Report on a complaint by
Mr Darren Hall

Report No. 99, 55th Parliament
Parliamentary Crime and Corruption
Committee
November 2016
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- Mr Ian Rickuss MP, Member for Lockyer

Staff:
- Ms Jo Mathers, Acting Research Director
- Mrs Ciara Furlong, Principal Research Officer
- Ms Amanda Parker, Executive Assistant

Contact details:
Parliamentary Crime and Corruption Committee
Parliament House
George Street
Brisbane Qld 4000
Telephone: +61 7 3553 6606
Email: pccc@parliament.qld.gov.au
Web: www.parliament.qld.gov.au/pccc
Subscribe: www.parliament.qld.gov.au/subscribe
Report on a complaint by Mr Darren Hall

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Chair’s Foreword

This Report presents a summary of the Parliamentary Crime and Corruption Committee’s consideration of a complaint made by Mr Darren Hall.

The Committee referred the complaint to the Parliamentary Crime and Corruption Commissioner (the Parliamentary Commissioner). Upon consideration of the Parliamentary Commissioner’s report, the Committee determined to bring this matter to the attention of the House. The Committee considered this was particularly important, given the complaint concerned a report by the then Crime and Misconduct Commission (the Commission) which was tabled in the Legislative Assembly in July 2009.

The Parliamentary Commissioner’s report is included in the Committee’s report.

The Parliamentary Commissioner considered important issues in relation to the Commission’s obligation to provide procedural fairness to a person, in this case Mr Hall, prior to publishing a Commission report.

The Committee made three recommendations in its report, including giving consideration to amending the Crime and Corruption Act 2001 to require the Commission to take all reasonable steps to provide procedural fairness to all persons who may be adversely affected by the publication of a Commission report. The other two recommendations relate more specifically to the publication of a statement by the Commission acknowledging that Mr Hall (referred to as ‘YZ’ in the Commission report) was not given an opportunity to respond prior to its publication and that he denies any misconduct on his part.

I thank the Committee members for their diligent consideration of this matter. I also place on record the Committee’s appreciation for the work of the Parliamentary Commissioner in relation to this matter.

I commend the Committee’s report and recommendations to the House.

Hon Lawrence Springborg MP
Chair
Recommendations

Recommendation 1
The Committee recommends that the government give consideration to amending the Crime and Corruption Act 2001 to require the Commission to take all reasonable steps to provide procedural fairness to all persons who may be adversely affected by the publication of a Commission report.

Recommendation 2
The Committee recommends that the Commission publish a statement in the terms outlined in their response of 11 November 2016.

Recommendation 3
The Committee recommends that the Legislative Assembly publish the statement outlined in Recommendation 2 with the CMC report tabled in the Legislative Assembly on 22 July 2009.
1. Introduction

This report of the Parliamentary Crime and Corruption Committee (the Committee) outlines the Committee’s consideration of a complaint from Mr Darren Hall about the conduct of the then Crime and Misconduct Commission (CMC), now the Crime and Corruption Commission (CCC). The CMC or CCC may also be referred to in this report as the Commission.

The Committee has resolved to table this report appending a report of the Parliamentary Crime and Corruption 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 is established under section 291 of the Crime and Corruption Act 2001 (CC Act) as the parliamentary committee responsible for overseeing the operations of the CCC. The Committee’s functions under the CC Act include:

- monitoring and reviewing the performance of the CCC’s functions;
- reporting to the Legislative Assembly on matters relevant to the CCC or the performance of its functions or exercise of its powers where appropriate;
- examining reports of the CCC;
- participating in the appointment of the CCC Chairperson, Commissioners and the Chief Executive Officer;
- conducting five yearly reviews of the CCC;
- periodically reviewing the structure of the CCC; and
- issuing guidelines and giving directions to the CCC where appropriate.

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

It is through the Committee that the Commission is accountable to the Parliament and to the people of Queensland.

1.2 The Parliamentary Crime and Corruption Commissioner

The Committee is assisted with its oversight functions by the Parliamentary Crime and Corruption Commissioner (the Parliamentary Commissioner).

The Parliamentary Commissioner has a number of functions under the CC Act. The Committee may require the Parliamentary Commissioner to:

- audit records and operational files of the CCC;
- investigate complaints against the CCC and its officers;
- investigate allegations of a possible unauthorised disclosure of confidential information;
- verify the accuracy and completeness of CCC reports to the Committee; and
- perform other functions that the Committee considers necessary or desirable.

The Parliamentary Commissioner may investigate a matter on their own initiative if certain criteria are met.

The Parliamentary Commissioner has further responsibilities under the CC Act, the Police Powers and Responsibilities Act 2000 and the Telecommunications Interception Act 2009. These responsibilities primarily require the Parliamentary Commissioner to inspect and audit various CCC and police records and report to various parties, including the Committee, on those inspections and audits.
To assist in the performance of the above 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 assisted the Committee in the current matter by investigating and reporting to the Committee on Mr Hall’s complaint, pursuant to a request under section 295(2)(d) of the CC Act.

The Committee was primarily assisted in this matter by the former Parliamentary Commissioner, Mr Paul Favell. Mr Favell’s term expired on 21 August 2016. The current Parliamentary Commissioner, Ms Karen Carmody commenced in the role on 22 August 2016. Ms Carmody assisted the Committee with this matter after Mr Favell’s departure.

2. Mr Hall’s complaints to the Committee

The complaint from Mr Hall concerns a report by the then CMC titled ‘Dangerous Liaisons – A report arising from a CMC investigation into allegations of police misconduct (Operation Capri)’ (the CMC report). The CMC report was tabled in the Legislative Assembly on 22 July 2009.

Mr Hall, a former Queensland Police Service officer, was referred to in the CMC report by the pseudonyms ‘Detective Senior Constable YZ’ or ‘YZ’.

Mr Hall first complained to the Committee in November 2009, raising concerns that the CMC had not provided him with an opportunity to address the allegations made against him in the CMC report and thereby denying him natural justice or procedural fairness.

The Committee requested a report from the CMC in relation to the matter. In February 2010, the Committee finalised its consideration of the matter and advised Mr Hall that it did not consider that the CMC acted inappropriately in carrying out its investigations under Operation Capri or in its release of the CMC report.

The Committee further dealt with this matter on a number of occasions between 2010 and 2013, based on the information available to the Committee at the relevant time.

The Committee’s most recent consideration of the matter arises from correspondence between the Commission and Mr Hall in 2014, along with a meeting between Mr Hall and the then Acting Chair of the Commission, Dr Ken Levy. This material was brought to the Committee’s attention by the then Speaker of the Legislative Assembly, Hon Fiona Simpson MP in November 2014.

The Committee requested a further report from the Commission, which was received on 1 July 2015.\(^1\)

In early 2016, the Committee received further material in relation to Mr Hall’s complaint from Mr Greg Williams, who was authorised by Mr Hall to act on his behalf.

3. Committee Consideration

As noted above, the Committee considered the concerns raised by Mr Hall on a number of occasions. The Committee received differing advice from the Commission over time as to their failure to provide a draft copy of the CMC report to Mr Hall. The Committee considered that there was sufficient uncertainty surrounding the question of whether the Commission complied with the principles of procedural fairness to warrant investigation of this question.

On 18 April 2016, the Committee resolved to ask the Parliamentary Commissioner to investigate and report on the matter pursuant to section 295(2)(d) of the CC Act in relation to the following:

- whether the principles of procedural fairness required the Commission to provide Mr Hall with a copy of the draft [CMC] report prior to its publication;

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\(^1\) The correspondence was dated 30 June 2015.
whether any obligation to accord procedural fairness to Mr Hall was discharged by the use of a pseudonym when referring to him in the [CMC] report; and
• if the Commission breached any obligation to accord procedural fairness to Mr Hall, what steps should now be taken by the Commission and/or the Committee in respect of that breach.

On 9 May 2016, the Committee requested, pursuant to section 295(2)(d) of the CC Act, that the Parliamentary Commissioner address any further matters of concern arising as a result of Mr Williams’ complaint.

The former Parliamentary Commissioner, Mr Favell, provided his report to the Committee on 19 August 2016. 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 matter concerned a Commission report tabled in the Legislative Assembly following a direction from the Committee to table the report.2

4. The Parliamentary Commissioner’s Report

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.3

In providing the report to the Committee, the then Parliamentary Commissioner, Mr Paul Favell, noted that the CCC was not able to provide a response to his draft report prior to the end of his term. As a result, Mr Favell presented the final report to the Committee, with that qualification.

The Committee subsequently provided a copy of Mr Favell’s final report to the CCC and sought a response from the CCC to be made on behalf of the Commission generally or on behalf of any officer referred to or alluded to in the report. The CCC’s response is attached at Appendix B.

The Committee provided the CCC’s response to the incoming Parliamentary Commissioner, Ms Karen Carmody, inviting submissions prior to the Committee tabling a report on the matter in the House. Ms Carmody’s response is attached at Appendix C.

The Committee sought a response from the CCC in relation to the matters raised by the Parliamentary Commissioner. The CCC’s response is attached at Appendix D.

4.1.1 Committee Comments

The Committee notes that this matter has taken some years to be finally resolved. If the Commission had provided Mr Hall with an opportunity to respond in 2009, prior to the tabling of the CMC report, this whole matter could have been avoided.

The Committee notes the Commission’s comments:

that faced with similar circumstances today, the CCC would, out of an abundance of caution, provide a person such as Mr Hall with an opportunity to respond either through an interview or provision of relevant extracts/summaries of the draft report together with invitation to show cause.4

Recommendation 1

The Committee recommends that the government give consideration to amending the Crime and Corruption Act 2001 to require the Commission to take all reasonable steps to provide procedural fairness to all persons who may be adversely affected by the publication of a Commission report.

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2 Section 69 of the CC Act (formerly the CM Act) provides for a direction to be given by the Committee to the Commission to provide a report to the Speaker for tabling in the Legislative Assembly.
3 The report includes a typographical correction to a date as requested by the Parliamentary Commissioner.
4 CCC response, dated 15 September 2016, p 2.
The Committee notes that the Commission is prepared to publish a statement with the CMC report on its website acknowledging that Mr Hall (referred to in that report as ‘YZ’) was not given an opportunity to respond to the contents of the report prior to its tabling in Parliament and that he denies any misconduct on his part.

**Recommendation 2**

The Committee recommends that the Commission publish a statement in the terms outlined in their response of 11 November 2016.

The Committee notes that the CMC report is also accessible through the Queensland Parliament’s website through the Tabled Papers database. Given the circumstances, the Committee considers that the same statement referred to above should also be linked to the tabled copy of the CMC report accessed through the database. However, this is a matter for the Legislative Assembly to determine.

**Recommendation 3**

The Committee recommends that the Legislative Assembly publish the statement outlined in Recommendation 2 with the CMC report tabled in the Legislative Assembly on 22 July 2009.

The Committee notes the Parliamentary Commissioner’s comments:

that the fact that there was no information on the Commission’s files stating that Mr Hall was not provided with a copy of the draft Report and, more importantly, the basis for the decision that it was not necessary that he be provided with a copy of the draft Report, is a significant failing on the part of the CMC officers responsible for that decision in May – July 2009.⁵

The Committee followed up on the Parliamentary Commissioner’s concerns in relation to the Commission’s protocols and training with respect to appropriate recording of such decisions.⁶

The Committee acknowledges the Commission’s advice that in recent years it ‘has invested significant resources into improving its record keeping practices and culture.’⁷

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Appendix A:

Report of the Parliamentary Crime and Corruption Commissioner
REPORT ON THE INVESTIGATION OF

THE COMPLAINT OF MR DARREN HALL

OFFICE OF THE
PARLIAMENTARY CRIME AND CORRUPTION COMMISSIONER

August 2016
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INTRODUCTION

In April 2005 the Crime and Misconduct Commission (CMC as it then was) received information from the Australian Federal Police (AFP) which suggested that an improper association existed between Mr Lee Owen Henderson - an inmate of a correctional centre and certain officers of the Queensland Police Service (QPS). The AFP had obtained evidence from telecommunications interceptions which established that telephone calls made by the inmate from inside the prison were routinely being diverted with the assistance of QPS officers. It was also evident from the telecommunications interceptions that the inmate had access to confidential police information which he shared with his criminal associates. The CMC then commenced a covert investigation in relation to the allegations.

By March 2006 the covert investigation of the allegations of improper association between the inmate and QPS officers had progressed and was elevated to operational status, under the codename Operation Capri. Over the course of the operation other allegations, including the removal of prisoners from correctional centres for improper purposes, and improper payments made to QPS officers, were included in the ambit of Operation Capri.

The CMC sent the last of its Operation Capri investigation reports to the QPS in September 2008 and a series of internal QPS disciplinary proceedings were commenced. In July 2009, pursuant to section 69 of the Crime and Misconduct Act 2001, the CMC provided to the Chairperson of the Parliamentary Crime and Misconduct Committee, the Speaker of the Legislative Assembly and the Attorney-General a copy of its report, Dangerous Liaisons - A report arising from a CMC investigation into allegations of police misconduct (Operation Capri) (“the Report”). In accordance with the Act, the Report was tabled in the Legislative Assembly on 22 July 2009.

In the introduction to the Report, under the heading “Identifying individuals”, it was stated:

In reporting publicly on Operation Capri, the CMC had to consider the degree to which this report should identify individuals, be they police officers, former police officers, serving prisoners or private citizens.

The CMC is mindful of the fact that naming a person in a report about police misconduct can cause significant embarrassment to that person and may in some circumstances have the potential to damage a person’s reputation. In the case of serving prisoners, there is the added risk of potential prejudice to their personal safety.

Ultimately, the CMC elected to adopt a consistent naming convention, whereby pseudonyms have been applied to all police officers and prisoners (with the exception of Lee Owen Henderson, for reasons given below).

The CMC does recognise however that the identity of particular officers may be apparent to those who may have worked with them, or who are otherwise familiar with the events and physical locations to which the report makes reference.¹

Later in the introduction, under the heading “Procedural fairness”, the Report stated:

The CMC is satisfied it has complied with procedural fairness requirements.

All persons and entities thought at risk of being viewed in an adverse light because of publication of this report were given an early draft and invited to make submissions. Most did so, and all of the issues raised in those submissions have been taken into account and, where appropriate, the CMC has acceded to the requests.

