public inquiries

The fifth area of inappropriate conduct alleged in Mr Flavell's complaint seeks to contrast the different approaches taken by the CMC towards his conduct and the conduct of former Minister Judy Spence in publicly announcing a grant to the Queensland Rugby Union prior to Executive Council approval.

The two situations are not analogous. The CMC's December 2010 *Report on an investigation into the alleged misuse of public monies, and a former ministerial adviser* did not concern allegations of disclosure of confidential information. As the CMC Chairperson states, the position of a Minister is rather different from that of a Director-General. Significantly, the Minister made a public announcement of the grant and would have suffered public embarrassment had the Executive Council not proceeded with the grant, whereas Mr Flavell made a private disclosure to a potential business partner in circumstances which might be seen as being "not impartial" in terms of section 14(b)(i) of the Act.

6 Errors in commercial analysis

Mr Flavell states that *"Much of the CMC's case was based on allegations I had conspired to establish CAG then publicly list the company on the ASX and make a windfall return…Such analysis is naïve in the extreme and demonstrates a lack of commercial awareness. There was no evidence of discussions concerning listing CAG on the ASX until well after I departed Government employment (CAG is still not listed on the ASX more than 4 years after it was established). Even if it was listed on the ASX, there is no guarantee of a windfall return and stringent due diligence procedures must be followed before the ASX will agree to a company listing. The CMC's lack of understanding on commercial matters led it to concoct a conspiracy when none in fact no such conspiracy* [sic] *existed and in so doing, its conduct was inappropriate."*

In his letter to the Committee Mr Flavell states that *"There was no investment of funds by me into CAG until well after I had departed the pubic service and there was* [no] *discussion or agreement to invest funds until after I had departed the public service."* However, as mentioned previously in the discussion of the second of Mr Flavell's allegations of inappropriate conduct, the investigation disclosed the existence of a Subscription Agreement dated 9 November 2006 which stated that on 17 June 2006 Mr Flavell and other investors had agreed to invest a total of $500,000 as initial funding for the establishment of CAG. Although there was conflicting evidence as to the actual date of the agreement, as at 17 June 2006, Mr Flavell was still Director-General of DET.

Further, it is not correct for Mr Flavell to assert that *"There was no evidence of discussions concerning listing CAG on the ASX until well after I departed Government employment."* The CMC was entitled to regard the preparation of an Information Memorandum shortly after the Subscription Agreement as evidence of an intention to publicly list the company. The Information Memorandum was dated 20 November 2006 – around two months after he had resigned from DET.

In his letter to the Committee Mr Flavell maintains that *"The first discussion of a public float was in November 2006 at a meeting with stock brokers ABN Amro Morgans in a discussion on options for raising private equity."* The CMC were entitled to be less than convinced by Mr Flavell's self-serving statement that he and other shareholders had not had discussions prior to that meeting with the stock brokers.

The fact that CAG is still not listed on the Australian Stock Exchange is of no relevance. It does not follow that publicly listing the company was not contemplated prior to the CMC's investigation. It may have been that the CMC's scrutiny of the company would have dramatically altered future plans for the company.

Finally on this issue, it is not relevant that *"Even if* [CAG] *was listed on the ASX, there is no guarantee of a windfall return …"* It was the potential for Mr Flavell to make substantial personal financial gain that concerned the CMC, not the certainty of it.

7 Declaration of pecuniary interests

Mr Flavell cites as another example of evidence of inappropriate conduct on behalf of the CMC that it *"has continued to falsely claim that I did not submit a register of pecuniary interests to my Minister…"*

The CMC's investigation revealed that the Public Service Commission (PSC) wrote to Mr Flavell in 2002, 2003 and 2004 upon his various appointments reminding him of his obligation pursuant to the *Public Service Act 1996*, a PSC Directive and the Ministerial Handbook, to provide pecuniary interest declarations within one month of appointment. The CMC established that no declarations were recorded on PSC files. The CMC also arranged for searches to be conducted by the Ministerial Services unit of the Department of the Premier and Cabinet, again with no record being located of any declaration by Mr Flavell.

Mr Flavell stated in his interview with the CMC in November 2007 that he may have made a declaration of interests upon his appointment with the Department of Innovation, Information, Economy, Sport and Recreation however it does not appear that the CMC followed up on this information.

Thereafter, in its submission to the Government's Integrity and Accountability Review in 2009, the CMC stated that Mr Flavell had not made a declaration. According to the CMC Chairperson's report to the Committee of 29 November 2012 this statement was made in light of Mr Flavell's evidence at the CMC's public hearings that he could not recall having made a declaration. Mr Flavell subsequently located a copy of the declaration referred to in his November 2007 interview with the CMC. As a result, the CMC retracted its assertion to the Integrity and Accountability Review that Mr Flavell had not made a declaration.

The CMC clearly made an error in this regard but submitted to the Committee that *"reasonable efforts went into establishing whether a declaration was made."*

It seems clear to me that, in light of the CMC's positive assertion to the Integrity and Accountability Review that Mr Flavell had not made a declaration, insufficient efforts went into establishing

whether a submission had been made. I do not however, consider this to constitute evidence of bias on the part of the CMC as Mr Flavell asserts. It does indicate a lack of thoroughness though.

The appropriateness of the CMC's report (required to be published under section 69 of the CM Act), which focussed on Mr Flavell's conduct whilst also commenting on general issues around post-separation employment.

8 Biased analysis

The last example of evidence of inappropriate conduct on behalf of the CMC to which Mr Flavell refers relates to the CMC's *"Public duty, private interests"* report. Mr Flavell asserts that it contains numerous errors, inconsistencies and statements that can not be substantiated by evidence. Along with his submission to the Committee, Mr Flavell provided a number of submissions prepared by his solicitors in support of his application for an indemnity from the State Government. Mr Flavell states that these submissions demonstrate that the CMC's final report *"represents little more than the personal views of the CMC authors, is not supported by evidence and is in essence hearsay."*

It is the case that some parts of the *"Public duty, private interests"* report amount to the views expressed by the CMC. However these views are open on, and supported by, the evidence.

The CMC report refers to a document headed "Business Concept – Training Company" which Mr Flavell sent to Mr Wills by email on 7 September 2005. The document refers to the establishment of a private company to provide training in the mining sector in opposition to an existing Registered Training Organisation (RTO) at Central Queensland TAFE. In the email Mr Flavell states:

> *The key to its success is the current manager who could be **poached** to replicate the model in a private company and become a competitor to the Government broker that I have established (which is now the single largest provider of mine training in Queensland). This entity has contracts with more than 40 companies and mine sites…*
>
> *Training is provided on a contract basis and pricing of training is based on a cost plus margin model. The only real competitor would be the Government entity which would largely collapse if **we** acquired the current manager…* [Emphasis added.]

