Criminal Justice Commission

Annual Report

Year Ended 30 June 1992

To the Honourable the Premier,
Minister for Economic and Trade Development
and Minister for the Arts

Sir

In accordance with the provisions of Section 7.10 of the Criminal Justice Act 1989, we submit to you for presentation to Parliament, the 3rd Annual Report of the Criminal Justice Commission, which formally embraces the period 1 July 1991 to 30 June 1992.

Sir Max Bingham QC
Chairperson

Dr J Irwin AM
Commissioner

Professor J Western
Commissioner

Mr J Kelly
Commissioner

September 1992
Purpose of the Report

The Commission serves and is accountable to the people of Queensland through the Queensland Parliament. This is accomplished through carefully engineered reporting mechanisms that involve Commissioners and senior Commission officers and the Parliamentary Criminal Justice Committee, which represents the Parliament.

This annual report holds a key place in the range of reports prepared by the Commission. It is the Commission's third annual report and the second covering a full year of operations. It presents a summary of the Commission's operations during 1991/92, as well as audited financial statements for the same period. It is designed to give the Parliament and the people of Queensland a consolidated picture of the actions that the Commission has taken on their behalf.

The Report's Readers

The Commission's annual reports have a very wide, diverse audience. They are distributed to members of Parliament, to members of the Queensland public, to public and private sector organisations in Queensland, to individuals and organisations throughout Australia and even overseas.

The Commission is a statutory body; much of its operations are based on the law and concern the enforcement of law. The Commission is aware that many people may not understand legal terminology. In preparing this report Commission staff have tried to write without recourse to legal jargon and in a style that is immediately accessible to the Queensland public.

Criminal Justice Commission

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Chairperson’s Introduction to Annual Report

The information in this report paints a picture of an active, dynamic, complex organisation discharging a variety of statutory functions.

All of the Commission’s functional Divisions (and the Office of General Counsel) have continued to refine and develop their operations, and some of their achievements are noted in the pages that follow. Highlights would include the very successful restructuring of the Complaints Section and the increasing sophistication of the measures being taken in relation to organised crime. The integration of the Intelligence Division operation with the work of the Official Misconduct Division is significant in this context. But the other components of the Commission have also had their successes, and it is unfair not to acknowledge them all.

One result of this progress has been that the Commission is seen to be a national leader in a number of areas of activity.

I think the members of the Commission and its staff can be justly proud of what has been accomplished.

During the year under review Jim Barbeler ceased to be a member of the Commission by the expiration of the term of his appointment. It is appropriate to acknowledge his contribution; his cheerful presence has been missed.

I wish to repeat my compliments of last year to the Queensland Police Service and to the Parliamentary Criminal Justice Committee on their respective achievements.

Because this will be the last annual report to which I shall contribute, I take the opportunity also to express my gratitude to my fellow Commissioners and to the staff of the Commission for their tremendous loyalty and dedication. It has been a privilege to have served with them.

Sir Max Bingham QC
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1. The Commission

The Criminal Justice Commission (the Commission) is a unique organisation in Queensland, and indeed Australian, public life. First, as a direct descendant of the Fitzgerald Commission of Inquiry, it was constituted with the express ideal of being free from Executive control and primarily accountable to Parliament. Second, there is no other justice agency operating in Australia with its sweep of responsibilities and functions.

The Commission is still a very young organisation, and this has generated both internal and external challenges. It has been given a very broad legislative mandate that is to be accomplished with finite resources and staffing complement. But perhaps more importantly, the Commission’s operations are to a large extent both prescribed and circumscribed by its legislation. Understanding the purpose and findings of the Fitzgerald Commission of Inquiry and their subsequent expression in the Criminal Justice Act 1989 (the Act) is critical to understanding why and how the Commission pursues its objectives. It provides an extremely important context to this annual report.

This first chapter of the annual report gives an overview of the legislative background, history, organisation, functions, and purpose of the Commission as a whole.

Legislation and History

The Commission was established in response to the recommendations of the Fitzgerald Commission of Inquiry, which was appointed following media revelations on crime and corruption in Queensland. The Fitzgerald Report recommended the creation of a new public entity, to be known as the Criminal Justice Commission, which would be permanently charged with monitoring, reviewing, co-ordinating and initiating reform of the administration of criminal justice and fulfilling those criminal justice functions not appropriately carried out by the police or other agencies.

These recommendations of the Fitzgerald Commission of Inquiry constituted a large part of the Act, which received Royal Assent on 31 October 1989. The proclamation of the Act may be considered the starting point for the Commission. However, major parts of the Act did not take effect until 22 April 1990, when the Commission began operations. The Commission has therefore been fully operative for just a little over two years.

Commission Membership

The Commission has five members: a Chairperson and four Commissioners. They are appointed by the Governor-in-Council on the recommendation of the Minister.