... In every case, the relevant issues had either been explored with, or otherwise identified to, the individuals concerned.

... In the case of those officers who are referred to, it is not disputed that the conduct in question occurred. At issue in those cases is the officer’s knowledge, or intent.²

The complainant in this matter, Mr Darren Hall, is a former QPS officer. In early 2004, prior to the commencement of Operation Capri and well before the publication of the Report, Mr Hall resigned from the QPS and commenced employment with the Australian Crime Commission (ACC). He is referred to in the Report by the pseudonyms “Detective Senior Constable YZ” or “YZ” a total of 26 times in the segments of the Report headed “The contrived drug raid”, “Payments made to police officers” and “An unauthorised investigation”.³

Referring this matter for my investigation, the Committee stated that “The Report contains numerous allegations and inferences of improper conduct against Mr Hall...” The Committee noted that in relation to the majority of the references to Mr Hall in the Report, “it is difficult to escape the conclusion that Mr Hall is portrayed in an adverse light.”

The Committee advised that Mr Hall strongly refutes the allegations made against him in the Report. He states that he was unaware of the allegations made against him in the Report until its publication as he was not interviewed by the CMC during Operation Capri, prior to or subsequent to the publication of the Report. Mr Hall maintains that in failing to provide him the opportunity to address the allegations made against him in the Report, either prior to its publication or subsequently, the CMC has failed to afford him procedural fairness. He believes that the Commission’s continued failure to provide him the opportunity to address the allegations renders the breach of procedural fairness ongoing.

Since the publication of the Report, Mr Hall has raised his concerns about the lack of procedural fairness in a number of forums, including with the Parliamentary Crime and Misconduct Committee, the QPS and during a meeting with the then Acting Chair of the Crime and Corruption Commission, Dr Ken Levy RFD. Where relevant to my terms of reference, these previous interactions are discussed in this report.

On 31 October 2014 Mr Hall wrote to the then Speaker of the Legislative Assembly, Hon Fiona Simpson MP, in relation to his concerns of the lack of procedural fairness provided to him by the CMC and other issues. On 11 November 2014 the Speaker forwarded Mr Hall’s correspondence to the Parliamentary Crime and Corruption Committee for the Committee’s consideration.

The Committee subsequently requested that the Crime and Corruption Commission provide a report on the matter. The Commission provided a response to the Committee by letter dated 30 June 2015.

³ Ibid. pp 51, 54 - 56, 67, 69, 73 and 74.
On 18 April 2016 the then Chair of the Parliamentary Crime and Corruption Committee, Mr Trevor Watts MP, wrote to me setting out the history of Mr Hall’s complaint concerning the CMC’s alleged failure to afford him procedural fairness.

Mr Watts noted that in early 2014 Mr Hall had again approached the CMC seeking a resolution of his complaint. By letter dated 25 March 2014, the then Acting Chair of the CMC, Dr Ken Levy, advised Mr Hall that:

Upon further examination of the Commission’s records, it appears to me that you were not forwarded a copy of the draft public report in May 2009. I am satisfied that this was due to a clerical oversight. The Commission however was unaware at that time, that you had not received the draft report.

Mr Watts noted that this advice appeared to contradict previous advice received from the CMC upon which the former Parliamentary Crime and Misconduct Committee based its determination to take no action in respect of the first complaint Mr Hall made to the Committee in 2009. Dr Levy’s advice also differed from earlier advice that the Commission provided to Mr Hall to the effect that the Commission was under no obligation to provide him with a copy of the report.

Further, in the report provided to the Committee on 30 June 2015, Dr Levy stated that his belief that Mr Hall was not provided with a copy of the report due to a clerical error was mistaken. Dr Levy advised the Committee that one of the senior officers involved in Operation Capri had since confirmed that the CMC deliberately did not provide Mr Hall with a draft copy of the report, as the Commission did not consider it had breached the principles of procedural fairness, given it had de-identified him in the report (as Detective “YZ”) and it made no adverse findings against him.”

The Committee considered that there was sufficient uncertainty surrounding the question of whether the Commission complied with the principles of procedural fairness to warrant investigation of this question. Mr Watts therefore advised that:

The Committee has accordingly resolved to ask you to investigate and report on the matter pursuant to section 295(2)(d) of the Act in relation to the following:

- whether the principles of procedural fairness required the Commission to provide Mr Hall with a copy of the draft report prior to its publication;
- whether any obligation to accord procedural fairness to Mr Hall was discharged by the use of a pseudonym when referring to him in the Report; and
- if the Commission breached any obligation to accord procedural fairness to Mr Hall, what steps should now be taken by the Commission and/or the Committee in respect of that breach.

On 9 May 2016 Mr Watts wrote to advise me that the Committee had recently received material from Mr Greg Williams in relation to Mr Hall’s complaint. The Committee provided a copy of this material which included a document entitled “Darren Hall’s Story” authored by Mr Williams, a transcript of a decision of the Australian Industrial Relations Commission relating to an application Mr Hall made against the ACC, letters from the CMC to Mr Hall and emails to and from Mr Williams. In accordance with section 295(2)(d) of the Crime and Corruption Act the Committee requested that I address any further matters of concern arising as a result of Mr Williams’ complaint.
RESULTS OF INVESTIGATION

Reference of 18 April 2016

Whether the principles of procedural fairness required the Commission to provide Mr Hall with a copy of the draft report prior to its publication

Procedural fairness and Commission reports

The obligation of the Commission to provide procedural fairness (also referred to as natural justice) to a person adversely mentioned in a Commission report was considered by the High Court in one of the leading cases in this area, Ainsworth v Criminal Justice Commission.4

In that case, Ainsworth, whose business activities included the supply of gaming machines, complained that the Criminal Justice Commission (CJC) produced and published a report adverse to his reputation without according him natural justice. The report entitled “Report on Gaming Machine Concerns and Regulations”, was prepared pursuant to section 2.14(1) of the Criminal Justice Act 1989 and provided to the Chairman of the Parliamentary Criminal Justice Committee, the Speaker of the Legislative Assembly and the responsible Minister of the Crown.

The report contained comments adverse to Ainsworth’s business reputation including the following observations and comments at pages 30 and 32 respectively:

Any examination of the evidence leads to questions about relationships between Ainsworth, his executives and associates and suspect former NSW police, criminal identities and former senior NSW police. It would appear from the evidence that investigations into the Ainsworth organisation were fully warranted. This commission is aware of other matters of complaint in relation to Ainsworth where the course of investigation has been unusual.

This Commission recommends that the Ainsworth group of companies not be permitted to participate in the gaming machine industry in Queensland.

The joint judgement of Mason CJ and Dawson, Toohey and Gaudron JJ in Ainsworth v Criminal Justice Commission observed that:

In any event, no enquiry was made of the appellants [Ainsworth and others]: they were not informed of the Commission's interest in them or of its intention to report with respect to them. More particularly, they were neither made aware of the matters which were eventually put against them in the report nor given an opportunity to answer them. And, of course, they had no opportunity to be heard in opposition to the recommendation that "the Ainsworth group of companies not be permitted to participate in the gaming machine industry in Queensland".5

The CJC, like the CMC and the Crime and Corruption Commission (CCC) was required to “at all times, act independently, impartially and fairly having regard to this Act and the importance of

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5 Ibid per Mason CJ and Dawson, Toohey and Gaudron JJ at para 7.
protecting the public interest. However, over and above that obligation, the joint judgement noted that:

A requirement to act fairly may not be in quite the same category as the requirement to act impartially or in the public interest. However, a body established for purposes and with powers and functions of the kind conferred on the Commission and its organisational units is one whose powers would ordinarily be construed as subject to an implied general requirement of procedural fairness, save to the extent of clear contrary provision. That is because it is improbable that, though it did not say so, the legislature would intend that a body of that kind should act unfairly.

Both the joint judgement and the judgement of Brennan J cited previous cases on the issue of the implied requirement to provide procedural fairness, including Annetts v McCann in which it was held that:

It can now be taken as settled that, when a statute confers a power upon a public official to destroy, defeat or prejudice a person’s rights, interests or legitimate expectations, the rules of natural justice regulate the exercise of that power unless they are excluded by plain words of necessary intendment.

After referring to the above passage, Brennan J then noted in Ainsworth v Criminal Justice Commission:

Clearly the [Criminal Justice] Act does not exclude the implied requirement that the rules of natural justice be observed in the preparation of a report pursuant to section 2.14(1). For the reasons which I expressed in that case [Annetts v McCann at pages 608-609] I am of the opinion that -

Personal reputation has now been established as an interest which should not be damaged by an official finding after a statutory inquiry unless the person whose reputation is likely to be affected has had a full and fair opportunity to show why the finding should not be made.

Reputation in this context is not restricted to reputation which is valuable in business: natural justice is required to be observed whenever a statutory authority contemplates a publication which would affect reputation by diminishing the estimation in which the bearer of the reputation stands in the opinion of others. The bearer of the reputation has an interest which is subject to adverse affection if the statutory authority publishes the contemplated report and that is sufficient both to attract the requirement of natural justice and to give locus standi to seek judicial review if natural justice is denied.

In the present case, the Commission purported to perform statutory functions in producing and furnishing the Report. On the assumption that the production and furnishing of the Report were statutory functions, the Commission was bound to give the appellants an opportunity to show why a finding adverse to their reputations should not be made.

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7 Ainsworth v Criminal Justice Commission ibid per Mason CJ and Dawson, Toohey and Gaudron JJ at para 17.
8 Annetts v McCann [1990] HCA 57; (1990) 170 CLR 596
9 Ibid at p 598.
10 Ainsworth v Criminal Justice Commission ibid per Brennan J at paras 16 and 17.
Similarly to the Criminal Justice Act, neither the Crime and Misconduct Act nor the Crime and Corruption Act excludes the implied requirement that the rules of natural justice or procedural fairness be observed in the production and furnishing of Commission reports. Therefore, the above analysis clearly illustrates that the principles of procedural fairness applied to the CMC in the production and furnishing of the Dangerous Liaisons Report.

It should be noted however, that “the duty to afford natural justice or procedural fairness arises only when there is a risk that an adverse finding may be made against someone.”\(^\text{11}\) As was made clear in Annetts v McCann, the obligation to allow a person to make submissions arises only when the Commission has reached the stage of contemplating the making of an unfavourable finding against that person. It is only at that stage that the Commission is bound to give the person notice of the possible finding and allow that person an opportunity to submit why the finding should not be made. There is no requirement to provide a person with the opportunity to make submissions if no adverse findings are contemplated.\(^\text{12}\)

**Explanations as to why Mr Hall was not provided with a copy of the draft Report**

The Report states under the heading ‘Procedural Fairness’:

\begin{quote}
All persons and entities thought at risk of being viewed in an adverse light because of publication of this report were given an early draft and invited to make submissions.
\end{quote}

\begin{quote}
In every case the relevant issues had either been explored with, or otherwise identified to, the individuals concerned.\(^\text{13}\)
\end{quote}

In referring this matter for my investigation in the letter to me dated 18 April 2016, the Committee stated that Mr Hall is the only officer referred to in the Report who was not provided with a draft copy of the Report for the purposes of providing comment prior to its publication. The Commission has accepted that Mr Hall was not provided with a copy of the draft Report at any time prior to its publication.\(^\text{14}\) Unfortunately, the reason that Mr Hall was not provided with a copy of the draft Report appears to have been largely undocumented within the Commission at the relevant time. This has led to contradictory advice being provided to both Mr Hall and the Committee at various times.

In November 2009 the Committee sought a report from the CMC in relation to an earlier complaint received from Mr Hall. Mr Robert Needham, the CMC Chairperson at the time of the release of the Dangerous Liaisons Report, provided a response to the Committee on 11 December 2009. He stated that:

\begin{quote}
Considerable care was taken when drafting the public report to ensure that Mr Hall was not identified, and the references to him in the report are oblique. This was done not only to ensure the CMC did not breach procedural fairness obligations, but also so as not to
\end{quote}


\(^{12}\) See Annetts v McCann ibid per Brennan J at para 12 and Mason CJ, Deane and McHugh JJ at paras 10 and 15.

\(^{13}\) Dangerous Liaisons Report ibid at page 6.

\(^{14}\) For example, in his letter to the Committee of 30 June 2015 the then Acting Chairman of the CCC, Dr Levy, accepted that “it now seems that the Commission did not provide Mr Hall with a draft report.”
prejudice any investigation or other action his employer might have chosen to conduct in respect of this and other matters.

...

In all of the circumstances, and given the information available at the time, I consider the CMC acted appropriately and professionally during the conduct of this complex investigation. As no findings were made against Mr Hall and because he was not identified in the published report, there was no breach of procedural fairness. [Emphasis added.]

Similarly, in a letter to Mr Hall dated 23 April 2013, the then Acting Chairperson of the CMC, Mr Warren Strange, advised that:

As no findings were made against you and because you were not identified in the published report, it was the view of the CMC that you have been provided sufficient procedural fairness.

The Committee noted that in a letter dated 25 March 2014 the then Acting Chairperson of the CMC, Dr Levy, advised Mr Hall that:

Upon further examination of the Commission’s records, it appears to me that you were not forwarded a copy of the draft public report in May 2009. I am satisfied that this was due to a clerical oversight. The Commission was unaware at that time, that you had not received the draft report.

Dr Levy reiterated this view in a further letter to Mr Hall dated 14 July 2014 and in a meeting with Mr Hall in October 2014.

In his letter to Dr Levy of 24 November 2014, the then Chair of the Committee, Mr Steve Davies MP stated that:

Your advice that the CMC failed to provide Mr Hall with a copy of the draft report due to a clerical error appears to contradict the previous advice from the Commission to the Committee, upon which the Committee based its determination to take no action on Mr Hall’s 2009 complaint.

...Mr Hall complains that he is now gagged in respect of your advice in March 2014 that the failure to provide him with a copy of the report was due to a clerical error, contrary to earlier advice provided to him that there was no obligation on the CMC to do so.

The Committee requested that the Commission provide a report on the apparent discrepancies in the advice the Commission had provided to the Committee and to Mr Hall in relation to the matter.