The report then refers to other documents Mr Flavell received from Mr Martin, an international sales officer from the Gold Coast Institute of TAFE, and which Mr Flavell then forwarded on to Mr Wills. The report proceeds to discuss the evidence Mr Flavell provided in relation to the email and the documents received from Mr Martin:

> *In evidence, Mr Flavell acknowledged that "we" referred to himself and Mr Wills and described its use a "sloppy use of English" as Mr Wills had "sort of put a proposal to me". He also testified it was "coincidental" that the information he requested from Mr Martin was possibly helpful to Mr Wills, and was forwarded to him so promptly. He was unable to give any other instance in which he had provided similar information or assistance to any other private person or business.*[3]

Later in the report there is reference to a list of RTOs granted User Choice contracts with the Government. This document was yet to be signed by Mr Flavell as the Director-General and was

[3] Crime and Misconduct Commission (December 2008), Public duty, private interests: Issues in pre-separation conduct and post-separation employment: pages 10 and 11.

then to be provided to the Minister for approval of the expenditure by the Executive Council. The CMC report states (at page 13):

> *Mr Flavell forwarded the list of RTO funding allocations to Mr Wills at 2.50pm the same day,* [9 May 2006] *with an email saying "You might be interested in this", and also suggested some names for the future company…*
>
> *In evidence, Mr Flavell has claimed that the forwarding of the list was inadvertent or "in error" and that if he had reflected on it in detail, he would have understood what it was and would not have sent it on to Mr Wills."*

The CMC report then refers (at page 14) to a document Mr Flavell prepared and sent to Mr Wills concerning the possibility of establishing an RTO in the heavy industry sector. Mr Flavell disclosed that a named private RTO *"may be experiencing cash flow difficulties."* Mr Wills later approached the principal of the RTO with a view to purchasing it. The CMC report states that in evidence, Mr Flavell conceded that his comments to Mr Wills were *"indiscreet"*.

These matters are referred to later in the CMC report in Chapter 3 "Discussion of Issues".

> *A person such as Mr Wills, considering the possibility of setting up a registered training organisation, could properly expect to receive assistance from the DET. The evidence showed that such assistance was regularly provided at officer level within the department. If Mr Flavell had passed Mr Wills' request for assistance on to the relevant departmental officers, with a request to them to provide all proper assistance, he would have avoided placing himself in any position of possible conflict of interest.*
>
> *Instead, he involved himself in personally providing advice and assistance to Mr Wills. In doing so, he placed himself in a position where he would potentially face a conflict between his public duty and his personal interest in future involvement in the training company. From that point, he faced many situations of real conflict of interest.*
>
> *One of the clearest examples of this occurred within a few days of Mr Flavell's initial luncheon meeting with Mr Wills on 2 September 2005. The Business Concept document which he wrote and provided to Mr Wills on 7 September spoke of "we" and how "poaching" a crucial DET employee would enable the future company to collapse a successful government training enterprise.*
>
> *Mr Flavell in evidence somewhat reluctantly admitted that his provision of this advice constituted a perceived conflict of interest, but he didn't consider it to be a real conflict. He said:*
>
> > *Well, I mean, I think there's — you know, a perceived conflict of interest. I don't consider it to be a real conflict of interest because I just think it was a hastily prepared piece of information that I didn't consider in any detail, and so it was just, you know, very careless on my behalf.*
>
> *The CMC finds extraordinary the stated belief by Mr Flavell that he was not in a position of conflict of interest because the advice he gave was "hastily prepared", and without proper consideration.*
>
> *The CMC is concerned that Mr Flavell did not avail himself of the advice of the Integrity Commissioner, which he admitted in evidence he knew was available to him. The provision of such a source of reputable advice by the government is clearly intended to ensure that senior public officials act according to appropriate standards of integrity.* (Pages 20 and 21)

> *…The evidence also disclosed many instances where Mr Flavell procured his subordinate officers within the department to provide departmental information and material which he then passed on to Mr Wills. Some of this material has been claimed by the department to be commercial-in-confidence. Some was certainly material that any senior public servant would know should not be disclosed, such as the User Choice allocations which still required Executive Council approval, or discussion papers for a subcommittee of COAG. Mr Flavell conceded that the User Choice material should not have been released at the time.*
>
> *However, even if the material cannot be classified as confidential, the question is whether its release by Mr Flavell was in accord with his public duty. For example, some of the material clearly was released without any proper consideration of whether it was appropriate for release. Mention is made above of Mr Flavell's claim about his provision of the Business concept document without proper consideration. Similarly, he stated that his release of the User Choice allocations document was done without proper reflection on its contents and that if he had his time over again he (Flavell) would not release it. His claim of lack of proper consideration in that instance is easily accepted; his subordinate provided more information than Mr Flavell requested and he forwarded the email attaching it on to Mr Wills within a relatively short time of receiving it.*
>
> *For a senior public official to release departmental material without any real consideration of the appropriateness of the material for release can hardly be said to be an action in accordance with his public duty. Mr Flavell was clearly a very competent public official, being Director-General of two departments. The only fair conclusion open is that his lack of proper consideration was due to his desire to assist Mr Wills to set up this new company that he could be involved in.* (Page 21)

Apart from the evidence Mr Flavell gave at the hearings, the CMC had obtained much evidence (derived from telecommunications records, interviews, emails and other documents) prior to the hearing. In my view the CMC has fairly stated the evidence including certain admissions made by Mr Flavell. The CMC has then drawn conclusions that were reasonably open on that evidence.

In essence, the conclusions the CMC arrived at in its report are not inconsistent with observations made by Mr Flavell's solicitors in a submission made to Counsel Assisting, Mr Ralph Devlin SC, in a letter dated 1 August 2008:

> *Our client's communication to Mr Wills of the business opportunity to become involved in the VET sector was consistent with government policy. In retrospect, it was the possibility that our client may become an employee in the business which gave rise to complications, and in retrospect our client wishes he had followed a different process…*
>
> *Unfortunately, our client's desire to encourage a business opportunity to achieve the government-approved policy outcomes became intermingled with his potential role as a CEO in that business. Our client's failure to adopt a better process has come at a very high price to him: personally, financially, for his future career and his well-earned reputation.*
>
> *The point that we wish to make is that our client's ambition to take up the challenge of establishing a new business that delivered the government policy outcomes that he had championed caused him not to reflect on the proper process that he should have followed and to adopt processes which he acknowledges were at times inappropriate.*

The submission prepared by Mr Flavell's solicitors in support of his application for an indemnity from the State Government (dated 6 March 2009) refers again to Mr Flavell's admitted inappropriate conduct. The submission refers to the conclusion reached by the CMC (referred to above) that to release the User Choice allocations document without consideration of the appropriateness of doing so was not an action in accordance with Mr Flavell's public duty. The

submission maintains that is a harsh conclusion. I do not consider it to be so – it is fairly open on the entirety of the evidence.

I do not consider it can be said that the CMC's "*Public duty, private interests"* report *"contains numerous errors, inconsistencies and statements that can not be substantiated by evidence"* as Mr Flavell asserts. It is merely the case that Mr Flavell disagrees with the conclusions reached which conclusions I consider to be reasonably open on the evidence.

CONCLUSION

As stated by Mr Flavell, the substantive argument of his submission is that poor processes and inappropriate conduct on behalf of the CMC (and DETA officers) led the Commission to procedural error and to pursue allegations that had no foundation.

The argument to some extent misconceives the functions, objectives and obligations of the CMC.

There is not sufficient evidence to establish the CMC acted inappropriately in establishing the investigation jointly with DETA.

In my view, the evidence does not establish that the procedural error specifically complained of was an error.

Further, even if the CMC did investigate allegations that eventually were found to have no foundation, it does not follow that the CMC acted inappropriately in carrying out those investigations.

The CMC did not act inappropriately if it based an investigation on evidence it did not adequately test for accuracy. Carrying out an investigation has as one of its legitimate purposes, testing earlier evidence. Logically, if such a complaint was valid, no complaint made that was not substantiated, should not be investigated. That would defeat the legislative obligation of the CMC to carry out its functions.

The evidence does not establish the CMC acted inappropriately to pursue a policy reform agenda.

There is no evidence that the CMC acted inappropriately by making serious allegations of breach of the Criminal Code, based on evidence it knew to be unreliable.