The Commissioners bring a broad range of professional and practical experience to the Commission. Each plays an active role in advising and assisting the Commission’s Chairperson and staff, especially within their primary areas of responsibility. The Commission’s membership (and the members’ areas of responsibility) is as follows:

The Chairperson and Commissioners (l to r): Mr Jim Barbour; Dr Janet Irwin, AM; Mr John Kelly; Professor John Western; Sir Max Bingham, QC.
The Commission

Chairperson:
Sir Max Bingham, QC

Commissioners:
Mr Jim Barbeler, LLB, Operations and General Counsel matters (Mr Barbeler's two-year appointment concluded on 8 March 1992, he did not seek re-appointment);

Dr Janet Irwin, AM, MB, ChB, Misconduct Tribunals and Police Reform;

Mr John Kelly, BSc (For), Complaints and Corporate Services;

Professor John Western, PhD, Intelligence and Research.

The Commissioners meet frequently with Commission officers working in these areas. They also participate in a range of other activities of the Commission.

During the 1991/92 financial year, the Commissioners met formally on 25 occasions to transact Commission business. Regular meetings were scheduled for the first and third Friday of each month, during which time Directors and other senior staff reported and were questioned on the activities of their areas of responsibility. From time to time extraordinary meetings were held to deal with specific issues.

Goals of the Commission

The goals of the Commission, which were set forth in its Corporate Plan, 1991-1993, published in November 1991, are:

- to promote and encourage a public sector environment in which malpractice is unacceptable and appropriate levels of accountability prevail;

- to facilitate reforms which improve fairness, effectiveness, and accountability within the criminal justice system;

- to make an effective contribution in combating organised and major crime;

Organisational Structure of the Criminal Justice Commission
to assist the Queensland Police Service in the completion of the reform process;

to increase public awareness and recognition of the Commission’s role; and

to maintain the independence and impartiality of the Commission.

Functions and Responsibilities of the Commission

The Commission’s functions and responsibilities are a matter of law. They are at once extremely diverse and specific. Because summarising them risks the loss of accuracy and precision, they are presented in detail in Appendix A.

Organisation and Staffing

The Commission’s organisational structure (see p. 2) is comprised of an Executive and six divisions, assisted by an Office of General Counsel, which has been given administrative responsibility for the Misconduct Tribunals.

As of 30 June 1992, the Commission’s establishment comprised 263 staff whose expertise and experience complement the wide range of Commission responsibilities.

The Official Misconduct Division, with an establishment number of 134, accounted for the majority of Commission staff; the Research and Co-ordination Division had an establishment number of 17; the Intelligence Division 24; the Witness Protection Division 29, including the seven-member Operations directorate; the Corporate Services Division 43; the Office of General Counsel seven; the Misconduct Tribunals four; and the Executive five.

Executive Management

The Executive Management Group, which comprises the Chairperson, General Counsel, and Divisional Directors, meets on a weekly basis to discuss inter-divisional matters and determine operational policies and priorities. This group also constitutes an internal editorial committee, which reviews all reports and issues papers produced by the Commission.

The Directors of the Commission are:

Mr Mark Le Grand
Director, Official Misconduct Division

Assistant Commissioner Carl Mengler
Director of Operations and Witness Protection Division

Dr Satyanshu Mukherjee
Director, Research and Co-ordination Division

Mr Paul Roger
Director, Intelligence Division

Mr Marshall Irwin
General Counsel

Mr Graham Brighton
Executive Director
2. Accountability

Fitzgerald QC showed that public institutions in Queensland were often neither accountable nor effective. Against this background, the Commission was made independent of the Executive and given extraordinary powers to use in discharging its role and responsibilities.

Independence is a cornerstone of the Commission's effectiveness in post-Fitzgerald Queensland; accountability is an important and necessary counterbalance. Using its independence and extraordinary powers in the public interest requires a delicate balance of the sometimes competing issues of accountability and confidentiality, and openness and secrecy.

Given the circumstances of its establishment and its legal heritage, the Commission strives to be a model agency in terms of accountability. This has implications for both the external and internal scrutiny of its operations.

But the Commission’s position in public life requires more than a passive adherence to its legal responsibilities. The Commission must fulfil its functions within both the letter and the spirit of the law. This chapter describes the systems in place to effect that accountability and the way they have worked.

External Review and Accountability

Consistent with the underlying philosophy of the Fitzgerald Report, the Act makes the Commission closely accountable to Parliament, the community, and the courts. Foremost in this formal review structure are the Commission's responsibilities to the Queensland Parliament and the Parliamentary Criminal Justice Committee (PCJC).

Parliamentary Criminal Justice Committee

Like the Commission, the PCJC was established under the Act. It is the Commission’s direct link to Parliament and, ultimately, the people of Queensland.

Legislation and History

The PCJC and the Commission came into operational existence at about the same time. The range of matters the PCJC has dealt with encompasses the broad spectrum of issues that have fallen to the Commission.

The Commission's responsibility to report to the PCJC is set forth very succinctly in s. 214(2) of the Act.