Dr Levy provided the Commission’s response in a letter to the then Acting Chair of the Committee, Mr Peter Russo MP, on 30 June 2015. I have set out below, in some detail, relevant extracts from the Commission’s response as my investigation has established that these passages represent a full and frank explanation for Dr Levy’s contradictory advice and an accurate statement of the reasons that the CMC did not consider it was required to provide Mr Hall with a draft copy of the Report prior to its publication:
From the outset, I wish to point out that the senior officers who were responsible for ‘Operation Capri’ are no longer at the Commission. Any comments I have made to Mr Hall in relation to this Operation, has been based on our hard copy and electronic copy documents, including inferences I made in relation to these documents following internal advice. In early 2013, the most senior officers who had been involved in the matter were contacted by the CMC, and those officers provided some context in relation to Mr Needham’s letter to the PCMC dated 11 December 2009. At that time, the reasons outlined in Mr Needham’s letter as to why Mr Hall was not interviewed, were made clearer. Given that was the gravamen of Mr Hall’s complaint at that time (ie. why he wasn’t interviewed by the CMC), we had not explored in any detail, whether Mr Hall was provided a draft report.

Up until recently and following an examination by Commission legal staff, it was concluded that the CMC had failed to provide Mr Hall a copy of the draft report due to a clerical error. These inferences were based on a number of factors. Firstly, there was no information on the CCC file to suggest that the senior officers of the Commission had not provided him a draft report.

It was inferred from the description above [a recitation of passages of the Report under the heading ‘Procedural Fairness’ including those quoted above], albeit mistakenly, that as the Commission intended that all subject officers were provided a draft report, Mr Hall must have been provided a copy of the draft report. In retrospect, the Commission did not consider it made any adverse findings against Mr Hall and therefore it did not include Mr Hall in the above description of persons ‘thought at risk of being viewed in an adverse light’. Consequently it now seems that the Commission did not provide Mr Hall with a draft report. [Emphasis added.]

At the time of writing to Mr Hall, I did not believe that the Commission made any deliberate decision not to provide him a draft copy, unlike all the other persons of interest. Simply put, following research by legal staff and advice to me, an inference was made that the CMC’s failure to provide Mr Hall with a copy of the draft report was due to a clerical error (that is, his name was on the list, but inadvertently not provided a draft copy).

Since receiving your correspondence, a senior legal officer has contacted one of the senior officers who was in charge of this matter. He confirmed that the CMC deliberately did not provide Mr Hall with a draft copy of the report, as the Commission did not consider it had breached the principles of procedural fairness, given it de-identified him in the report (as Detective “YZ”) and it made no adverse findings against him. [Emphasis added.]

The above has attempted to explain the discrepancies between my previous advice and Mr Needham’s letter. I am prepared to advise Mr Hall that I had mistakenly inferred from the file, that the Commission intended to provide him a draft report to respond but further inquiries have revealed the investigators at the time did not intend to consult with him as he was not a person who was regarded as being at risk of being viewed in an adverse light.

It is regrettable that staff had limited means of ascertaining the complete history of the file, in light of the passage of time and that senior officers who were once involved in the decision making processes in this matter were no longer employed by the Commission.
I should add, in relation to the last paragraph, that the fact that there was no information on the Commission’s files stating that Mr Hall was not provided with a copy of the draft Report and, more importantly, the basis for the decision that it was not necessary that he be provided with a copy of the draft Report, is a significant failing on the part of the CMC officers responsible for that decision in May - July 2009.

The passages quoted in bold in the preceding two pages represent the basis the CMC did not consider it had breached the principles of procedural fairness in relation to Mr Hall with the publication of the Report. The CMC deliberately did not provide Mr Hall with a draft copy of the Report as it did not believe there was an obligation to provide procedural fairness given it considered that no adverse findings were made against him and he was only referred to as “Detective Senior Constable YZ” or “YZ” in the report.

An internal email from the Acting Director Misconduct Investigations to the Assistant Commissioner Misconduct dated 29 November 2010, discusses the making of the decision not to provide a copy of the draft Report to Mr Hall. The Acting Director Misconduct Investigations stated that:

*The answer to the question as to whether Hall should have been provided with relevant parts of the report for procedural fairness is a matter of opinion.*

*At the relevant time, Russell [Pearce – Acting Assistant Commissioner Misconduct at the time the Report was published who had since left the Commission], under the guidance of Robert Needham, was responsible for the Dangerous Liaisons report, including the procedural fairness issue. I believe Russell formed an opinion about the necessity for procedural fairness for Hall.*

On 20 April 2015, after the Committee had requested the Commission to provide a report on the apparent discrepancies in the advice the Commission had provided in relation to the matter, a senior legal officer from the Commission telephoned Mr Pearce to discuss the basis for the decision not to provide Mr Hall with a copy of the draft Report. Dr Levy referred to this contact in his letter to the Committee of 30 June 2015 when he stated that “Since receiving your correspondence, a senior legal officer has contacted one of the senior officers who was in charge of this matter.”

A Note to File dated 20 April 2015 records the telephone contact with Mr Pearce and notes:

*Mr Pearce said that they decided that we didn’t need to provide a draft copy of the report to Hall to respond as he had sufficiently been de-identified and had applied a different method of coding (YZ) and adverse findings or conclusions had not been made against Hall.*

*Russell said there was a robust discussion with Steven Lambrides and Mr Needham about procedural fairness. He said that they made a conscious decision that they didn’t need to give Hall a draft copy.*

*In any event, Russell said that because Hall wasn’t named or identifiable in the report, he questioned whether they had to give him an opportunity to respond to any adverse comments and he thought there was no obligation to give him a draft report. They provided it to the other subject officers, being cautious.*

*In essence, Russell was of the view, that there was no obligation or requirement to afford Hall an opportunity to comment on the draft report.*
The Committee would note that Mr Pearce’s statements are consistent with the passages quoted in bold above which state the basis the CMC did not consider it had breached the principles of procedural fairness by not providing Mr Hall with a copy of the draft Report prior to its publication.

Adverse Findings

It can therefore be regarded as settled that the CMC deliberately did not provide Mr Hall with a draft copy of the Report as it did not believe there was an obligation to provide procedural fairness given that it considered that no adverse findings were made against him and he was only referred to as “Detective Senior Constable YZ” or “YZ” in the report.

I shall now deal separately with the issues of whether the Report was adverse in relation to Mr Hall and whether the obligation to provide procedural fairness only arises in respect of findings. (The other rationale for not providing Mr Hall with a copy of the draft Report - that he was said to be “not identified in the published report” - is dealt with under the next bold heading.)

As the Committee has noted, in relation to the majority of the references to Mr Hall in the Report, “it is difficult to escape the conclusion that Mr Hall is portrayed in an adverse light.” The following extracts are indicative of the light in which Mr Hall (or more correctly “Detective Senior Constable YZ”) is portrayed in the Report:

> The circumstantial evidence points to the fact that then Detective Senior Constable YZ was the link between Henderson and the conduct of the police raid of 13 October 2003. YZ has links to a number of aspects of Operation Capri, and is referred to throughout this report. As stated above, he is now employed by another law enforcement agency. The very best that could be said of YZ’s involvement with the events described in this segment is that he allowed himself to be used by a prison informant. The evidence concerning former Detective Senior Constable YZ has been referred to his present employer.\(^{15}\)

> YZ took no steps to have ballistic tests performed which might have linked the firearm to offences, but, instead, made arrangements for the revolver to be returned to its registered owner.\(^{16}\)

> The evidence points to Detective Sergeant AS, and another officer (i.e. former Detective Senior Constable YZ) having also received various sums from Henderson.\(^{17}\)

There can be no doubt that the various comments in the Report concerning Detective Senior Constable YZ “would affect reputation by diminishing the estimation in which the bearer of the reputation stands in the opinion of others” to use the words of Brennan J in Ainsworth v Criminal Justice Commission. Or, to use the words of the CMC under the ‘Procedural Fairness’ heading in the Report, Detective Senior Constable YZ must surely be amongst the “persons and entities thought at risk of being viewed in an adverse light because of publication of this report”.

Leaving aside for the present the “de-identification issue”, it cannot be suggested that the comments concerning Detective Senior Constable YZ in the Dangerous Liaisons Report are any less injurious to Mr Hall’s reputation than the comments the CJC made about Ainsworth in the “Report on

\(^{15}\) Dangerous Liaisons Report ibid at page 55.

\(^{16}\) Ibid footnote 1 on page 55.

\(^{17}\) Ibid at page 69.
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Gaming Machine Concerns and Regulations\textsuperscript{18} which were held to have required the observation of the principles of procedural fairness in that case.

Although Dr Levy correctly identified one of the reasons the CMC did not provide Mr Hall with a copy of the draft Report was that the CMC did not consider it had made any adverse findings against Mr Hall, in his letter to the Committee of 11 December 2009 Mr Needham stated that no findings were made against Mr Hall. It was not that the CMC didn’t consider the references to Detective Senior Constable YZ in the Report to be adverse – rather, the CMC did not consider the adverse references to be findings.

The CMC considered that the adverse references to Detective Senior Constable YZ in the Report were not findings because they were prefaced by words such as \textit{“The circumstantial evidence points to the fact…”} and \textit{“The evidence points to...”} That may well be the case and the authorities on the issue do state that procedural fairness requires providing a person with an opportunity to show why findings adverse to the person’s reputation should not be made. However the authorities make it clear that the principle of procedural fairness is not restricted only to situations where findings are made.

Certainly the comments the CJC made about Ainsworth in the “Report on Gaming Machine Concerns and Regulations” which were held to have required the observation of the principles of procedural fairness, were not findings in the strict sense. In that report, the CJC stated that:

\begin{quote}
Any examination of the evidence \textbf{leads to questions} about relationships between Ainsworth, his executives and associates and suspect former NSW police, criminal identities and former senior NSW police. \textbf{It would appear from the evidence} that investigations into the Ainsworth organisation were fully warranted.
\end{quote}

In the joint judgement in \textit{Ainsworth v Criminal Justice Commission}, the court expressly recognised that the obligation to provide procedural fairness was not restricted only to situations where findings have been made, noting that:

\begin{quote}
And it matters not that, instead of an express finding, there is, as here, an adverse recommendation based on the reports of other bodies or authorities. That being so, the appellants were entitled to procedural fairness.\textsuperscript{19}
\end{quote}

In \textit{Annetts v McCann} it was held that:

\begin{quote}
There is difficulty with the word “finding” in this context. The jurisdiction of the Coroner is to “inquire into the manner and cause of death” of the two young men...He may not express an opinion on any matter outside the scope of the inquest, except in a rider which is in accord with section 43(1)(i)(a). A rider is not part of the decision or finding: section 43(1)(i)(b).
...
...if he is minded to make a decision or finding adverse to the character or conduct of James Annetts, or to include in any rider comments that bear adversely on the conduct or character
\end{quote}

\textsuperscript{18} The comments are quoted at page 4 of this report.
\textsuperscript{19} \textit{Ainsworth v Criminal Justice Commission} ibid per Mason CJ and Dawson, Toohey and Gaudron JJ at para 27.
of the deceased, counsel for the appellants should be informed and be given the opportunity of addressing the Coroner or making written submissions in regard thereto.\textsuperscript{20}

In the case of \textit{Criminal Justice Commission v Queensland Police Credit Union Limited}, the CJC was also found to have failed to observe the requirements of procedural fairness in not providing the Queensland Police Credit Union the opportunity to be heard before a report was published which “contained imputations adverse to the reputation of the plaintiff.” McPherson JA noted that:

\begin{quote}
As a matter of caution, it should perhaps be added that it is not every \textit{criticism or adverse comment on collateral matters or events} which arise in the course of proceedings that will attract the need for procedural fairness of this kind. The function of judicially hearing, investigating, reporting or deciding would be effectively stultified if nothing in the least degree adverse could legitimately be said without first affording the opportunity to be heard to anyone who supposed himself or herself to be in some way detrimentally affected by it. In the present instance, however, \textit{the criticism implicit in the Commissioner’s observations} had a real potential to prejudice the plaintiff’s reputation and business interests and to do so in a way that was plainly bound to become a matter of public interest and concern. In those circumstances, the Commissioner ought to have afforded the plaintiff the opportunity of presenting its side of the matter to him before making the strictures which were passed upon it in the Report which he published.\textsuperscript{21} [Emphasis added.]
\end{quote}

In fact the Report itself does not purport to restrict the application of the principles of procedural fairness only to situations where findings have been made, as under the heading ‘Procedural Fairness’ it is stated that:

\begin{quote}
\textit{All persons and entities thought at risk of being viewed in an adverse light because of publication of this report} were given an early draft and invited to make submissions.\textsuperscript{22} [Emphasis added]
\end{quote}

It is clear from the binding authorities that the obligation to provide procedural fairness is not restricted only to situations where formal findings are made. Therefore, (still leaving aside the “de-identification issue”) the principles of procedural fairness required that the CMC provide Mr Hall with the opportunity to show why statements adverse to his reputation should not be made in the Report.

\textbf{Was it necessary to provide a copy of the draft Report}

The Committee requested that I investigate and report in relation to whether the principles of procedural fairness required the Commission to provide Mr Hall with a copy of the draft Report prior to its publication.

The Dangerous Liaisons Report was wide-ranging and addressed allegations of police misconduct made against a number of police officers. Any obligation to provide procedural fairness to Mr Hall would, of course, only relate to material that had the potential to adversely affect his reputation – not the reputation of other persons adversely mentioned in the Report. The principles of procedural fairness would apply.

\begin{flushright}
\textsuperscript{20} \textit{Annetts v McCann} ibid per Toohey J at paras 24 and 27
\textsuperscript{21} \textit{Criminal Justice Commission v Queensland Police Credit Union Limited} [1998] QCA 233
\textsuperscript{22} \textit{Dangerous Liaisons Report} ibid at page 6.
\end{flushright}
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fairness would not necessarily have required the CMC to provide Mr Hall with a copy of the entire draft Report prior to its publication.

For example, in *Annetts v McCann* the court stressed that:

...although the appellants are entitled to make submissions concerning matters which are identified as a possible source of adverse findings concerning their interests, they have no right to make submissions on the general subject matter of the inquest. Their legal entitlement is confined to making submissions in respect of matters which may be the subject of adverse findings against them personally...  