There is no credible evidence, to support the assertion by Mr Flavell that an appropriate observer could conclude *"gross inconsistency from the CMC which can only be explained by incompetence or bias and inappropriate conduct."*

I did not find evidence of a lack of understanding on commercial matters by the CMC or that such led to the CMC concocting a conspiracy when none existed. The real question was whether there was sufficient material to justify an enquiry. In my view, there was.

There is not sufficient credible evidence of inappropriate conduct by the CMC concerning its conduct about the declaration of pecuniary interests. There is evidence of a lack of thoroughness in respect of that issue.

In summary, the evidence and this investigation does not support the claim by Mr Flavell that *"the CMC and DETA have been led into error in this investigation by prejudging the acts of individuals and preliminary evidence without fully understanding the policy and commercial issues. In the process they have exposed the CMC to conducting poor process, demonstrable errors and bias. The fact it was a joint investigation with DETA, compromised the independence of the investigation from the outset and its findings cannot be considered reliable."*

In my view the investigation by the CMC and its report was appropriate.

APPENDIX B:
CMC REPORT TO THE COMMITTEE

CRIME AND MISCONDUCT COMMISSION

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Your Reference: c.21/11
Our Reference: AD-11-0754 / RH
Contact Officer: Rob Hutchings

29 November 2012

Mrs Liz Cunningham MP
Chair
Parliamentary Crime and Misconduct Committee
Parliament House
George St
BRISBANE 4000

Dear Mrs Cunningham

RE: MR SCOTT FLAVELL

Thank you for your letter, under the hand of Mr Hastie, of 21 November 2011, seeking a report regarding Scott Flavell's letter dated 27 July 2011 to the PCMC.

As you requested, in responding to the assertions by Mr Flavell, we have endeavoured to follow the format of his 14-page letter of complaint.

I apologise for the significant delay in response, however as you may be aware a number of the primary authors of the report in December 2008 entitled "*Public Duty, Private Interest – Issues in pre-separation conduct and post-separation employment for the Queensland public sector*" (report) have since left the Crime and Misconduct Commission (CMC). Although this has made the task of addressing Mr Flavell's wide-ranging complaint a significant one, it has also provided an opportunity to look at his complaint with 'fresh eyes'.

Overview of complaint and the CMC's Response

In 2007, the CMC commenced an investigation into allegations that Scott Flavell, former Director-General (DG) of the Department of Education and Training (DET), while in office, misused departmental information for his own benefit and failed to disclose a personal interest in a private training company.

That investigation, which was undertaken jointly with the Department of Education, Training and the Arts (DETA, the successor to DET), included holding public hearings. The report was in two main parts:

- Part one outlined the context of the investigation and examined the issues raised by the evidence
- Part two considered the actions taken by the CMC in accordance with its functions, on the evidence; and proposed certain legislative reforms.

Listed below are Mr Flavell's eight areas of complaint, with our response to each. In an attempt to keep the response as concise as possible, and to avoid repetition of factual material, we have prepared it on the assumption the reader has considered the report. In particular, you may be assisted by part one of the report (pages 1 to 22)

which sets out the evidence in support of the conclusion that Mr Flavell's actions, could, if proved prior to his resignation, have constituted official misconduct.

1. Alleged Conflict of Interest

Mr Flavell asserts the CMC has compromised the impartiality of its investigation by conducting it jointly with DETA, suggesting that DETA acted at the behest of the CMC in unlawfully terminating the contract with Careers Australia Group Pty Ltd (CAG, the holding company for a number of entities, and the organisation by which Mr Flavell was later employed) and requiring his resignation as CEO before rescinding the termination.

According to him, DETA's actions in "pre-emptively" terminating the CAG contract infect the CMC's investigation with a lack of impartiality and independence because it was a joint investigation. That logic is not easy to follow. Much of the complaint relates to dealings between DETA, CAG and CAG's legal advisors, which the CMC cannot comment on. He suggests that in becoming involved in the matter, the CMC was justifying the "extreme" action earlier taken by DETA to terminate the contract. He maintains he has rights of action against DETA, but has apparently not pursued them.

The investigation arose in the following way. On 29 May 2007 a member of the public phoned the CMC and made a complaint. On 25 June 2007 the CMC wrote to the complainant and advised that the complaint had been forwarded to DETA to deal with.

On 8 August 2007 the CMC received letter dated 6 August 2007 from the Director of Ethical Standards at DETA advising that the investigation to date substantially changed the nature of the issues involved and suggesting that the CMC might consider that it should play a more significant role in the investigation.

On 28 September 2007 the CMC's Misconduct Assessment Committee decided that the matter should be referred to Misconduct Investigations for a joint investigation by the CMC with DETA. That is a commonly employed strategy.

According to Mr Flavell, in October 2007 DETA terminated the contract with CAG. The termination was apparently rescinded when Mr Flavell resigned as CAG's CEO and sold his shares back to CAG[1]. The CMC had no involvement in the contractual arrangements between the State acting through DETA and CAG. DETA took its own advice and exercised rights it had against CAG. It is clear from the report that the CMC's focus was on what Mr Flavell did during through 2005 and up to October 2006, and the 2007 contractual issues with DETA were of historical interest only.

It is very difficult to understand how, as Mr Flavell asserts, the impartiality of the CMC's investigation could have been "compromised" by seeking the co-operation of DETA during the investigation. DETA's role was to provide access to records as required. This is a common practice and was employed in this case because of the technical nature of the information and documents to be considered. Utilising the assistance of the department concerned is neither surprising nor unusual having regard to Parliament's intention, expressed in the *Crime and Misconduct Act 2001*[2], that the CMC and agencies should work cooperatively to build capacity in units of public administration in preventing and *dealing with* misconduct.

The investigation was conducted by a team of CMC officers consisting of about 7-8 personnel, under the leadership of Supt Tony Cross. Contrary to Mr Flavell's assertion, the bulk of the investigating work was not undertaken by Dr Paul Collings. He was a DETA employee, attached to the CMC as a Senior Investigator, to explain the workings of User Choice and other training strategies and to participate in interviews as a TAFE expert. He was based at the CMC from December 2007. By far the largest part of the investigative work fell to the CMC's Forensic Computing Unit, in searching and sorting the data obtained from CAG. Lawyers, intelligence analysts and financial investigators were also heavily involved. Although Operation Proxy was nominally a joint investigation, operational

[1] See p.18 of the report.
[2] s. 34 CM Act

matters were not discussed with DETA at officer level. DETA can not in any sense be said to have *"conducted a significant part of the investigation on behalf of the CMC"*.

2. **Poor Investigative Procedure (subscription agreement)**
3. **Insufficient justification for the public hearing**

Mr Flavell's complaints numbered 2 and 3 are related, so it is convenient to deal with them together.

At the outset, it is trite to say that public reports and investigative hearings fulfil an important function. They are selectively used[3] to bring important matters of public interest to the public's attention. As you would appreciate, a decision to hold a public investigative hearing is not taken lightly. In appropriate cases, they also have significant preventative value.

The lead up to the decision to hold the public hearing

Investigations in Operation Proxy commenced in January 2008 and included extensive interrogation of Enhance and CAG computer records, telephone records and interviews with eight witnesses. That evidence established that Mr Flavell had:

- made 162 phone calls to Mr Wills (CAG's former Director and Chairman) on his departmental phone (not including private phone records) between 23 December 2004 and 1 November 2006;

- whilst DG, telephoned Hilton International College (a training organization experiencing financial difficulties) to ask whether the business was for sale;

- provided at least 9 documents to CAG, Mr Wills and Enhance Group Pty Ltd (Wills' existing company) which arguably were confidential and/or represented a substantial investment of departmental resources and were clearly the intellectual property of the department;

- assisted Mr Wills by preparing several planning documents for the future company – documents which drew heavily on existing TAFE and private sector intellectual property, without permission;

- inappropriately disclosed to Mr Wills that a particular registered training organization (RTO) was experiencing cash flow difficulties, prompting Wills and Sinclair to offer to negotiate to purchase it. Mr Flavell conceded his comments were 'indiscreet';

- provided a ministerial departmental briefing note to Mr Wills detailing the list of proposed recipients of User Choice Contract Funding for the RTO, and the value of each contract. The following day the Minister signed the Briefing Note approving the funding;

- prepared a business plan for CAG, proposing a strategy by which 'we' could damage TAFE's viability. Mr Flavell suggested the only real competitor if a Mining Services Training RTO were to be established in Central Qld would be Central Qld TAFE. The plan contemplated "poaching" the Manager of the TAFE, which would result in its "collapse".

Mr Flavell says (page 7) that there was insufficient justification for holding the public hearing, and the evidence later adduced demonstrates that. Using his dot points, he says there is "no evidence" that he:

- **Disclosed confidential information**: One need look no further than his role in the disclosure of the RTO user choice funding allocations[4] to demonstrate that there is ample evidence of disclosure of confidential information;

[3] To illustrate, since 1992, only 25 public reports on matters involving public hearings have been published by the CMC or its predecessor - an average of one a year.

[4] See pp. 12-13 of the report

- **Engaged in the negotiation for purchase of RTOs which received funding that he had approved**: This is disingenuous, as there is ample documentary evidence that he advised Mr Wills and identified which RTOs CAG should approach (Mr Wills made no approaches not suggested by Flavell) and allowed his name and position to be invoked in those negotiations;

- **Held a personal private interest in CAG:** In light of the evidence (discussed below), it is disingenuous in the extreme for Mr Flavell to now distance himself from the subscription agreement. That document spoke for itself. The agreement provided that the subscriber and the other investors would invest $500,000 as initial funding for the establishment of the company. 50,000,000 shares at $0.01 per share would be issued. Mr Flavell (and his wife Loretta Boman) would subscribe (pay $102,040.82) for 10,204,082 shares.

The subscription agreement, and Mr Flavell's evidence about it

Mr Flavell signed a copy of the Subscription Agreement as a Subscriber. A copy of it is enclosed with this letter. Recital B clearly records that the Subscriber (Flavell and Boman together) agreed to the investment on 17 June 2006, well before Flavell left the public service.

When given the opportunity to comment on the Agreement at the hearing, Mr Flavell said that the information in Recitals A and B of that subscription agreement he signed was false. He said that he "...was careless..", he "...didn't read the document in any detail..." and that he "...didn't reflect on it...".[5]

Other CAG officers also claimed that the date was false. Mr Wills claimed that in choosing a completely arbitrary date, he chose his daughter's birthday. However, he apparently recalled this date incorrectly - her drivers' licence records her birthday as 18 June. Although it is possible the date was false, it would seem strange that a group of experienced businessmen such as Mr Rowe (another subscriber) and Mr Wills would set up a company (in August/September 2006) and start employing staff without ever having discussed the ownership and the future prospects of the company.

Recital A clearly records that these discussions occurred. Mr Flavell himself states (on p.9 of this submission) that "*...In the end I decided not to become a standard employee but invest my own money in my own company with other investors and receive a salary considerably lower than my public service salary.*" The subscription agreement, on its face, is not inconsistent with this statement.

Mr Flavell contends the agreement was not 'checked for accuracy' before serious conclusions were drawn about his conduct, and the decision taken to hold a public hearing. Although the actual date of the agreement remains unresolved, the CMC's investigators were faced with a subscription agreement which on its face was prepared by lawyers, executed by the Directors and clearly identified Mr Flavell as a subscriber, at a time he was Director-General – a prima facie conflict of duty and interest.

Mr Flavell's evidence that his first discussion with Mr Wills and others regarding the investment and the value of it occurred in late September 2006 (after he had resigned as DG) can much more readily be interpreted in a way contrary to the propositions he would advance. His self-serving explanations are inconsistent with the more likely situation that the intention to share the financial establishment and rewards of the venture was of long standing, and had been known to the investors, including Mr Flavell from discussions in early 2006.

Without descending to the particular evidence, it is reasonably open to conclude that the prospect of buying shares in CAG and the potential windfall profit was a factor in Mr Flavell's decision to leave DET. The formal letter of offer to Mr Flavell from CAG was dated 25 August 2006. It is quite inconceivable in the light of his own statement that he accepted this offer without previously discussing the share arrangements with Wills.

The *Chronology* at pages 4 and 5 of the Report sets out some of the steps taken between September 2005 and September 2006 to develop the business which became Careers Australia Group Pty Ltd.

[5] see CMC Public Hearing on 17 July 2008 at page 279 to 280

The Report at p.17 deals with the evidence adduced during the hearing. Apart from the use of the 17th for the date in June 2006 in Recital B, it is more likely than not that the information in Recitals A and B is correct. Although the likelihood is strong that the agreement correctly records history, the report accepts that there may have been no meeting. The long-standing intent to set up an arrangement for personal benefit is the relevant factor.

The decision to hold a public investigative hearing

The CMC's decision to hold a public investigative hearing was made after consideration of a submission from its Misconduct division dated 14 May 2008. The *decision*, in a redacted form, became exhibit H1 in the hearing on 14 July 2008 to establish that the requirements of s.177(2)(c) of the Act had been met (copy **enclosed**). Mr Flavell has a copy of that document. A copy of the unredacted decision, including the *submission*, is also **enclosed** for your information. Mr Flavell does not have that, and it should remain confidential.

The submission is a comprehensive document. It had a number of attachments:

Attachment A: Observations to the Commission – Operation Proxy
Attachment B: Issues to consider in deciding whether hearings are to be open to the public
Attachment C: Synopsis of evidence of proposed witnesses

The submission examines the evidence in support of the allegations, and the issues to be considered in resolving to hold a public hearing. The document largely speaks for itself. It is evidence that the CMC took consideration of the public interest very seriously[6]. At this point, it is important to note that the Subscription Agreement focussed on by Mr Flavell in his complaint was only one of a significant number of factors underpinning the recommendation for a public hearing. Other factors were:

- Being a former Director-General of a State government department and the allegations related to an abuse of that position, in particular the conflict between his duty to his employer and his private interests
- His role, while Director-General, in the selection of possible targets for acquisition by CAG
- His role in inducing DET personnel to join CAG, thereby securing valuable industry expertise and simultaneously depriving his competition (ie his employer) of that expertise
- His role, while Director-General, in developing key CAG documents, utilizing intellectual property of the department.

It is clear from the submission that appropriate consideration was given to the issue of whether closing the hearing would have been contrary to the public interest. The CMC was acutely aware of the significance of a decision to hold a hearing in public. In this case significant consideration was given to the potential for the registered training organisations to suffer reputational and financial loss (student places). As a result, closed hearings were held where possible and appropriate. The evidence concerning Mr Flavell, however, put him in a different category. As the former Director-General, the Commission considered the public interest demanded a public hearing.

In a letter to the CMC dated 30 May 2008 Mr Flavell requested, pursuant to s. 32 of the *Judicial Review Act 1991*, a statement of reasons for the CMC's decision to hold a public hearing. It is clear there is no requirement under the relevant legislation to provide those reasons. A copy of the CMC's letter dated 16 June 2008 to Scott Flavell in reply to his letter dated 30 May is **enclosed** with this letter. No judicial review ever occurred.