Therefore the issue for determination is not whether the principles of procedural fairness required the Commission to provide Mr Hall with a copy of the draft Report prior to its publication, but whether, prior to publishing the Report, the Commission was bound to give Mr Hall an opportunity to show why comments adverse to his reputation should not be made. Providing a copy of the draft Report to Mr Hall is one mechanism by which he could have been afforded this opportunity but he might also have been informed of the contemplated adverse comments during an interview, in relevant extracts of the draft Report or summaries of the contemplated adverse comments, and invited to make submissions in relation thereto.

Conclusion

The issue of whether the CMC’s obligation to provide Mr Hall procedural fairness was discharged by the use of a pseudonym when referring to him in the Report is discussed under the next section of this report. Leaving that issue aside for the present, the first question is whether, prior to publishing the Report, the principles of procedural fairness required the Commission to provide Mr Hall with an opportunity to show why the contemplated comments adverse to his reputation should not be made. It is my view that the CMC was obliged to provide Mr Hall with such an opportunity.

**Whether any obligation to accord procedural fairness to Mr Hall was discharged by the use of a pseudonym when referring to him in the Report**

As mentioned above, in his letter to the Committee of 11 December 2009 the then Chairperson of the CMC, Mr Needham, stated that:

*Considerable care was taken when drafting the public report to ensure that Mr Hall was not identified, and the references to him in the report are oblique. This was done not only to ensure the CMC did not breach and procedural fairness obligations, but also so as not to prejudice any investigation or other action his employer might have chosen to conduct in respect of this and other matters.*

...  

*In all of the circumstances, and given the information available at the time, I consider the CMC acted appropriately and professionally during the conduct of this complex investigation. As no findings were made against Mr Hall and because he was not identified in the published report, there was no breach of procedural fairness.* [Emphasis added.]

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In a letter to Mr Hall dated 23 April 2013, the then Acting CMC Chairperson, Mr Strange, reiterated this point:

As no findings were made against you and because you were not identified in the published report, it was the view of the CMC that you have been provided sufficient procedural fairness.

The basis for the obligation to accord procedural fairness in the present circumstances is that personal reputation has been recognised as an interest which should not be damaged by an official finding (or adverse comment) unless the person whose reputation is likely to be affected has had an opportunity to show why the finding should not be made. The CMC obviously considered that, since Mr Hall was not identified in the Report except by way of a pseudonym, the adverse comments made about him in the Report could cause no damage to his personal reputation. The CMC therefore considered there was no obligation to accord procedural fairness to Mr Hall.

Unlike the issues discussed earlier in this report, it is difficult to find authorities which deal directly with the issue of whether a statutory authority’s use of a pseudonym when referring to a subject officer in a publication abrogates the statutory authority’s obligation to accord procedural fairness to that officer.

Some support for the CMC’s view that there was no breach of procedural fairness because Mr Hall was not identified in the published report, might be found in the decision of Criminal Justice Commission and Ors v Parliamentary Criminal Justice Commissioner. In that case the CJC sought a declaration that, in investigating allegations of possible unauthorised disclosure of confidential information and reporting to the Parliamentary Criminal Justice Committee, the then Parliamentary Criminal Justice Commissioner, (now Her Honour) Ms Julie Dick SC, was not entitled to make findings of guilt on the part of any person.

Although the Court of Appeal ultimately decided the matter against the CJC on another basis, in the course of his judgement McPherson JA observed that:

Among the difficulties confronting the applicants’ first submission are that Ms Dick made no finding against anyone that he was guilty of a contravention of, or of an offence against, s132(2) of the Act. In fact, she was careful not to do so. In referring to the evidence and actions of the individual officers of the CJC who testified before her, she avoided identifying any of them by name, but instead designated them only by means of an alphabetical letter as Mr "A", Mr "B" and so on. It was not until the second originating application issued on 14 July 2000 that the names of any individuals became linked in any way to her investigation, and even then it was not possible to say which of those letters of the alphabet designated particular applicants.

What was more, Ms Dick did not make any finding that any one or more of those persons so designated had contravened s132(2) of the Act by “wilfully” or otherwise disclosing knowledge that had come to him as an officer of the CJC. [Emphasis added.]
McPherson JA advanced two bases for concluding that no finding had been made against the CJC officers: first, the Parliamentary Criminal Justice Commissioner avoided identifying any of the officers by name but instead designated them only as Mr "A", Mr "B" and so on, and secondly, there was no finding that any of the officers so designated had wilfully (or otherwise) disclosed confidential information.

Arguably this passage lends support to the CMC’s view that, since Mr Hall was not identified by name in the Report and referred to only as “Detective Senior Constable YZ” or “YZ”, no finding or comment adverse to his reputation had been made against him. If that view is accepted, the use of a pseudonym when referring to Mr Hall in the Report absolved the CMC of the obligation to accord Mr Hall procedural fairness.

In determining whether any obligation to accord procedural fairness to Mr Hall was discharged by the use of a pseudonym when referring to him in the Report, I have considered that some assistance might be provided from the texts and authorities in the area of defamation law. Although not strictly related to the principles of procedural fairness, the authorities in this area have addressed issues concerning the identification of unnamed persons in publications.

In *Kruse v Lindner*, for example, it was held:

> It is of the essence of the tort of defamation that the person defamed be able to show that his reputation has suffered by reason of the publication complained of. Unless the publication points to some person as the person against whose reputation the aspersion in the publication is made with such particularity that a reader without additional knowledge, or with additional knowledge, can and does identify some particular person as the person whose reputation is the subject of the aspersion, then nobody is defamed.

More particularly on the issue of the identification of unnamed persons in defamation actions, it is the case that:

> To succeed in an action of defamation the plaintiff must not only prove that the defendant published the words and that they are defamatory: he must also identify himself as the person defamed ... The test of whether words that do not specifically name the plaintiff refer to him or not is this: Are they such as reasonably in the circumstances would lead persons acquainted with the plaintiff to believe that he was the person referred to? ...... It is not necessary that all the world should understand the libel; it is sufficient if those who knew the plaintiff can make out that he is the person meant.

The Report itself, under the heading ‘Identifying individuals’ acknowledged that the identity of officers referred to in the Report by way of pseudonyms might be discernible to certain persons. The Report states:

> The CMC is mindful of the fact that naming a person in a report about police misconduct can cause significant embarrassment to that person and may in some circumstances have the potential to damage a person’s reputation. In the case of serving prisoners, there is the added risk of potential prejudice to their personal safety.

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26 *Kruse v Lindner* (1978) 19 ALR 85 per Smithers J at p87.
Ultimately, the CMC elected to adopt a consistent naming convention, whereby pseudonyms have been applied to all police officers and prisoners (with the exception of Lee Owen Henderson, for reasons given below).

The CMC does recognise however that the identity of particular officers may be apparent to those who may have worked with them, or who are otherwise familiar with the events and physical locations to which the report makes reference.\(^{28}\)

On 12 November 2009, the Solicitor for the Queensland Police Union of Employees wrote to the CMC as Mr Hall’s legal representative. The letter states in part:

Mr Hall informs us he was referred to in the Crime and Misconduct Commission’s (“CMC”) Dangerous Liaisons Report (“the Report”) under the alias Detective Senior Constable YZ. Following publication of the Report, The Australian newspaper published an article which made comment in relation to our client and his employment at the Australian Crime Commission. This article cited the Report.

It is Mr Hall’s view that he was easily identifiable by some sections of the community both within the Report itself, and also within the article by The Australian.

In its reference to me the Committee also noted that Mr Hall had advised:

...as a result of the public releasing of [the Dangerous Liaisons] report, my pseudonym was widely publicised in the media as well as making the headline story of the Australian Newspaper with the heading, ‘Crime Agency Tainted by Rouge Cop’\(^{29}\) [sic]... it did not take long for people within different law enforcement agencies to figure out that I was the ‘Rouge Cop’. [sic] In fact, I received a phone call from as far afield as the Solomon Islands from an ex-Police Officer who was able to deduce that the ‘Rogue Cop’ was me.

Mr Williams also stated in the document he authored entitled “Darren Hall’s Story”, that “it wasn’t long before many of Mr Hall’s colleagues and those ‘in the know’ identified ‘YZ’ as Mr Hall.”\(^{30}\)

I have no reason to doubt that Mr Hall was identified as described. The reference to YZ’s rank in the QPS, the station he was working from and the fact that by February 2004 he had commenced duties with another law enforcement agency based outside Queensland, would have made his identity apparent to those who may have worked with him or who were otherwise familiar with the events and physical locations to which the Report referred. In terms of the relevant test in defamation law, although the Report does not specifically name Mr Hall, the words used are such as reasonably in the circumstances would lead persons acquainted with him to believe that he was the person referred to.

In response to the Committee’s specific question then, applying the principles of defamation law, the obligation to accord procedural fairness to Mr Hall could not be regarded as discharged by the use of a pseudonym when referring to him in the Report. However, I am unaware of any binding authority on the specific issue in terms of a statutory authority’s obligation to provide procedural

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\(^{28}\) Dangerous Liaisons Report ibid at page 5.

\(^{29}\) As the Committee noted, the actual title of the article is “Crime Body Tainted by Rogue Cop”.

\(^{30}\) Mr Greg Williams LLB Darren Hall’s Story: Crime & Corruption in the Queensland Crime & Corruption Commission at p 9.
fairness, therefore this cannot be regarded as an authoritative conclusion – more so an informed view.

If this view is correct, and the obligation to accord procedural fairness to Mr Hall was not discharged by the use of a pseudonym when referring to him in the Report, Mr Hall might expect to be provided some redress of the nature provided to the plaintiffs in *Ainsworth v Criminal Justice Commission* and *Criminal Justice Commission v Queensland Police Credit Union Limited*. (I have discussed this issue under the next heading.)

However, if my view is incorrect, and the use of a pseudonym when referring Mr Hall in the Report was sufficient to discharge the CMC’s obligation to accord him procedural fairness, there remains an obvious inconsistency in the way CMC’s dealt with Mr Hall and the way it dealt with the other subject officers mentioned in the Report. All other QPS officers and former QPS officers thought at risk of being viewed in an adverse light because of the publication of the Report were given a copy of the draft Report and invited to make submissions, notwithstanding that they too were not identified in the Report except by way of pseudonyms.

According to the Note to File of 20 April 2015 (part of which is set out on page 9 of this report), Mr Pearce advised that it was decided that the CMC didn’t need to provide a draft copy of the Report to Mr Hall as he had been sufficiently de-identified. He maintained that copies of the draft Report were provided to the other subject officers as a matter of caution, and whereas the pseudonyms used to identify those officers in the Report were , the CMC had applied a different method of coding (“YZ”) when referring to Mr Hall.

There are many more adverse references to some, but not all, of the other officers in the Report than there are adverse references to Detective Senior Constable YZ or YZ. Some of the references to the other officers are more in the nature of findings than the references to Detective Senior Constable YZ or YZ. However, as discussed above, it is clear from the authorities that that the obligation to provide procedural fairness is not restricted only to situations where formal findings are made.

Although Mr Pearce stated that copies of the draft Report were only provided to the other officers “being cautious”, the final Report presented to Attorney-General, the Speaker of the Legislative Assembly and the Chairman of the Parliamentary Crime and Misconduct Committee and tabled in Parliament, stated that the CMC had complied with the requirements of procedural fairness by giving all subject officers an early draft of the Report and inviting the officers to make submissions.

I do not consider the fact that a different method of applying a pseudonym was used for Mr Hall as opposed to the other subject officers, constitutes a sufficient basis to conclude that the CMC was obliged to provide procedural fairness to the other officers and not to Mr Hall. In my view, even if it were possible to argue that the use of the pseudonym “YZ” meant it was not strictly necessary for the CMC to provide procedural fairness to Mr Hall, the fact that procedural fairness was provided to all other subject officers referred to by (different) pseudonyms in the report and not provided to Mr Hall, leaves the CMC open to criticism that it did not act impartially and fairly as required by section 57 of the *Crime and Misconduct Act* (as it was then).

Out of an abundance of caution and in order to be seen to act at all times impartially and fairly under section 57, the appropriate course would have been to treat Mr Hall the same as all the other subject officers referred to in the Report and provide him with the opportunity to show why the contemplated comments adverse to his reputation should not be made.
If the Commission breached any obligation to accord procedural fairness to Mr Hall, what steps should now be taken by the Commission and/or the Committee in respect of that breach.

The CMC’s Dangerous Liaisons Report was tabled in accordance with section 69 of the (then) Crime and Misconduct Act. Pursuant to section 69(7) of the Crime and Misconduct Act the Report is therefore taken to have been tabled in, and published by order of, the Legislative Assembly and is to be granted all the immunities and privileges of a report so tabled and published.

In accordance with section 9(2)(d) of the Parliament of Queensland Act 2001, a document tabled in the Assembly falls within the definition of “proceedings in the Assembly”. Section 8(1) of the Parliament of Queensland Act states that “The freedom of speech and debates or proceedings in the Assembly can not be impeached or questioned in any court or place out of the Assembly.” It may therefore be considered that the steps which can be taken by the Commission and/or the Committee in respect of any breach of the obligation to accord procedural fairness to Mr Hall in the preparation of the Report, are somewhat limited.

Pursuant to section 9(3)(a) of the Parliament of Queensland Act, the protection against impeaching or questioning proceedings in the Assembly afforded by section 8(1) does not apply to a document tabled in the Assembly in relation to a purpose for which the document was brought into existence other than for the purpose of being tabled in the Assembly. Appropriate action may therefore be taken by the Commission and/or the Committee on this limited basis.

However, it is worth noting that the “Report on Gaming Machine Concerns and Regulations” which was the subject of contention in Ainsworth v Criminal Justice Commission was similarly deemed to have been tabled in, and printed by order of, the Legislative Assembly and granted all the immunities and privileges of a report so tabled and printed.31 In the Supreme Court, Ainsworth had sought relief by way of certiorari, namely an order that "the ... proceedings of the Criminal Justice Commission (be removed) for the purpose of quashing all findings of the ... Commission in the Report on Gaming Machine Concerns and Regulations which relate to the (appellants) or the 'Ainsworth group', as that term is used in the ... Report".32

The Full Court of the Supreme Court of Queensland initially refused this application. One basis upon which the application was refused was that the court considered it would be “overstepping the proper limits of our responsibilities by a wide margin if we were to order a writ of certiorari to issue to bring up a record that now forms part of the proceedings of Parliament.”