In summary, in light of the subscription agreement, and the evidence of dealings between Mr Flavell and the other investors throughout 2006, it was reasonable for the CMC to conclude that regardless of the date of the subscription agreement, the arrangements in it were under discussion no later than mid-August, and quite probably somewhat earlier. Mr Flavell therefore had a reasonable expectation of profit from his dealings with CAG, which makes it for him a very real conflict of interest, which he at

[5] See generally s.34(d) and specifically s.177(2)(c) CM Act.

no time declared. Such a scenario would lend weight to a conclusion that a public hearing was justified, rather than militate against it.

In his complaint on this point, Mr Flavell asserts that CMC officers exhibited inappropriate conduct, described as follows:

> *"...The CMC/DETA investigation relied heavily on the existence of a Shareholders Agreement which contained an incorrect date.* ***If the CMC verified the accuracy of this document prior to consideration by the Commission,*** *the substantive allegations of misconduct would have proven to have no basis...".*
>
> (emphasis added)

What in fact occurred was that the CMC did seek to verify the arrangements with Enhance/CAG by way of interviews. Mr Wills did not raise the issue during his interview. When Mr Flavell was interviewed on 8 November 2007, the CMC started with the memo in which he suggested that if a manager could be poached from the Rockhampton TAFE, it would essentially collapse. Mr Flavell immediately consulted with his lawyer, Ross Perrett, and the interview ended.

The public hearing was an opportunity for Mr Flavell to clear up any misunderstandings or inaccuracies in the results of the investigations undertaken to that point. Instead, the tenor of the report would suggest that his attempts to explain away difficult aspects of his involvement with CAG were ultimately seen as evasive and implausible.

Complaints about pre- and post-employment separation

Mr Flavell's complaints in this regard are that:

- The discussion in the report on pre- and post employment separation are not relevant to his situation, and the recommendation would prevent anyone doing the same now;
- His intention to pursue other opportunities following departure from the public service was unique, and in any event, he was not engaged as a lobbyist – so the CMC's recommendations in relation a lobbyists' Code of Conduct were irrelevant.

In the CMC's submission, all recommendations fell directly out of Mr Flavell's circumstances. Mr Flavell appears to misapprehend the focus of the report and its recommendation.

Put simply, Mr Flavell:

- Created a situation where his public duty and his private interest conflicted;
- Failed to manage that conflict;
- Improperly disclosed and used official departmental resources;
- Departed the public service, thereby avoiding any disciplinary consequences;
- Narrowly avoided prosecution for a criminal offence under the existing Code provisions;
- Clearly intended to utilize his government knowledge and contacts to further his personal interest as a CEO and major shareholder of CAG.

Faced with these circumstances, the CMC recommended reform of the requirements and obligations on senior public servants.

Recommendation 1 (review of exit processes to preserve official information) arose directly out of the actions of Mr Flavell (and other DETA employees who were subsequently recruited to CAG) in failing to maintain security over official information.

Recommendation 2 (introduction of new Criminal Code offence of misconduct in public office) was made to address the deficiencies on the *Code* highlighted by Mr Flavell's conduct. It was proposed that the offence apply where a public officer deliberately acts in a manner contrary to the duties or functions of the public office in a manner which is an abuse of the trust placed in the officer. An intent to receive an advantage or cause damage would clearly bring the Act within the ambit of the offence.

Importantly, the new offence applies to former, as well as current, public officers – a direct response to Mr Flavell's situation.

Recommendation 5 resulted in a comprehensive suite of reforms, most relevantly including amendments to the Queensland Public Sector Code of Conduct, and the enactment of the *Integrity Act 2009* and the (now superseded) *Queensland Contact with Lobbyists Code*. The related *Post-Separation Employment Provisions policy*[7] later assisted in interpreting the *Integrity Act* requirements. So far as Mr Flavell is concerned, the essential issue addressed by these reforms was the inappropriate use by senior government representatives of confidential information gained during government employment for a private commercial benefit both pre-separation (where it is a conflict of interest) and post-separation – not lobbying *per se*. Both these potential situations applied to Mr Flavell.

4. Assessment of Confidential information

Mr Flavell's complaint is that the CMC accepted as correct an inapt classification of departmental documents he provided to those outside government. According to him, the significance of this is that any criminal charge which might have flowed from such an inaccurate classification would have resulted in a miscarriage of justice. He says that the CMC's investigatory process was flawed in accepting a relatively junior officer's assessment of the confidentiality of those documents, because "subsequent evidence provided at the hearing demonstrated their [sic] was no confidentiality associated with these documents...".

The assessment of confidentiality was undertaken by DETA at the CMC's request. Such a step is appropriate – they were DETA's documents. The CMC did indeed have some reservations about the reliability of it. Those reservations were recorded in appropriate qualifications in the report.[8] That issue however would have been resolved by a trial court if a criminal charge had been preferred – which never happened.

What Mr Flavell appears to be suggesting is that a charge pursuant to s.85 *Code* (Disclosure of Official Secrets) was never "on the cards". The CMC took a different view.

Over a long time Mr Flavell provided an extraordinary amount of DET material to Vernon Wills. It was not the case that they were inadvertent or unplanned disclosures. It is clear from the words used by Mr Flavell in his emails that he was not just acting in his capacity as Director-General of the department. It is clear that he saw himself as part of the business which Vernon Wills was working to establish. During the investigation Mr Flavell said that the use of the word "we" when communicating with Wills was "sloppy use of English". That opportunistic explanation is contrary to the tenor of his communications with Vernon Wills.

The evidence of Mr Peter King, an employee of Hilton International College, in his statement dated 21 April 2008, was that he returned a phone call from Mr Flavell in or around October 2005 when Mr Flavell said that he had some people he was involved with who were interested in possible joint ventures with english language colleges and the possible sale of such colleges and that Mr Flavell asked whether Glynne Hilton was interested in a possible sale. That evidence shows that in making that enquiry Scott Flavell was not acting in his capacity as Director-General of the department. Mr King also gave that evidence at the public hearing on 14 July 2008.

When one views the report's findings objectively, it is hardly surprising that having considered the evidence obtained before and during the public hearing, the CMC reached the conclusion that the gravity of the disclosures by Mr Flavell warranted consideration by the Director of Public Prosecutions. In accordance with the usual course, after the public hearing was complete, it reported to the DPP in light of all the evidence pursuant to s.49 of the CM Act.

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[7] http://www.psc.qld.gov.au/library/document/policy/w-o-g-post-separation-provisions.pdf

[8] See, for example, pages 10 and 21.

That the DPP took a different view on the likely prospects of securing a conviction does not mean it was inappropriate to refer the matter. Legal opinion can differ, and the anachronistic language of the section and its lack of use since enactment made definitive judgments difficult.

While not wanting to put words in Mr Flavell's mouth, his complaint appears to proceed on the basis that the public hearing was cognate with a trial of the issues. That, of course, is not the purpose of any investigative hearing. It was but one aspect of a broader investigation which in turn informed the final report.

5. Inconsistent position with other public inquiries

The CMC report of December 2010 *Report on an investigation into the alleged misuse of public monies, and a former ministerial adviser* (Tutt report) related to a CMC misconduct investigation which centred upon two issues:

- the circumstances surrounding the department awarding the grant of $4.2 million to the Queensland Rugby Union (QRU); and
- the circumstances surrounding the use to which some of the grant monies were put by the QRU, including the transfer of $200 000 to the University of Queensland Rugby Academy.

That misconduct investigation was not an investigation into an allegation relating to the disclosure of confidential information. One of the allegations made against Scott Flavell was that he disclosed "confidential information to an entity now known as Careers Australia Group Pty Ltd".

In the Tutt matter, reference was made in Counsel Assisting's opening to the fact that the announcement of the grant was made prior to approval by the Executive Council[9], and that Executive Council approval did not occur for some weeks thereafter. No particular comment is made about that.

At day 1, page 22, Ms Spence was questioned as follows:

> *CA: The Commission has been told that you publicly announced the grant at the Reds ball on the Friday evening; is that correct?*
> *W: That's correct.*
> *CA: That was notwithstanding that the grant still had to receive the approval of the Executive Council.*
> *W: That's correct.*
> *CA: Is that –*
> *W: It also says in that letter that the grant is still subject to a funding agreement being in place with the department.*
> *CA: What I want to know is: Was there any constraints upon you in making announcements such as this in respect of grants that still required Executive Council approval, or is it something that in your discretion you could do?*
> *W: I believe I could.*
> *CA: The risk of embarrassment fell to you, I suppose, if Executive Council ultimately knocked back the grant?*
> *W: Sure.*

The matter was not again traversed until closing submissions. The passage to which Mr Flavell may be referring may come from the submissions of Counsel Assisting[10]:

> "Ms Spence has said she was satisfied as to the quality of the ministerial briefing. Opinions may vary in that regard, but the content of the document will speak for itself.
>
> What is plain is that Mr Matheson had gone to considerable effort to do whatever needed to be done so that the minister might make it to the ball on time. Again, there is no impropriety in attaching urgency to the matter so that the minister, for example, could take advantage of the opportunity to announce her funding decision. It may be a matter for comment in other places, but it does not give rise to official misconduct.

[9] Transcript, pages 7-8 of Day 1
[10] Transcript, page 467 on Wednesday 16 December 2009

> Similarly, the fact that the grant was announced before Executive Council approval and seemingly before the Premier had been made aware of it, might also attract comment, but it is not official misconduct."
>
> (emphasis added)

The Tutt report records that former Minister Spence made a press announcement about the grant notwithstanding that it was yet to be approved by the Governor in Council. The situations are quite different. The position of a Minister (Spence) is rather different from that of a Director-General in so far as the release of confidential information is concerned. There is also the significant difference that Mr Flavell, on the evidence, was exercising his discretion to release for personal gain – and in light of his previous dealings with CAG, his discretion was effectively non-existent. There was no suggestion in the Tutt matter the former Minister had personal gain as her motive.

6. Errors in commercial analysis

Many of the comments made in respect of issue 2 apply here.

Mr Flavell maintains he was interested in the CAG venture "along with several other employment opportunities". He says it was "only rational that I plan for future employment opportunities because my family depended on my income". He therefore "decided not to become a standard employee but invest my own money in my own company with other investors and receive a salary considerably lower than my public service salary".

It is difficult to accept that Mr Flavell would have taken such a significant drop in pay if there was no agreed arrangement regarding shareholding. There were certainly discussions very soon after he left the public service. A *Subscription Agreement* of 9 November 2006 was located. The first *Information Memorandum* (early stage of a company float) is dated 20 November 2006. Share list prices for the float vary in different versions of the document from $0.10c to $1.00, and the number of shares to be issued varies from 6 million to 20 million. It is hard to maintain an argument that a float had not been contemplated. Mr Flavell stood to make substantial personal financial gain from the public listing of CAG – he held in excess of 10 million shares, purchased at one cent each.

The CMC makes no apologies for pursuing the issue of the float of CAG, despite it being in its infancy. The CMC's focus in Operation Proxy was not to rationalise the likelihood or imminency of a successful public listing of CAG. Its functions include identifying and, where appropriate, publicly investigating cases where confidential government information has been applied for personal gain.

7. Declaration of pecuniary interests

The 2009 CMC submission to the government's Integrity and Accountability Review public consultation process can be found at http://premiers.qld.gov.au/community-issues/open-transparent-gov/submissions/submissions-101-120/cmc.aspx.

During Mr Flavell's employment, the requirement (under s.55 of the *Public Service Act 1996*, Public Service Commission (PSC) *Directive 1/96,* and the *Ministerial Handbook*) was that declarations must be made within a month of appointment and were to be held by the Minister during the CEO's tenure, and then sent to the PSC for permanent storage. The PSC wrote to Mr Flavell on 3 July 2002, 27 October 2003, and 24 February 2004 (upon his various appointments) reminding him of this obligation. Copies of the letters are on file at PSC, but no declarations by him are recorded.

The Ministerial Services unit at the Department of the Premier and Cabinet examined the diaries of former Minister Barton (by then retired) and found no mention of a declaration by Mr Flavell. Mr Barton was interviewed on 27 May 2008, by commission officers Danny Boyle and Sidonie Wood and had no useful recollection.

At his truncated interview (with his solicitor) on 8 November 2007 Mr Flavell stated that he "... may have made a declaration of interests when he started at the Department of Innovation, Information Economy, Sport and Recreation Queensland but [has made] no notification of changes since".

The Integrity Commissioner (then Gary Crooke QC) advised in writing that no person from DET had sought his advice from his appointment on 1 July 2004 to 23 August 2007.

According to the best evidence we can locate, the sentence in the CMC's submission to the accountability review "removed for legal reasons" was "...*In evidence, the officer indicated that he had not made a declaration*". The corporate knowledge of why this was done is limited, but I understand the sentence removed reflected the CMC's understanding at the time – namely, that at the public CMC hearing, Mr Flavell could not recall having made one. Both the Minister's office, and the Public Service Commission had conducted a search of their files and had been unable to find any declaration of interests by Mr Flavell, including upon his personal file there. By the time of his complaint about the CMC's submission to the review, he had apparently located a declaration from some years prior.

The CMC did not, so far as the corporate memory can recall, ask whoever was the DIIESRQ Minister in 2002 to conduct a search, but perhaps this should have been done. The CMC has not seen the earlier declaration, so I cannot comment on it. However, in my view the steps taken, outlined above, reveal that reasonable efforts went into establishing whether a declaration was made.

8. Biased analysis

Despite the evidence adduced at the hearing, Mr Flavell asserts that the report contains numerous "errors, inconsistencies and statements not supported by evidence...".

Attempting to address such a vague and unspecific assertion would be futile. If however you require clarification of anything contained in the report which, on its face, is not clear, I would be happy to assist.

Reform proposals

Mr Flavell's proposals for reform would require extensive amendment to long-standing legislative provisions. They appear to be designed to suit his own idiosyncratic view of what occurred. I am content to address any particular proposal you feel may have merit, but otherwise it would seem that in light of the recent Three Year Review, any detailed response would be unproductive.

Conclusion

Mr Flavell's complaint is supported by selective assertions and evidence, designed to put his conduct in a favourable light. When his conduct is viewed in its entirety, a vastly different picture emerges. This complaint might readily be regarded as an attempt to re-write history, without any objectivity. On any view, the contents of the report demonstrate inappropriate conduct on his part.

Mr Flavell's arguments appear to revolve around his belief, stated on page 1 of his letter of 27 July 2011, that "*the allegations against me [had] no substance*". That conclusion is simply misconceived. In reality, the report concludes that he "... *breached his duty to act in the public interest...*".[11]

His misconception is underlined by the adoption by government of all the report's reform recommendations. The legislature grasped the opportunity to conduct a wide-ranging review of integrity and accountability in Queensland. It promptly enacted into law the new offence of misconduct in relation to public office in s.92A of the *Code*[12], and reformed the obligations on lobbyists and senior government officials.

[11] Page viii

[12] As recommended in the Report in chapter 5.