On appeal to the High Court, it was noted that “certiorari does not lie to correct the failure of the Commission to comply with its duty to proceed in a way that was fair to the appellants.”33 Instead, the High Court considered it appropriate that a declaration be made in terms indicating that the appellants were denied natural justice. Significantly, the High Court did not address the issue of parliamentary privilege to any great extent in its judgments. Brennan J merely noted that:

The respondent [the Criminal Justice Commission] contended that the report was validly produced and furnished to the office-holders in conformity with the Act and, on being

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31 The Criminal Justice Commission’s Report on Gaming Machine Concerns and Regulations was tabled in accordance with section 2.18 of the Criminal Justice Act 1989 – later renumbered as section 26. Section 26 was effectively the same as section 69 of the Crime and Misconduct Act.

32 Ainsworth v Criminal Justice Commission ibid per Mason CJ and Dawson, Toohey and Gaudron JJ at para 35.

33 Ainsworth v Criminal Justice Commission ibid per Mason CJ and Dawson, Toohey and Gaudron JJ at para 36.
printed, attracted the immunities and privileges of a report tabled in and printed by order of the Legislative Assembly. (The respondent based some of its argument on the immunities and privileges attaching to a report tabled and printed by order of the Legislative Assembly but the character of the Report in that respect is immaterial to the making of the declaration to which, in my view, the appellants are entitled.)\(^{34}\) [Emphasis added.]

*Ainsworth v Criminal Justice Commission* therefore stands as High Court authority for the proposition that a report of the Commission can be subject to judicial review notwithstanding that the report has been tabled in the Assembly.

As stated above, my view is that the obligation to accord procedural fairness to Mr Hall was not discharged by the use of a pseudonym when referring to him in the Report. If that view is correct, it would seem appropriate for the Commission to offer Mr Hall some form of redress of similar nature to that provided to the plaintiffs in *Ainsworth v Criminal Justice Commission* and *Criminal Justice Commission v Queensland Police Credit Union Limited*.

In *Ainsworth v Criminal Justice Commission* Brennan J observed:

> Where an official entity, purportedly exercising a statutory power or performing a statutory function which requires it to observe the rules of natural justice, publishes a report damaging to a person's reputation without having given that person an opportunity to be heard on the matter, prima facie that person is entitled to a declaration that the report, so far as it damages his or her reputation, has been produced in breach of the entity's duty to observe the rules of natural justice. The declaration cannot assert that the report was in fact erroneous for the court is not concerned with the merits of the report.\(^{35}\)

The court therefore made the declaration that “in reporting adversely to the appellants in its Report on Gaming Machine Concerns and Regulations, the respondent failed to observe the requirements of procedural fairness.”

In *Criminal Justice Commission v Queensland Police Credit Union Limited* the court made the declaration that “the plaintiff was denied procedural fairness in respect of observations concerning the plaintiff made in a Report dated 8 October 1997 by the defendant and appearing at pages 23 to 24 of that Report.”

If my view is correct and the obligation to accord procedural fairness to Mr Hall was not discharged by the use of a pseudonym when referring to him in the Report, it would be appropriate for the CCC to make a public declaration in similar terms. For example the CCC could acknowledge that, “In reporting adversely to Mr Darren Hall identified as Detective Senior Constable YZ in the July 2009 report entitled Dangerous Liaisons - A report arising from a CMC investigation into allegations of police misconduct (Operation Capri), the Crime and Misconduct Commission failed to observe the requirements of procedural fairness.”

Alternatively, if my view is incorrect and Mr Hall was sufficiently de-identified in the Report such that it was not strictly necessary for the CMC to provide him procedural fairness, the fact that all other subject officers referred to by (different) pseudonyms in the report were provided the

\(^{34}\) *Ainsworth v Criminal Justice Commission* ibid per Brennan J at para 10.

\(^{35}\) *Ainsworth v Criminal Justice Commission* ibid per Brennan J at para 25.
opportunity to show why the contemplated comments adverse to their reputations should not be made, and Mr Hall was not provided this opportunity, should be acknowledged.

As can be noted from the analysis above, the issue of whether the CMC breached its obligation to accord procedural fairness to Mr Hall may be open to interpretation. In those circumstances the Commission may consider it unnecessary or inappropriate to concede that report was produced in breach of its duty to observe the rules of procedural fairness. In that case, it would be appropriate in my view for the Commission to acknowledge that the Report was published without providing Mr Hall with the opportunity to show why the contemplated comments adverse to his reputation should not be made. Further, the failure to provide Mr Hall with the opportunity to show why the contemplated comments adverse to his reputation should not be made, was inappropriate since that opportunity had been provided to all other officers adversely mentioned in the Report.

I note that during the meeting with Mr Hall in October 2014, Dr Levy offered to take the Report down from the CCC’s website. That may not be necessary if the CCC places an appropriate acknowledgement before the link to the Report. The Commission might also consider providing a written acknowledging to Mr Hall in terms discussed above.

Although I do not consider it is necessary for the Committee to take any steps, the Committee may wish to consider writing to Mr Hall to acknowledge that, in its view, the Dangerous Liaisons Report was published without providing him with the opportunity to show why the contemplated comments adverse to his reputation should not be made. Further, that the failure to provide Mr Hall with the opportunity to show why the contemplated comments adverse to his reputation should not be made, was inappropriate since that that opportunity had been provided to all other officers adversely mentioned in the Report.

Reference of 9 May 2016

On 9 May 2016 the Committee forwarded to me material it had recently received from Mr Greg Williams in relation to Mr Hall’s complaint. The material included a document entitled “Darren Hall’s Story” authored by Mr Williams, a transcript of a decision of the Australian Industrial Relations Commission relating to an application Mr Hall made against the Australian Crime Commission, letters from the CMC to Mr Hall and emails to and from Mr Williams. In accordance with section 295(2)(d) of the *Crime and Corruption Act* the Committee requested that I address any further matters of concern arising as a result of Mr Williams’ complaint.

Much of the material provided to me concerns agencies other than the Commission, in respect of which I have no jurisdiction. I have identified below those issues which might be said to relate to “the conduct or activities of the commission or a commission officer” in terms of section 295(1)(a) of the *Crime and Corruption Act* which defines the extent of the Committee’s referral of the matter to me pursuant to section 295(2)(d).

Under each of the headings below, I have included extracts from Mr Williams’s document “Darren Hall’s Story” which contain his allegations concerning the conduct or activities of the commission or a commission officer.
Mr Hall was “set up” by the ACC at the behest of the CCC’s manufactured allegations

The CCC allegations

Mr Hall was shocked to read in the “Dangerous Liaisons” report that totally unproven serious criminal allegations about him had been covertly forwarded to the ACC by the CCC. He denies every allegation provided to the ACC. This was the first time Mr Hall was aware of these allegations made against him.

The allegations include:

- Accepting money from an informant
- Improper registering of a firearm, and
- Being “used” by a prison informant.

The real reasons emerge about why the ACC sacked Darren Hall

What now becomes clear is that the ACC had known about these allegations and improperly constructed a way to rid itself of “a former corrupt police officer”. The timing of the covert referral by the CCC to the ACC of damaging allegations against Mr Hall matched the ham-fisted attempts by the ACC to get rid of Mr Hall in late 2004.

The AIRC’s criticisms of the ACC now also came into clearer focus. On the weight of compelling evidence, it is open to conclude that Mr Hall was “set up” by the ACC at the behest of the CCC’s manufactured allegations.36

There is no evidence whatsoever, compelling or otherwise, upon which it might be concluded that Mr Hall was set up by the ACC at the behest of the Commission. The timing of the referral by the CMC to the ACC of allegations against Mr Hall does not match the alleged attempts by the ACC to get rid of Mr Hall in late 2004.

Mr Hall was first dismissed by the ACC on 29 October 2004. The investigations which ultimately developed into Operation Capri commenced in early 2005. There is a record on the Commission’s files of a meeting on 13 October 2005 between the CMC and the ACC during which there was some discussion of allegations that Mr Hall may have assisted in having State firearms charges against a person withdrawn. On 8 March 2006 the ACC and the CMC commenced a Joint Agency Agreement which allowed the CMC to have access to intelligence derived from the ACC’s use of its telecommunications interception powers.

Subsequently, on 20 November 2006, the CMC formally disseminated information to the ACC concerning Mr Hall’s alleged association with the prison informant Lee Owen Henderson.

The suggestion that the provision of this information to the ACC was an attempt to set up Mr Hall is without foundation. First, it occurred two years after the ACC’s first attempt to dismiss Mr Hall and secondly, the CMC had an obligation pursuant to section 55(2) of the Crime and Misconduct Act to provide such information:

36 Darren Hall’s Story ibid at pages 6 and 7.
Results of Investigation

The commission must, in the performance of all of its functions, give intelligence information to the entities it considers appropriate in the way it considers appropriate.

Section 60 of the Crime and Misconduct Act also provided the CMC with a basis to provide this information to the ACC:

1. The commission may give evidence of, or information about, a possible offence against a law of the State, the Commonwealth or another State to an entity or a law enforcement agency the commission considers appropriate.

2. Also, the commission may give information coming to its knowledge, including by way of a complaint, to a unit of public administration if the commission considers that the unit has a proper interest in the information for the performance of its functions.

After the publication of the Dangerous Liaisons Report in July 2009, the CMC disseminated further information concerning Mr Hall to the ACC on 10 September 2009. This information related to Mr Hall’s alleged involvement in a “contrived drug raid” and the removal from custody of the prisoner Lee Owen Henderson.

Both formal disseminations of information were made pursuant to section 60 and in accordance with 62 of the Crime and Misconduct Act which stated that:

Any information, document or thing in the commission’s possession may be used and dealt with in performing the commission’s functions, but otherwise must not be given to or made available for inspection by any person without the commission’s express written authorisation.

Whilst Mr Williams states that the material was covertly provided to the ACC, the two formal disseminations of information from the CMC to the ACC were made in accordance with the CMC’s obligations under the Crime and Misconduct Act, pursuant to the express written consent of the Chairperson as delegate of the Commission, and recorded on the Commission’s dissemination registers.

What use the ACC then made of the information provided by the CMC does not fall within the ambit of my investigation. The information was appropriately provided by the CCC to the ACC. It was then a matter for the ACC to decide the truth and reliability of that information and to determine the appropriate course of action, if any.

Mr Williams lays down a challenge to the Chairperson of the CCC, Mr Alan MacSporran QC, at the conclusion of the Darren Hall’s Story document:

If Mr MacSporran and the CCC are to have a shred of credibility, Mr MacSporran must immediately announce that he supports a wide-ranging independent inquiry, headed by an interstate senior judge, into the scandal surrounding the role the CCC played in the sacking of Mr Hall. 37

The CMC disseminated information concerning Mr Hall to the ACC pursuant to section 60 and in accordance with 62 of the Crime and Misconduct Act two years after the ACC’s first attempt to dismiss Mr Hall. The suggestion that there is any scandal surrounding this dissemination is without

37 Darren Hall’s Story ibid at page 20.
foundation. Mr Williams’ call for a wide-ranging independent inquiry, headed by an interstate senior judge is unwarranted.

The CCC admits to sending “evidence” to the ACC

The “Dangerous Liaisons” report states that the CCC had forwarded “evidence” about Mr Hall’s criminality to the ACC:

1. “The evidence concerning former Detective Senior Constable YZ has been referred to his present employer.”

2. “Evidence of payments to then Detective Senior Constable YZ, who is now employed by another law enforcement agency, is not detailed in this report, but has been conveyed to the relevant agency.”

Every allegation the CCC had failed to put to Mr Hall have been denied by Mr Hall. The ACC never put the CCC allegations nor their evidence to Mr Hall. On the weight of compelling evidence, it is reasonably open to conclude that this fundamental failure to respect procedural fairness as a matter of legal obligation on both law enforcement agencies. This demonstrates the level of disdain [sic] and toxic culture embraced by the officers involved in the investigation.38

As stated above, the CMC had an obligation pursuant to section 55(2) of the Crime and Misconduct Act to provide such information to the entities it considered appropriate in the way it considered appropriate. The CMC was not obliged to “put to Mr Hall” the information it sent to the ACC. To do so would have been premature and unhelpful had the ACC wished to conduct an investigation of the information provided by the CMC. There is no “fundamental failure to respect procedural fairness” involved in the provision to the ACC of the information involving Mr Hall. The issue of procedural fairness does not arise in such circumstances where intelligence information is merely transmitted between law enforcement agencies.

At page 10 of the Darren Hall’s Story document, Mr Williams states that the ACC’s failure to disclose highly material matters (namely the allegations conveyed to the ACC by the CMC) to the Australian Industrial Relations Commission (AIRC) “may raise serious issues of possible alleged conspiracy and perjury. These ACC officers should be investigated by the Australian Federal Police. In addition, relevant CCC officers should be investigated to determine if any were involved in the alleged conspiracy.”

I have no jurisdiction in relation to the allegations relating to the ACC but I note that the first record of any discussion between the CMC and the ACC concerning allegations against Mr Hall was on 13 October 2005. The formal disseminations of information occurred on 20 November 2006 and 10 September 2009. The decision of the AIRC that Mr Williams provided to the Committee is dated 31 March 2005 – well before the CCC conveyed any information to the ACC in relation to Mr Hall. There is absolutely no basis to call for an investigation to determine if any CMC officers were involved in a conspiracy against Mr Hall.

38 Darren Hall’s Story ibid at page 9.
The CCC’s evidence sent to the ACC conveniently goes missing

The CCC’s “Evidence” Sent to the ACC Conveniently “Goes Missing”

During the Hall-Levy meeting [of 30 October 2014] in relation to the “evidence” the CCC passed to the ACC, Ms Wood is recorded as saying:

- The CCC “cannot tell me [Mr Hall] what it is as the file only contains the running sheet.”
- “We can’t find a record of the dissemination [to the ACC] which is the only way we can record what was given to them.”
- When asked why a record of information supplied to another agency (ACC) would not be recorded, the CCC stated that normally a copy was kept on the file but they were unable to locate it. It was then stated that the CCC couldn’t give much more information other than to say that they provided information to the ACC.

It is incredible that the CCC now states that they cannot locate the so-called evidence forwarded to Mr Hall’s employer, the ACC. This admission by the CCC is either extraordinary incompetence or a real possibility that an officer or officers of the CCC may have removed and/or tampered with the vital evidence out of self-interest.

Whatever the reasons, the CCC should have immediately reported the matter to the PCCC and had the missing file investigated by a retired interstate senior judge. Instead, the CCC appears to have done nothing despite knowing that the crucial file was missing and admitting that they had committed major blunders in the “Dangerous Liaisons” report, a report published with great fanfare and credit to the CCC at the time showing to the public at large that it was ‘on the job’ and could be faithfully relied on.

The so called “evidence” against Mr Hall has vanished and it appears the CCC failed to inform the PCCC, which by deliberate design, has rendered the PCCC to such an unacceptable impotent and discredited status by knowingly withholding this type of vital evidence in its own self-interest.

Ms Wood provided a memorandum dated 18 January 2016 which dealt with a number of the issues Mr Williams raised in his “Darren Hall’s Story” document, including the above matter. She stated that after the meeting with Mr Hall in October 2014 the Commission requested that efforts be made to locate the information disseminated to the ACC. Ms Wood admitted that she was not aware of the details of the two formal disseminations at the time of the meeting and did not anticipate Mr Hall’s questions about what information was forwarded to the ACC. She was aware of contact between the CMC and the ACC as she had access to the running sheet on the investigation file and file notes but not the formal disseminations.

Certainly if the disseminations were not able to be located, there may have been some basis to Mr Williams’ suggestion of extraordinary incompetence or a possibility that the disseminations had been removed and/or tampered with. Further, if the disseminations were not able to be located

39 Darren Hall’s Story ibid at page 15.
40 Darren Hall’s Story ibid at page 17.
Subsequent to the meeting in October 2014, it would have been necessary to advise the Parliamentary Committee and the Parliamentary Commissioner of this fact pursuant to section 329 of the Crime and Corruption Act.

Mr Williams asserts that “the CCC appears to have done nothing despite knowing that the crucial file was missing”. However, the records of the disseminations and copies of the disseminated material were located by a Senior Investigator of the Commission shortly after the meeting as stated in a Note to File from Ms Wood dated 12 December 2014. Copies have been placed on the CCC’s file concerning Mr Hall’s complaint and were inspected in the course of my investigation. From my experience in conducting the Annual Review of Intelligence Data in possession of the CCC, I would not have expected the records of the disseminations to be included on the Commission’s Operation Capri investigation file. Hard copies of formal disseminations such as those to the ACC are stored in the Property Control section. Electronic versions of the disseminations are also retained as were the disseminations concerning Mr Hall to the ACC.

The fact that the disseminations were not able to be produced to Mr Hall during his meeting with Dr Levy and Ms Wood in October 2014 is unfortunate as it led him and/or Mr Williams to suspect incompetence or deliberate tampering or removal of the documents. However, there is absolutely no evidence to suggest any such factors and no reason to have “the missing file investigated by a retired interstate senior judge.”

Queensland Police Union and the CCC’s first explanation

The QPU contacted the CCC by letter and telephone seeking an explanation as to why unfounded allegations and alleged “evidence” against Mr Hall had been forwarded to the ACC without first interviewing him. The CCC’s solicitor stated that it appears the CCC had “forgotten” to talk to Mr Hall.

This is the first of three conflicting “explanations” by the CCC (others are set out below). However the CCC’s shocking “forgotten” admission did not result in a correction, an immediate inquiry, compensation for Mr Hall and an apology. The CCC’s response was to do nothing.

Over the next few months the QPU sought further explanations from the CCC and none were forthcoming. Indeed, the CCC’s failure to respond to QPU letters merely confirmed the CCC’s culpability and highlighted its preparedness to knowingly commit ongoing alleged crime and misconduct that offends to the present time. Any reasonable person would expect more from Queensland’s major crime fighting organisation which is obliged by law to act honestly in all dealings.41

As stated above, the CMC was not obliged to interview or “put to Mr Hall” the information it sent to the ACC. A memorandum on the file from the Acting Director Misconduct Investigations to the Assistant Commissioner Misconduct, dated 29 November 2010 states:

I can confirm that Hall was never interviewed. He was living in Victoria at the time. There was some consideration re: calling him to a hearing but as he was no longer a QPS employee and there were no criminal charges arising from his conduct, we decided not to

41 Darren Hall’s Story ibid at page 7 and 8.
pursue that course. He was never officially approached for an interview – so he never officially declined. He was also under investigation at the time (by the ACC and ACLEI) and involved in ongoing litigation with the ACC over his employment...

I have not identified any evidence to suggest that the CCC had “forgotten” to interview Mr Hall. On 25 March 2014 Dr Levy had incorrectly advised Mr Hall that he was not forwarded a copy of the draft public report in May 2009 due to a clerical oversight, but that does not relate to the issue of interviewing Mr Hall. It appears to be the case that Mr Williams has confused the differing explanations provided by the CMC as to why Mr Hall was not provided with a copy of the draft report, with the explanation as to why he was not interviewed. These are two separate issues and the CMC’s explanation as to the latter has been consistent at all times as discussed under the next heading.

The CMC did not fail to respond to the Queensland Police Union as Mr Williams asserts. According to a memorandum on the file from the Official Solicitor to the Director Integrity Services, the Official Solicitor spoke to the author of the Queensland Police Union on 8 June 2011. The Solicitor stated that the file was being reviewed and the CMC would provide a response to the Queensland Police Union letter shortly but the CMC was not minded to give recognition of a breach of natural justice.

The CMC’s eventual response to the Queensland Police Union was not timely. Entries on the CMC’s files state that this was due to the fact that senior officers involved in the decision-making processes for Operation Capri were no longer with the Commission. A considerable amount of time and effort was taken to review the Operation Capri files and the computer of the former Director Misconduct Investigations. The CMC eventually provided a belated response to the Queensland Police Union by letter dated 16 September 2011. The CMC’s response was primarily directed at the QPU’s request for “formal recognition from the CMC that Mr Hall was not afforded natural justice prior to the publishing of the Report in that he was not afforded an opportunity to put his position forward or otherwise provide comment in relation to the content of the Report as it impacted upon his reputation.” The CMC did not accept that it had failed to afford Mr Hall procedural fairness.

There is simply no evidence to suggest that the CMC’s alleged failure to respond to letters from the Queensland Police Union indicated that the CMC was prepared to “knowingly commit ongoing alleged crime and misconduct” as Mr Williams asserts.

The CCC’s second explanation

If there is any doubt about the CCC’s dishonesty it may be found in their further responses to the natural justice issue.

Then Acting Chairman, Warren Strange, stated in a letter dated 23 April 2013 that Mr Hall had not been interviewed because Mr Hall was in Melbourne and “effectively outside the CCC’s jurisdiction.”

This was arrant nonsense for two reasons. Firstly, whilst attending a law enforcement seminar in Victoria, a detective sitting next to Mr Hall was pulled out of the seminar to be interviewed by the CCC. Secondly, it is laughable to imagine the ACC would refuse to allow
Mr Hall to be interviewed by the CCC. Mr Strange’s explanation also conflicts with the “we forgot” explanation previously proffered by the CCC to the QPU.\(^{42}\)

Procedural fairness or natural justice does not require that a person be interviewed. As discussed above, it requires providing the person with an opportunity to show why the contemplated comments adverse to the person’s reputation should not be made. The CMC’s explanation as to why Mr Hall was not interviewed had always been consistent.

For example, the full explanation provided in the letter from the Acting Chairperson, Mr Strange, to Mr Hall in the latter of 23 April 2013 was:

*Operation Capri ran from March 2006 to September 2008 during which time, to the CMC’s knowledge, you were residing in Melbourne and employed by the Australian Crime Commission (ACC), a Commonwealth law enforcement agency.*

*In the CMC’s view, you were effectively outside the CMC’s jurisdiction, and the CMC was unable to easily exercise its coercive powers in respect of you. There was no expectation that you would voluntarily participate in any interview with CMC investigators. Although you have stated previously that you returned to Brisbane in June 2008, the CMC was unaware of that fact.*

*I understand that CMC investigators made preliminary inquiries and were advised that you were under investigation in relation to other matters. Therefore, in all the circumstances a decision was made not to interview you.*

That explanation is consistent with the 29 November 2010 memorandum from the Acting Director Misconduct Investigations to the Assistant Commissioner Misconduct, quoted at page 25 above.

I am unaware of the circumstances in which the detective sitting next to Mr Hall at the seminar was interviewed, but it is not particularly relevant. The CMC had made a decision that it would not interview Mr Hall for a number of legitimate reasons. This is quite a separate issue from the question of providing him procedural fairness. I fail to discern how the letter from Mr Strange to Mr Hall of 23 April 2013 letter can be said to demonstrate the CCC’s dishonesty in relation to the natural justice issue.

**The CCC’s third explanation**

*Later, Acting Chairman, Dr Ken Levy RFD, stated in a letter dated 25 March 2014 that he was “satisfied that the CCC failure to forward a copy of the draft “Dangerous Liaisons” report was “due to a clerical oversight.”*  

...  

*The CCC’s attitude has been to stubbornly but conveniently miss the point that it continues to breach its obligation to accord natural justice to Mr Hall. Years of prevarication by the CCC and the more recent conflicting excuses from two Acting Chairmen raise further serious allegations of unlawful cover-ups and a deep-seated culture within the CCC that officers are above the law.*\(^{43}\)

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\(^{42}\) *Darren Hall’s Story* ibid at page 13.  

\(^{43}\) *Darren Hall’s Story* ibid at page 14.
There are not conflicting responses in relation to the decision not to interview Mr Hall, as Mr Williams appears to assert here. The incorrect “clerical oversight” explanation provided by Dr Levy related to the CMC’s failure to forward a copy of the draft Report to Mr Hall. I have set out at page 8 above, relevant extracts from Dr Levy’s 30 June 2015 letter to the then Acting Chair of the Committee, Mr Russo MP. Dr Levy accepted that the “clerical oversight” explanation was incorrect and he provided an accurate statement of the reasons that the CMC did not consider it was required to provide Mr Hall with a draft copy of the Report prior to its publication.

There is nothing in Mr Williams’ allegations under this heading which suggests “serious allegations of unlawful cover-ups and a deep-seated culture within the CCC that officers are above the law”.

Conflicting explanations from two Acting Chairmen of the CCC

The contradictory explanations by two Acting Chairmen of the CCC on the same material point raises serious questions of who is telling the truth and which one may have committed an offence by failing to act honestly? This should be investigated.44

There are not contradictory explanations by two Acting Chairmen of the CCC on the same material point, as Mr Williams alleges. Mr Strange provided an explanation in relation to the decision not to interview Mr Hall. Dr Levy provided an explanation in relation to the CMC’s failure to forward a copy of the draft Report to Mr Hall. Dr Levy’s “clerical oversight” explanation was incorrect as he later recognised and he then provided an accurate statement of the reasons that the CMC did not consider it was required to provide Mr Hall with a draft copy of the Report.

There is no evidence that either person committed an offence by failing to act honestly and nothing that warrants further investigation.

Breaches of natural justice by the CCC and the ACC

Despite their legal obligation to do so, including Mr Hall’s right to procedural fairness, neither the CCC nor the ACC once put the allegations of criminality to him. He was kept totally in the dark. These fundamental procedural fairness failures (i.e. a right to face one’s accuser and the allegations) must render all notions of an impartial investigation by the ACC and the CCC (as required by law) as not having been met.

Natural justice isn’t some esoteric legal principle. It is fundamental to the principles which ground and sustain the notion of government by the rule of law. It is about fairness that an accused person is given an opportunity to defend himself or herself from allegations and to not be arbitrarily condemned without hearing his/her version of events. The ACC and the CCC would have known this but, most concerningly, felt emboldened enough to deny Mr Hall the opportunity to defend himself. 45

I have discussed earlier in this report, Mr Hall’s allegation that the CMC breached its obligation to provide natural justice or procedural fairness. However, the fact that procedural fairness may not have been provided to Mr Hall in circumstances where, arguably – since he was identifiable, it should have been, does not mean that the entire Operation Capri investigation was not impartial.

44 Darren Hall’s Story ibid at page 14
45 Darren Hall’s Story ibid at page 7.
The investigations conducted pursuant to Operation Capri commenced years before the reporting process, culminating in the publication of the Dangerous Liaisons Report. The entire investigation cannot be said to be tainted by any subsequent failure to provide procedural fairness in the reporting process.

In my view, it was not the case that the CMC “arbitrarily condemned” Mr Hall and “felt emboldened enough to deny Mr Hall the opportunity to defend himself”. As stated earlier in this report, the CMC considered that Mr Hall had been sufficiently de-identified such that the obligation to provide procedural fairness did not arise in respect of adverse comments made concerning Detective Senior Constable YZ in the Report. The CMC clearly did not consider that those adverse comments would be identified as condemning Mr Hall.

Issues concerning the Australian Crime Commission are not within my jurisdiction.

**The CCC misleads the Queensland Parliament about its procedural fairness**

As stated below, the CCC misled the Queensland Parliament when its report proclaimed it had accorded natural justice to every police officer named in the report. This is a patently false statement.\(^{46}\)

The “Dangerous Liaisons” report misleadingly states:

- “The CMC is satisfied it has complied with procedural fairness requirements.”
- “All persons and entities thought at risk of being viewed in an adverse light because of publication of this report were given an early draft and invited to make submissions.”
- “In every case, the relevant issues had either been explored with, or otherwise identified to, the individuals concerned.”
- “In the case of those officers who are referred to, it is not disputed that the conduct in question occurred.”

Based on the weight of compelling evidence, these statements by the CCC are all misleading and dishonest. It is beyond dispute that Mr Hall was never interviewed or given an opportunity to defend himself. The CCC has been aware of this for over six years.