In spite of the objective evidence obtained during Operation Proxy, Mr Flavell obviously maintains a passionate belief in his innocence. His complaint is replete with self-serving explanations of the events of 2005-2006, which portray in every case the most favourable interpretation of what did, or might, have occurred. Unfortunately for him, many of his assertions (the only support for which is contained in his own testimony), are contrary to the evidence which in a number of aspects is damaging and incontrovertible.

Many of Mr Flavell's arguments are premised upon the mistaken belief that because his actions did not result in a criminal charge, they were therefore not *wrongful*. He seems to believe that because he was not charged, he has been "*..exonerated...*"[13]. In the CMC's view, no reasonable person could sensibly reach that conclusion. The fact that Mr Flavell had left the public service placed him (at that time) beyond the reach of disciplinary action; the state of the (then) criminal law allowed him to narrowly avoid a serious criminal charge. He obviously feels victimised. Some might consider he has been extremely fortunate.

We remain willing to address any aspect on which you may require clarification. If you would care to discuss the matter, please do not hesitate to contact me or Rob Hutchings, General Counsel, on [redacted].

Yours faithfully

ROSS MARTIN SC
Chairperson

[13] Letter from Scott Flavell to Chair, PCMC, 14 November 2011

COPY

SUBMISSION TO THE CRIME AND MISCONDUCT COMMISSION

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Meeting Date	16/05/08	Supporting Documentation	Yes	File Number	MI-08-0069

TOPIC Operation Proxy – Whether to hold public hearings or closed hearings

BACKGROUND

(a) The primary allegations investigated to date are that between 7 September 2005 and 15 September 2006 Scott Cameron Flavell, while Director-General of the Department of Education and Training (DET):

i. disclosed confidential information to an entity now known as Careers Australia Group Pty Ltd (CAG);

ii. actively engaged in the negotiation for the purchase of Registered Training Organisations which received significant funding from the Queensland Government via User Choice Contracts that Mr Flavell approved; and

iii. held a personal/private interest in CAG

and thereby engaged in official misconduct (pursuant to sections 85, 89, 92, 204 or 442B of the *Criminal Code*).

(b) The investigation gave rise to Operation Proxy, which commenced in January 2008. Operation Proxy has proceeded by way of co-operative investigation with the Department of Education, Training and the Arts (DETA) (formerly DET).

ISSUES

The authorisation of the Commission (which has been delegated to the Chairperson) is required to hold an investigative hearing – section 176, *Crime and Misconduct Act 2001* ('the Act"). At issue is whether the Commission:

(a) Considers that closing the hearing to the public would be unfair to a person or contrary to the public interest – section 177(2)(c)(i); and

(b) Approves that the hearing be a public hearing – section 177(2)(c)(ii).

The decision about whether a hearing should be a public hearing must not be delegated, and is therefore a matter for the Commission: section 177(3) of the Act.

DRAFT RESOLUTION

The Commission resolves as follows:

1. Pursuant to section 176 of the *Crime and Misconduct Act 2001* ("the Act"), the Commission authorises the holding of a hearing in relation to the complaint concerning the alleged official misconduct of Scott Cameron Flavell at a time that he was Director-General of the Department of Education and Training, and

Author	A/C Misconduct	Resolution Approved
Daniel Boyle 14/5/2008	14/5/08	15/5

Operation Proxy Exhibit H1

associated official misconduct by any other person (Operation Proxy).

2. Pursuant to section 177(2)(c) of the Act, the Commission considers that closing the hearing would be contrary to the public interest and therefore the Commission approves that the hearing be a public hearing.

3. That the Chairperson determine persons required to attend to give evidence at the public hearing, and any closed hearings held.

30 May 2008

SCOTT C FLAVELL

[redacted]

[redacted]

Mr Daniel Boyle
Acting Director -Misconduct Investigations
Crime and Misconduct Commission
GPO Box 3123
Brisbane Qld 4001

Private and confidential

Dear Mr Boyle,

Scott Cameron Flavell - Public Hearing

I refer to your letter dated 28 May 2008 to my solicitor, Mr Ross Perrett, enclosing an Attendance Notice issued under s.82 of the *Crime and Misconduct Act 2001*.

In your letter you advised that the Commission had decided that "*the hearing referred to in Mr Flavell's Attendance Notice, will be a public hearing.*"

I understand that the Commission's decision to hold a public hearing was made under s.177 of the *Crime and Misconduct Act 2001* ("the Act"). Relevantly, s.177(1) of the Act provides that generally, a hearing will not be open to the public. Subsection 177(2) then provides the Commission with the discretion to make a decision to hold a Public Hearing in certain circumstances.

It is evident from your letter of 28 May 2008 that the Commission has, within the last week, made a decision under s.177 of the Act that the hearing referred to in the Attendance Notice will be a Public Hearing.

Pursuant to s.32 of the *Judicial Review Act 1991*("JR Act") I now request a Statement of Reasons for the Commission's decision to hold a Public Hearing in relation to the hearing scheduled to commence on Monday 14 July 2008 in respect of which I have been served with an Attendance Notice.

I note that in accordance with s.31 and Schedule 2 of the JR Act, there are certain classes of decisions made by the Commission in respect of which the Commission is not required to provide reasons under Part 4 of the JR Act. Relevantly, the classes of decisions for which the Commission is not required to provide reasons under Part 4 of the JR Act are set out in ss.3 to 5 of Schedule 2 of the JR Act, namely:

> **"3 Misconduct etc.**
>
> (1) Decisions in relation to the investigation of persons for misconduct under the *Crime and Misconduct Act 2001*.

(2) Decisions in relation to the initiation of matters in the original jurisdiction of a Misconduct Tribunal constituted under the *Misconduct Tribunals Act 1997*.

4 Intelligence functions of Crime and Misconduct Commission

Decisions made by the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001* in the performance of its functions under chapter 2, part 4, division 28 of that Act.

5 Certain decisions under Crime and Misconduct Act 2001

Decisions made under the *Crime and Misconduct Act 2001*, section 56(a), 73 or 83 or chapter 3, parts 6 to 89 by the commission, or a commission officer, under that Act."

It is submitted that the Commission's decision to hold a Public Hearing does not fall within any of the classes of decisions set out in ss.3 to 5 of Schedule 2 of the JR Act. In relation to any suggestion that the Commission's decision to hold a Public Hearing is a "decision in relation to the investigation of persons for misconduct under the *Crime and Misconduct Act 2001*, I would note the following:

- The Commission's decision to hold a public hearing should be properly characterised as a decision in relation to the nature of the hearing to be held (ie, a public hearing as distinct from a closed hearing). With respect, an investigation of a person for alleged official misconduct is not affected by whether the hearing takes place in a public or closed hearing. Such a decision is not capable of being properly characterised as a "*decision in relation to the investigation of persons for misconduct...*".

- Section 5 of Schedule 2 of the JR Act, specifically excludes decisions made under certain provisions of the Act from the operation of Part 4 of the JR Act. The exclusion of decisions made under specific sections of the Act from the operation of Part 4 of the JR Act indicates that the Parliament gave specific consideration to which classes of decisions made by the Commission should be excluded from the operation of Part 4 of the JR Act. If the legislative intention had been to exclude decisions made under s.177 of the Act from Part 4 of the JR Act, then such an exclusion would have clearly been included in s.5 of Schedule 2 of the JR Act.

- Finally, even if there is some ambiguity as to whether a decision by the Commission to hold a public hearing is within the class of decisions covered by s.3 of Schedule 2 of the JR Act, the accepted approach to the interpretation of the JR Act, as a piece of reformist legislation, is to interpret the legislation in a manner that is consistent with the legislation's objectives. This means that one is to read the JR Act in a manner that favours the relevant reforms set out in the JR Act. On this basis, even if there is any legal uncertainty regarding the meaning of s.3(1) of Schedule 2 of the JR Act, it should be interpreted and read in a manner that favours the provision of a Statement of Reasons.

I look forward to receiving the Commission's Statement of Reasons in relation to the decision to hold a Public Hearing.

Yours faithfully

SCOTT FLAVELL

A reply is to be prepared by:_____
(A copy of the reply is to be forwarded to Complaints Registry.)
Suggested reply:

☐ Acknowledgement (letter 1)
('unlikely CMC will contact you further')

☐ Acknowledgement (letter 2)
('CMC will contact you in due course')

Registry:

☐ Acknowledgement receipt

☑ No reply required

Letter forwarded ... for preparation of reply.
by: ... Date: ...

① MI-08-0669

② TONY CROSS

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OFFICE OF THE
Assistant
Commissioner
Misconduct

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140 Creek St
(Cnr Creek and Adelaide)
Brisbane, Queensland

CRIME AND MISCONDUCT COMMISSION

QUEENSLAND

(27)

cmc/08/08301

RECFIND

Our Reference: MI-08-0069 / DCB-DM
Contact Officer: Daniel Boyle

16 June 2008

Mr Scott Flavell
[redacted]

Dear Mr Flavell

RE: YOUR REQUEST FOR A STATEMENT OF REASONS

Thank you for your letter dated 30 May 2008 received by email on 2 June 2008.

The Commission is not required to provide you with a Statement of Reasons pursuant to the *Judicial Review Act 1991* in relation to its resolution to hold a public hearing. While reasons for the resolution will not be provided to you, I make the following comments.

Before making the resolution to hold a public hearing, the Commission was required to consider whether closing the hearing would be unfair to a person or contrary to the public interest.

The Commission must, at all times, act independently, impartially and fairly having regard to the purposes of the *Crime and Misconduct Act 2001* (C&M Act) and the importance of protecting the public interest.

In relation to its misconduct function, the Commission has a statutory function to raise standards of integrity and conduct in units of public administration and to ensure a complaint about misconduct is dealt with in an appropriate way, having regard to the principles set out in section 34 of the C&M Act. The public interest principle in section 34 specifies the Commission's overriding responsibility to promote public confidence in the integrity of units of public administration and, if misconduct does happen within a unit of public administration, in the way it is dealt with.

It would be contrary to the public interest to close this hearing because this investigation is examining matters which go to the heart of good and effective governance of the State of Queensland.

Further, the allegations which are the subject of this investigation have been in the public arena for many months. A public hearing will provide you with the opportunity to respond to any such allegations.

Yours sincerely

DANIEL BOYLE
Acting Director
Misconduct Investigations

APPENDIX C:
CMC RESPONSE TO THE INDEPENDENT ADVISORY PANEL REPORT

Our Reference: AD-11-0754 / RRH
Contact Officer: Rob Hutchings

16 May 2013

Mrs Liz Cunningham MP
Chair
Parliamentary Crime and Misconduct Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mrs Cunningham

RE: RESPONSE TO CALLINAN REPORT – FLAVELL SUBMISSION

I refer to the email received from your Acting Research Director yesterday, requesting the Crime and Misconduct Commission (CMC) to urgently respond, by midday today, to the comments in the Advisory Panel's report regarding the submission from Scott Flavell.

The Committee has received a report which details the CMC's response to Mr Flavell's complaint of 27 July 2011. As is the case with the vast majority of submissions made to the Review, the CMC has not seen Mr Flavell's. A comprehensive response is therefore impossible, but the excerpts of the submission recited in the Report appear to follow a common pattern of complaint historically adopted by Mr Flavell. Those parts of his submission which are repetitive of previous complaints have already been addressed in the CMC's report to the Committee of 29 November 2012, and I need not repeat them.

The apparent acceptance by the Panel of a number of Mr Flavell's assertions, without consultation with the CMC, is obviously of significant concern in the context of a public report. It is of particular concern that the Panel do not appear, from the comments made, to have considered the CMC's public report on Mr Flavell's conduct.

- ***"Allegations against [Mr Flavell] which were found to have no substance"***

This issue was dealt with in the CMC's report of 29 November 2012. It appears to be a reference to the fact that criminal charges against him were ultimately not preferred by the Director of Public Prosecutions. That is separate from, and irrelevant to the finding, in the CMC's public report, that he breached his duty, as Director-General, to act in the public interest.

- ***"Serious deficiencies in the investigation to which [Mr Flavell] was subjected"***

I cannot comment on the asserted deficiencies as the CMC has not received the submission, but if they reflect those contained in his complaint to the committee, these have been addressed.

- ***Abuse of the public hearing power***

The committee has been provided with the submission to the Commission dated 14 May 2008 which informed the decision to hold a public hearing pursuant to s.176 of the *Crime and Misconduct Act 2001* (CM Act). The CMC's response is detailed in the report to the Committee. In my view, the submission is evidence that the Commission was aware of the potential reputational damage to Mr Flavell, and exercised this significant power responsibly. It is not appropriate to "second guess" such decisions taken in accordance with legislative authority.

- ***"no relevant recommendations were ever made"***

The CMC's position is that the recommendations contained in Chapters 4, 5 and 6 of the public report were relevant to and arose out of the Flavell case study.

- ***"we fail to see why a public hearing would serve the purpose claimed by the CMC in this instance"***

It is unclear what is meant by "the purpose claimed by the CMC in this instance". If it is the asserted purpose of pursuing a policy agenda which had no relevance to Mr Flavell's circumstances, the CMC rejects this. It is disappointing the language used by the Panel attributes to the CMC a position which appears to be that advanced by Mr Flavell.

- ***"Reference is made in the Committee's report to the insertion of a new offence of misconduct in public office into the Criminal Code, but there is no suggestion that such amendment was in any way specifically a result of the Flavell investigation"***

This is incorrect. We have attached the relevant Hansard extract which explains the former Premier's motivation in introducing the amendment of the *Code*.

- ***The CMC's "enthusiasm" to convene public hearings and procedural fairness***

Since 1992, only 25 public reports on matters involving public hearings have been published by the CMC or its predecessor – an average of one a year. Consistent with the CMC's usual practice, procedural fairness was afforded to Mr Flavell. In 2007 Mr Flavell terminated his interview when the first documentary evidence was produced. The CMC provided Mr Flavell's lawyer with the allegations against him as a matter of natural justice. Before the public Inquiry Mr Flavell and his lawyer attended the CMC and was provided the opportunity to view the evidence. He then gave evidence at the public hearings and was legally represented throughout. His Senior Counsel's comprehensive submissions were considered prior to publication of the public report.

- ***Wrong prioritisation of the CMC's focus – the investigation "seems to have had no productive result and was never likely to do so"***

The fact that the government quickly enacted s.92A suggests, in my view, that the decision to undertake the investigation was reflective of the public interest. The legislature conducted reform of integrity and accountability in Queensland. The comments by the Panel reveal a limited understanding of the outcomes flowing from the investigation into Mr Flavell.

<u>Matters of concern generally</u>

The CMC is concerned by the unjustified conclusions made and assertions drawn about it by the Panel. No consultation regarding the Panel's views on the Flavell matters was ever undertaken with the CMC, before the Panel's report was published.

The error regarding the catalyst for the enactment of s.92A *Code* is a case in point. There are other factual and legal errors contained elsewhere in the report. The CMC would be able to separately detail these to the Committee, if it would assist.

Yours sincerely

WARREN STRANGE
Acting Chairperson