This ongoing deception by successive senior officers of the CCC is reasonably open to be viewed as an alleged serious prima facie breach of the Crime and Misconduct Act and Criminal Code and should be investigated.\(^{47}\)

As I have stated earlier in this report, it is my view that the CMC should have provided Mr Hall with the opportunity to address the possible adverse comments in the report concerning Detective Senior Constable YZ, prior to the publication of the Report. It may be argued that, based on my analysis of the law in this area, the CMC’s assertion that it “is satisfied it has complied with procedural fairness requirements” could be considered misleading. However, the evidence

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\(^{46}\) *Darren Hall’s Story* ibid at page 7.

\(^{47}\) *Darren Hall’s Story* ibid at page 9.
suggests that at the time the CMC was indeed satisfied that it was not necessary to provide procedural fairness to Mr Hall.

The CMC considered there was no risk of Mr Hall being viewed in an adverse light because he had been de-identified in the report. (Though not sufficiently so in my view.) This had been the consistent view of the CMC Chairperson, Mr Needham, since before the publication of the report. In his letter to the Committee of 11 December 2009, Mr Needham, stated that:

*Considerable care was taken when drafting the public report to ensure that Mr Hall was not identified, and the references to him in the report are oblique. This was done not only to ensure the CMC did not breach and procedural fairness obligations, but also so as not to prejudice any investigation or other action his employer might have chosen to conduct in respect of this and other matters.*

*...*  

*As no findings were made against Mr Hall and because he was not identified in the published report, there was no breach of procedural fairness.*

Whilst it is apparent that I do not agree with Mr Needham’s view in this regard, there is no evidence upon which it could be concluded that his view was not honestly held. Nor is there evidence to suggest that the other statements in the Report quoted above were made dishonestly.

The Standing Orders provide that the Legislative Assembly may treat deliberately misleading the House or a committee as a contempt.48 Three elements must be established when it is alleged that a person has committed the contempt of deliberately misleading the House or a parliamentary committee:

- firstly, the statement must, in fact, have been misleading;
- secondly, it must be established that the person making the statement knew at the time the statement was made that it was incorrect; and
- thirdly, in making it, the person must have intended to mislead the House.

Previous Ethics Committees and authoritative texts49 have noted that the standard of proof demanded in cases of deliberately misleading parliament is a civil standard of proof on the balance of probabilities, but requiring proof of a very high order having regard to the serious nature of the allegations.

There is no evidence to suggest that the senior officers involved in the preparation of the Report knew or believed the statements quoted above were incorrect. On the contrary, there is evidence that the officers honestly believed (erroneously in my view) that Mr Hall was not “at risk of being viewed in an adverse light because of the publication” of the report because he had been de-identified and that, therefore, there was no obligation to provide him with procedural fairness.

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I do not consider there is any evidence of an ongoing deception by successive senior officers of the CMC and the CCC. The basis upon which it was determined that it was unnecessary to provide Mr Hall with a draft copy of the report was stated in Mr Needham’s letter to the Committee of 11 December 2009. Subsequent Chairpersons have apparently also adopted that position. The fact that others might disagree with that position does not mean there has been deception by successive senior officers of the CMC and CCC. There is no evidence to suggest an alleged serious prima facie breach of the Crime and Misconduct Act or the Criminal Code.

**Sections 92, 92A and 200 of the Queensland Criminal Code**

*The relevant Queensland laws state:*

**Section 92: Abuse of office**

Any person who, being employed in the Public Service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another is guilty of a misdemeanour, and is liable to imprisonment for two years.

**Section 92A: Misconduct in relation to public office**

A public officer who, with intent to dishonestly gain a benefit for the officer or another person or to dishonestly cause a detriment to another person –

a) deals with information gained because of office; or

b) performs or fails to perform a function of office; or

c) without limiting paragraphs (a) and (b), does an act or makes an omission in abuse of the authority of office;

is guilty of a crime.

*Maximum penalty – 7 years imprisonment.*

**Section 200: Refusal by public officer to perform duty**

Any person who, being employed in the public service, or as an officer of any court or tribunal, perversely and without lawful excuse omits or refuses to do any act which it is his or her duty to do by virtue of his or her employment is guilty of a misdemeanour, and is liable to imprisonment for 2 years, and to be fined at the discretion of the court.

**Section 140: Attempting to pervert justice**

In addition, the senior Queensland officers may have breached this section.

*A person who attempts to obstruct, prevent, pervert, or defeat the course of justice is guilty of a crime. Maximum penalty 7 years imprisonment.*

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50 Darren Hall’s Story ibid at page 10.
It is open to suggest in respect of these sections that certain senior CCC officers may be in breach of them by repeatedly failing to remedy the serious known blunders made in relation to Mr Hall.

The civil offence of a failure to accord natural justice, should, and could have been rectified by the CCC when the culpability of senior officers became patently obvious to anyone who cared to read the “Dangerous Liaisons” report and the CCC’s own admission that they had failed to apply the law of natural justice.

However, it is submitted that once these officers sought to prevaricate and cover-up their failures (by their inaction), and the failures of others, they then may have collectively and knowingly over six years committed alleged prima facie criminal offences, the type of which are not curtailed by time limitations. Therefore, all of the CCC officers who allegedly breached the Queensland Criminal Code may have left themselves open to be charged (at any time) under one or more of the sections set out [above]. On the facts, this may include successive Chairmen and Acting Chairmen.51

Police complaints against the CCC Chairman and Commissioners

Clearly these aforesaid three sections (and others) were enacted by Parliament to ensure public officers did not abuse power in their office. Their purpose is plainly to protect and maintain public confidence in government, especially concerning the conduct of law-enforcement agencies.

In Mr Hall’s matter, it is submitted that certain senior officers may have committed alleged on-going offences under all three sections (and others) for over six years.52

As Mr Williams advised, Mr Hall made a complaint to the Commissioner of the Queensland Police Service against former and current Commission officers in relation to possible offences under sections 92, 92A and 200 of the Queensland Criminal Code. (I make no comment in relation to Mr Williams’ adverse observations concerning the conduct of the police investigation and the actions of the Committee at page 13 of the Darren Hall’s Story document.)

On 3 August 2012, the then Commissioner of the Queensland Police Service advised the Committee that there was no case against the Commission officers pursuant to sections 92 and 200 because the officers did not fall within the definition of “person employed in the public service” in section 1 of the Criminal Code. Further, in respect of section 92A, there was insufficient evidence of the requisite “intent to dishonestly gain a benefit for the officer or another person or to dishonestly cause a detriment to another person”.

I concur with the Police Commissioner’s assessment of the complaints. As I have observed above, whilst I may not agree with the views of the CMC officers responsible for the decision not to provide Mr Hall with the opportunity to show why the contemplated comments adverse to his reputation should not be made, there is no evidence upon which it could be concluded that this view was not honestly held. There is no evidence whatsoever of an intent to dishonestly cause a detriment to Mr Hall.

51 Darren Hall’s Story ibid at pages 10 and 11.
52 Darren Hall’s Story ibid at page 12.
Other comments

Mr Williams asserts at page 7 of his Darren Hall’s Story document that:

Since the report’s publication in July 2009, every Chairman and Acting Chairman of the CCC (except one short-term incumbent) has been made aware that the report was fatally flawed but each Chairman has failed to admit to Mr Hall and the Queensland Parliament that their allegations that led to the destruction of Mr Hall’s marriage and career were totally groundless.

I do not consider the Dangerous Liaisons Report to be fatally flawed. Whilst I may not agree with the CMC’s interpretation of the law that provides context to the comments concerning the CMC’s compliance with procedural fairness, the entire Report is not fatally flawed. Nor is it possible to determine whether the allegations against Mr Hall in the Report are totally groundless since they have not been assessed with the benefit of any explanation or comment Mr Hall might wished to have provided in respect of them.

Mr Williams asserts at page 8 of the Darren Hall’s Story document that “The CCC continues to publish a report it has known to be false for over six years.” Again, whilst I may not agree with the CMC’s interpretation of the law concerning procedural fairness, I do not consider that the Report can be described as false.
Leaving aside the issue of whether the CMC’s obligation to provide Mr Hall procedural fairness was discharged by the use of a pseudonym when referring to him in the Report, it is clear that the principles of procedural fairness required that, prior to publishing the Report, the CMC was obliged to provide Mr Hall with an opportunity to show why the contemplated comments adverse to his reputation should not be made.

In my view, the obligation to accord procedural fairness to Mr Hall could not be regarded as discharged by the use of a pseudonym when referring to him in the Report. It would therefore be appropriate for the CCC to make a public declaration acknowledging that, in reporting adversely to Mr Darren Hall in the Dangerous Liaisons Report, the CMC failed to observe the requirements of procedural fairness.

Alternatively, if my view is incorrect and Mr Hall was sufficiently de-identified in the Report such that it was not strictly necessary for the CMC to provide him procedural fairness, it would be appropriate for the CCC to acknowledge that the Dangerous Liaisons Report was published without providing Mr Hall the opportunity to show why the contemplated comments adverse to his reputation should not be made and that failure to provide Mr Hall with this opportunity was unfair since that opportunity had been provided to all other officers adversely mentioned in the Report.

My investigation has disclosed no evidence upon which it might be concluded that Mr Hall was set up by the ACC at the behest of the Commission as Mr Williams alleged. The two formal disseminations of information from the CMC to the ACC concerning Mr Hall were made in accordance with the CMC’s obligations under the Crime and Misconduct Act, pursuant to the express written consent of the Chairperson as delegate of the Commission, and recorded on the Commission’s dissemination registers. There is absolutely no basis to call for an investigation to determine if any CMC officers were involved in a conspiracy against Mr Hall. The suggestion that there is any scandal surrounding the disseminations is without foundation. Mr Williams’ call for a wide-ranging independent inquiry into the issue, headed by an interstate senior judge is unwarranted.

The fact that the disseminations were not able to be produced to Mr Hall during his meeting with Dr Levy and Ms Wood in October 2014 is unfortunate as it led Mr Hall and/or Mr Williams to suspect incompetence or deliberate tampering or removal of the documents. However the records of the disseminations and copies of the disseminated material were located by a Senior Investigator of the Commission shortly after the meeting in the location I would expect them to have been. There is absolutely no evidence to suggest incompetence or deliberate tampering or removal of the documents and no reason to have “the missing file investigated by a retired interstate senior judge.”

Mr Williams appears to have confused the differing explanations provided by the CMC as to why Mr Hall was not provided with a copy of the draft report, with the explanation as to why he was not interviewed. These are two separate issues and the CMC’s explanation as to the latter has been consistent at all times.
The CMC’s eventual response to the Queensland Police Union was not timely but there is no evidence to suggest that the CMC’s alleged failure to respond to letters from the Queensland Police Union indicated that the CMC was prepared to “knowingly commit ongoing alleged crime and misconduct” as Mr Williams asserts.

There is no evidence to suggest “serious allegations of unlawful cover-ups and a deep-seated culture within the CCC that officers are above the law”.

The fact that procedural fairness may not have been provided to Mr Hall in circumstances where, in my view, it should have been, does not mean that the entire Operation Capri investigation was not impartial. The entire investigation cannot be said to be tainted by any subsequent failure to provide procedural fairness in the reporting process.

There is no evidence to suggest that the senior officers involved in the preparation of the Report knew or believed the statements under the heading “Procedural fairness” at page 6 of the Report were incorrect. The evidence indicates that the officers honestly believed (erroneously in my view) that Mr Hall was not “at risk of being viewed in an adverse light because of the publication” of the report because he had been de-identified and that, therefore, there was no obligation to provide him with procedural fairness. Nor do I consider there is evidence of an ongoing deception by successive senior officers of the CMC and the CCC. Subsequent Chairpersons appear to have accepted the basis upon which it was determined unnecessary to provide Mr Hall with a draft copy of the report as stated in Mr Needham’s letter to the Committee of 11 December 2009. There is no evidence to suggest an alleged serious prima facie breach of the Crime and Misconduct Act or the Criminal Code.

There is no case against Commission officers pursuant to sections 92 and 200 of the Criminal Code as the officers did not fall within the definition of “person employed in the public service” – an element of the offence. There is insufficient evidence of the requisite “intent to dishonestly gain a benefit for the officer or another person or to dishonestly cause a detriment to another person” – an element of the offence under section 92A of the Criminal Code.

I do not consider the Dangerous Liaisons Report to be fatally flawed or false. It is not possible to determine whether the allegations against Mr Hall in the Report are totally groundless since they have not been assessed with the benefit of any explanation or comment Mr Hall might wished to have provided in respect of them.

**Qualification**

The Committee should be aware that, as I have made some comments in my report which could be considered adverse to the Commission, Commission officers and former Commission officers, on 16 August 2016 I provided a draft copy of my report to the CCC Chairperson, Mr Alan MacSporran QC, in order to enable submissions to be made to me on behalf of the Commission generally or on behalf of any officer referred to or alluded to in the report.

As I wished to provide the final report to the Committee by 19 August 2016, which was effectively the last day of my term as Parliamentary Crime and Corruption Commissioner, I requested that the CCC provide any submission to me by Thursday 18 August 2016 if possible.

On 17 August 2016 I received correspondence from Mr MacSporran in which he noted my view that the CMC was obliged to afford Mr Hall with an opportunity to show why proposed comments
adverse to his reputation in the Dangerous Liaisons Report, should not be made. Mr MacSporran also referred to my statement that, if my view was incorrect, there was an obvious inconsistency between the way in which Mr Hall was dealt with and the way the CMC dealt with other subject officers who were provided with an opportunity to comment of the proposed Report.

Mr MacSporran stated that a finding that the CMC may have breached its obligation to provide procedural fairness to Mr Hall is a serious issue and he wished to discuss the matter with the Commission at their next meeting. He also considered that the officers involved in the decision-making process concerning the provision of procedural fairness to Mr Hall, principally the then Chairperson, Mr Needham, should be given an opportunity to respond to my report.

Mr MacSporran considered there to be insufficient time to respond to my draft report within the requested timeframe and requested that I note the Commission’s inability to respond and the reasons, in my report to the Committee. Mr MacSporran anticipated that the Committee might provide the Commission with an opportunity to respond to my report before reaching any conclusions in relation to the matter.

In the circumstances, I consider this to be a reasonable course to adopt in order to facilitate the delivery of my report to the Committee prior to the expiry of my term as Parliamentary Crime and Corruption Commissioner.
Appendix B – Response from the CCC, September 2016
15 September 2016

Mr Lawrence Springborg MP
Chair
Parliamentary Crime and Corruption Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Springborg

RE: DARREN HALL COMPLAINT

I refer to your letter dated 29 August 2016 enclosing a report of an investigation by the previous Parliamentary Crime and Corruption Commissioner, Mr Paul Favell, into a complaint by Mr Darren Hall. Thank you for the opportunity to respond to the adverse passages in the report before the Committee reaches any conclusions in the matter.

The Commission’s response

A summary of the adverse passages in Mr Favell’s report (shaded) and our responses are as follows:

The absence of information on Crime and Misconduct Commission (CMC) files about the decision not to provide Mr Hall with a copy of the draft report was a significant failing by those responsible for the decision.1

The CCC has no comment on this point other than to disagree with the finding that responsibility for record-keeping fell on all officers responsible for the decision. The Chairperson for example should not be expected to make file notes or draft memoranda to file on such issues. That responsibility would fall to more junior staff involved in the decision making process.

The principles of procedural fairness required the CMC to provide Mr Hall with an opportunity to show cause why the contemplated comments adverse to his reputation should not be made.2

This is a matter on which minds may differ.

1 Report by the Parliamentary Crime and Corruption Commissioner August 2016 at pages 8 to 9
2 Ibid at page 13

HIGHLY PROTECTED
The Chairperson, Mr Needham, was of the view that anonymity and the absence of adverse findings did not give rise to any obligation to provide procedural fairness. In February 2010, the Parliamentary Crime and Corruption Committee agreed with him.³

Mr Favell found that there is no evidence that Mr Needham did not honestly hold the view that there was no breach of the requirement to provide procedural fairness to Mr Hall nor that statements made in the report about procedural fairness were made dishonestly.⁴

Some seven years on, the CCC does not consider it necessary to form a view one way or another. What can be said, however, is that faced with similar circumstances today, the CCC would, out of an abundance of caution, provide a person such as Mr Hall with an opportunity to respond either through an interview or provision of relevant extracts/summaries of the draft report together with invitation to show cause.

Use of a pseudonym for Mr Hall did not discharge the CMC’s obligation to provide procedural fairness to him. If that conclusion is wrong there is an obvious inconsistency in the way Mr Hall was dealt with and the way other subject officers were dealt with. This leaves the CMC open to criticism of not acting impartially and fairly as required by the Crime and Misconduct Act. The appropriate course would have been to provide Mr Hall with an opportunity to respond.⁵

Our response is the same as for the previous adverse comment; the CCC would, currently, out of an abundance of caution, provide a person such as Mr Hall with an opportunity to respond either through an interview or provision of relevant extracts/summaries of the draft report together with invitation to show cause.

The fact that the authorities to disseminate information could not be located at the time of Mr Hall’s meeting with Dr Levy and Ms Wood in October 2014 was unfortunate as it led him and/or Mr Williams to suspect incompetence or deliberate tampering or removal of the documents.⁶

We agree that this was an unfortunate event while noting that neither officer had anything to do with the original investigation and the record-keeping was less than optimal. We agree that there is no basis for further investigation of this issue.

The CMC’s response to the Queensland Police Union of Employees’ (QPU) concerns, was not timely.⁷

By letter dated 12 November 2010 (first letter), the QPU wrote to the CMC complaining that Mr Hall had not been afforded an opportunity to respond to or comment on the content of the report. Another letter in identical terms was sent to the CMC by the QPU in May 2011. The CMC responded in September 2011.

Without fully appreciating the circumstances we agree that, on its face, the response was not timely.

However, we note that when the first letter was received, senior officers who were at the CMC when Operation Capri was conducted had left namely, Mr Needham (31 December 2009), Mr Steven Lambrides, Assistant Commissioner Misconduct (17 April 2009), and Mr Russell Pearce, Director

³ Letter dated 10 February 2010 from the Chairperson of the PCMC to The Honourable Martin Moynihan AO QC then Chairperson of the CMC
⁴ Report by the Parliamentary Crime and Corruption Commissioner August 2016 at page 25
⁵ Ibid at page 17
⁶ Ibid at page 22
⁷ Ibid at page 23
Misconduct Investigations, and later Acting Assistant Commissioner Misconduct (24 September 2010).

Having read the files it would appear that the absence of corporate knowledge of the reasons for decisions in respect of Mr Hall, together with the poor record-keeping, made it difficult for the CMC to respond in an accurate and timely way.

**Advice from Crime and Misconduct Commission officers**

The report concerns events that occurred some time ago, and none of the officers who are said to have been involved in decisions concerning Mr Hall now work for the Crime and Corruption Commission (CCC).

With the Committee's permission Messrs Needham, Lambrides and Pearce were contacted and asked whether they wished to make a submission in response to Mr Favell's report. None of them wished to see the report.

In discussing the matter with Mr Lambrides he said he recalled seeing a very early draft of the Dangerous Liaisons report which was of poor quality but took no further part in its drafting. He said he has no recollection of being involved in a “robust discussion” with Messrs Needham and Pearce (as recalled by Mr Pearce) on whether or not to provide a copy of the draft report to Mr Hall.

Mr Lambrides said he may have had a general conversation about the provision of procedural fairness, that is, not one about any specific subject officer, although he does not recall such a conversation.

In April 2009 Mr Lambrides left the CMC to commence preretirement leave. Mr Favell concluded at paragraph 1 page 9 of his report that the decision not to provide Mr Hall with a copy of the report was made in May to July 2009, that is, after Mr Lambrides left the CMC.

**Mr Hall’s position**

The CCC is prepared to include on our website a statement to the effect that:

- Mr Hall was not given an opportunity to respond to the contents of the report prior to tabling in Parliament
- Mr Hall denies any impropriety on his part.

Please do not hesitate to contact me or the Chief Executive Officer, Mr Forbes Smith, if we can be of any further assistance.

Yours sincerely

Alan MacSporran QC
Chairperson
Appendix C

Submission from the Parliamentary Commissioner, October 2016
Mr Lawrence Springborg MP
Chair
Parliamentary Crime and Corruption Committee
Parliament House
BRISBANE QLD 4000

Dear Mr Springborg,

Re: Complaint of Mr Darren Hall


You have indicated that the Committee intends to table a report in the Legislative Assembly attaching the Darren Hall Report and the Commission's response. Prior to tabling the report the Committee has invited submissions from me regarding:

a) a review of the Commission’s response and confirmation as to whether or not I have anything to add in light of the Commission’s comments on the Darren Hall Report;

b) any redactions I consider necessary to the Darren Hall Report; and

c) any other matter I would like the Committee to consider before tabling its report.

A Review of the Commission’s Response

1. The Failure to Keep Appropriate Records

At page 9 of the Darren Hall Report Mr Favell states:

...the fact that there was no information on the Commission’s files stating that Mr Hall was not provided with a copy of the draft Report and, more importantly, the basis for the decision that it was not necessary that he be provided with a copy of the draft Report, is a significant failing on the part of the CMC officers responsible for that decision in May - July 2009.
The Commission has responded and states that it disagrees. It suggests that file notes of that type, rather than being made by senior officers responsible for the decision, for example the Chairperson, should, instead, be made by more junior officers. That misses the point. No records were made – whether by junior or senior officers. The question then is - has the Commission put in place protocols and training to ensure that future decisions of this type are appropriately recorded? For example is there a checklist prior to the release of reports recording whether relevant persons mentioned in the report have been provided draft copies in advance of its release. The Committee may wish to enquire of the Commission as to any protocol/training that has been put in place.

2. Failure to Provide Procedural Fairness

At page 13 of the Darren Hall Report Mr Favell states that in his view procedural fairness required the Commission to provide Mr Hall with an opportunity to respond to the comments in the Dangerous Liaisons Report which were adverse to his reputation. The Commission responds that “This is a matter on which minds may differ” and sets out alternative views. Notwithstanding that statement the Commission concedes that in the future, out of an abundance of caution, a person such as Mr Hall would be provided with an opportunity to respond.

However, as mentioned above, the Commission does not explain what procedures or protocols have been put in place to ensure such steps will be taken in the future. That is an issue the Committee may also wish to explore with the Commission.

3. Commission’s Proposal to place a Statement on its Website

With respect to the other issues raised in the Darren Hall Report the Commission accepts, to a greater or lesser degree, Mr Favell’s findings. In acknowledgement of this the Commission has advised that it is prepared to place a statement on its website. The statement would be to the effect that Mr Hall was not given an opportunity to respond to the Report prior to its tabling in Parliament and that Mr Hall denies any impropriety on his part.

Those statement would appear to be appropriate. However from my point of view I would have preferred that the precise terms of the statement were provided to the Committee along with a description of where the statement will be placed. For example will it be placed on the opening page of the Darren Hall Report’s link so that it is read prior to the Report itself being read?

Any redactions I consider necessary to the Darren Hall report

Other than the redaction referred to in your letter, I do not consider there to be any further redactions necessary to the Darren Hall Report for the purposes of its tabling in the Legislative Assembly.

Any other matter for the Committee to consider before tabling its report

There is one mistake that I have noted in the Darren Hall Report. On page 9 of the Report, in the paragraph commencing “On 20 April 2015...” there is a reference to Dr Levy’s letter to the Committee of 30 July 2015. That letter was actually dated 30 June 2015. My office can provide
to the Committee a substitute page 9 with the corrected date for the purposes of inclusion in the Darren Hall Report to be tabled.

Yours faithfully

Karen Carmody
Parliamentary Crime and Corruption Commissioner
11 November 2016

The Honourable Lawrence Springborg MP
Chair
Parliamentary Crime and Corruption Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Springborg

RE: PARLIAMENTARY COMMISSIONER’S REPORT ON INVESTIGATION OF COMPLAINT OF MR DARREN HALL

I refer to your letter dated 1 November 2016 concerning the report by the former Parliamentary Crime and Corruption Commissioner, Mr Favell, in respect of the complaint by Darren Hall. In respect of the two issues you have raised, I advise as follows:

1. **Has the Commission put in place protocols and training to ensure that future decisions are appropriately recorded?**

In recent years, the Crime and Corruption Commission (CCC) has invested significant resources into improving its record keeping practices and culture.

1.1. **Records management framework**

A new records management framework has been developed and provides details of the CCC’s principal record keeping policies and procedures.

This framework has been developed to assist the CCC to make and keep accurate records of its business activities and decisions. Policies and procedures provide guidance on a range of topics such as general record keeping, managing emails as records, and the retention and disposal of records (see below).

1.2. **Training**

To ensure these policies and practices are well understood by all CCC officers, the Records Management unit provides compulsory training to all staff.

The training will ensure that all staff can identify information received or created that is deemed to be a ‘record’ and are aware of their responsibilities in regard to managing that record.
1.3. Policies and Procedures

A comprehensive range of policies and procedures have been developed in support of the records management framework:

**General record keeping procedure**
The purpose of this procedure is to ensure the CCC's records are adequately captured, managed and retained in an accessible and useable format that preserves the integrity of those records for as long as they are required.

**Management of Electronic Surveillance Device Material (policy and procedure)**
The purpose of this policy and procedure is to outline the responsibilities of CCC officers who deal with electronic surveillance device (ESD) material and steps to be followed in managing the destruction of ESD material by all areas of the CCC.

**Managing Correspondence (procedure)**
To ensure that incoming correspondence is adequately captured so that all actions, approvals and responses are managed in a systematic and transparent way.

**Managing emails as records (procedure)**
The purpose of this document is to provide staff with guidance for managing incoming and outgoing emails as records to comply with recordkeeping legislation, and to ensure that only messages of continuing value are captured on a long-term or permanent basis.

**Meeting Management (procedure)**
To ensure that full and accurate records of meetings are recorded so that business decisions and actions are documented.

**Metadata management (procedure)**
The objective of the procedure is to ensure metadata is managed to aid and support discovery, administrative control, security, rights management, preservation and use of information that the CCC holds.

**Record keeping (policy)**
The purpose of this policy is to ensure that the CCC meets its legal recordkeeping obligations and to foster recordkeeping better practice across the CCC.

**Release of personal information (procedure)**
The purpose of this procedure is to identify the steps required when a Commission officer wants to remove digitally stored private information from the CCC network.

**Retention and disposal of records (procedure)**
The purpose of this procedure is to ensure that the CCC meets its statutory and procedural requirements in relation to the retention and disposal of records.

**Transferring permanent public records to Queensland State Archives including setting and changing Restricted Access Periods [RAPs]**
The purpose of this procedure is to provide direction for Commission Officers engaged: - in transferring permanent public records to QSA and setting the restricted access periods (RAPs) for those records; or - changing the RAPs of CCC, Criminal Justice Commission or Crime and Misconduct Commission records already held at QSA, to ensure compliance with the Crime and Corruption Act 2001 and the Public Records Act 2002; or - approving administrative access to restricted records held at QSA.
These policies and procedures can be made available to the Committee on request.

1.4. Code of Conduct

There is also a specific reference to the importance of good record keeping in the CCC Code of Conduct as follows:

4.2 – Record keeping
We must conscientiously protect the accuracy, integrity and confidentiality of Commission information at all times.

This includes a requirement to make and keep full and accurate records of all business transactions and official activities and to ensure that such records are adequately tracked, preserved and made accessible for as long as they are of value.

When giving advice, we should provide written advice or confirmation wherever possible, otherwise we should keep well documented notes about advice we have provided.

2. Terms of statement

The Dangerous Liaisons Report can be accessed via the CCC’s website, however, a reader can also access the report without going to the site. For example, if the reader were to search “Dangerous Liaisons report” on Google the link takes the reader directly to the report. For that reason it will be necessary to have the statement on the front page of the report. As the report is not the actual document that was tabled in Parliament there is no issue with interfering with the report itself.

We propose to create a new front page with the following words inserted:

In this report, with one exception (see page 5), pseudonyms have been applied to all current and former police officers and prisoners. One former police officer, referred to as YZ, was not given an opportunity to respond to the material concerning him prior to the publication of this report. YZ denies any misconduct on his part.

The Committee will note that the report is also accessible on the Queensland Parliamentary website. The CCC has no objection to the above words being brought to the attention of the reader but the method by which that is done is not a matter for the CCC.

Yours sincerely

Alan MacSporran QC
Chairperson