Membership and Staff

During the 1991/92 financial year, the members of the PCJC were:

- Mr P D Beattie, MLA, Member for Brisbane Central (Chairperson)
- Hon W A M Gunn, MLA, Member for Somerset (Deputy Chairperson)
- Mr K H Davies, MLA, Member for Townsville
- Mrs W M Edmond, MLA, Member for Mount Coot-tha
- Hon N J Harper, MLA, Member for Auburn
- Mr S Santoro, MLA, Member for Merthyr
- Mr R E Schwarten, MLA, Member for Rockhampton North
- Mrs M R Woodgate, MLA, Member for Pine Rivers

Mr Davies was appointed in April 1992, after the resignation of Mr Schwarten.

Mr T Woodyatt was the Committee’s Research Director. Mr D Wright served as Research Assistant. Ms Luisa Pink served as Research Assistant after Mr Wright’s resignation.

The Commission submits written reports to the PCJC each month. These reports, which the Committee has characterised as "extremely
Accountability

detailed and wide-ranging", cover the operations of each of the Commission’s Divisions and are submitted prior to the regular monthly meeting between the Commission and the Committee.

The Committee may request oral presentations by both Commissioners and Division Directors on specific issues raised in the monthly reports. Given the confidential nature of the operations and material discussed at these briefings, these reviews are not always made public.

During the 1991/92 financial year, the Commission met formally with the PCJC on 13 occasions.

submissions made by members of the public; Part B analysed those submissions and that of the Commission itself in the context of the PCJC’s evaluation of the Commission’s achievements during its first year of operation.

The report considered a wide range of issues and made numerous suggestions and recommendations concerning the structure, powers, functions, and priorities of the Commission. Its overall evaluation of the Commission’s performance was very positive. In May 1992, Parliament passed an amendment to the Act giving the Commission discretion in investigating complaints. This was recommended by the PCJC. However, to date, the full implications of the report have not been debated in Parliament.

The PCJC gives close attention to the Commission’s operations. Although much of the material it handles cannot be made public because of its confidential nature, the PCJC may hold public hearings on issues relevant to the Commission. During the 1991/92 financial year, the PCJC held two public hearings. The first was held during August 1991 to address media reports after publication of the Commission’s report on its investigation into the complaint of The Hon T R Cooper, MLA, then Leader of the Opposition, against The Hon T M Mackenroth, MLA, Minister for Police and Emergency Services. The second public hearing was convened in June 1992 to examine allegations made by Mr R N Chesterman QC, past-member of the Misconduct Tribunals, in The Courier-Mail and The Australian on 23 June 1992.

Parliament as a whole may also consider the Commission’s work. During this reporting period, aspects of the Commission’s work received considerable attention during Parliamentary debate. Perhaps understandably, the matter that Members raised most frequently by far was the Commission’s report on Parliamentary travel entitlements. Other matters that received attention included the Misconduct Tribunals and the Commission’s report on prostitution.

Parliamentary Review

On 3 December 1991 the PCJC published its first major review of the Commission, the most comprehensive assessment of the Commission’s actions and achievements to date. This report, Review of the Committee’s Operations and the Operations of the Criminal Justice Commission, consisted of two parts. Part A presented the
Judicial Review and Supervision

The Commission’s discharge of its functions and responsibilities under the Act is monitored by the PCJC and is also subject to the scrutiny of the courts and other independent entities such as the Misconduct Tribunal, for example:

- The Commission must apply to a judge of the Supreme Court for approval to exercise a number of its statutory powers; namely, the issue of a search warrant (s. 3.3), apprehension of a witness (s. 3.11) and authority to use listening devices (s. 3.14). In addition, the Commission must apply to the Supreme Court for approval to issue a notice (s. 3.1) or notice of summons (s. 3.6), if the person on whom such a process would be served is under a duty or obligation imposed by an Act or law or oath to maintain confidentiality in relation to its subject matter.

- The Commission’s powers are subject to the claim of privilege on the following grounds:
  - legal professional privilege;
  - Crown privilege or other public interest;
  - Parliamentary privilege.

Such a claim will be determined by a judge of the Supreme Court (s. 3.9).

- The Commission is subject to the courts in relation to the fairness of its procedures and the extent of its powers.

- Under s 2.25, an application may be made to the Supreme Court for an injunction in respect of an investigation by the Official Misconduct Division on the basis that:
  - it is being conducted unfairly; or
  - the complaint or information on which the investigation is being, or is about to be, conducted does not warrant an investigation.

- The Commission is subject to the Judicial Review Act 1992 (see Chapter 13).

- The Commission and its staff may be served with subpoenas to give evidence and produce documents to a court. Although the Commission will object to this where necessary on the grounds of public interest immunity, in particular to protect the confidentiality of sources of information, this too is the subject of judicial scrutiny.

- A significant number of the Commission’s investigations result in recommendations that charges of criminal offences or official misconduct be preferred. When such charges are brought, the Commission’s investigations are subject to the public scrutiny of the court and the Misconduct Tribunal, as the case may be.

Accountability to Complainants

The Complaints Section of the Official Misconduct Division receives, assesses and in the exercise of its discretion, investigates alleged or suspected misconduct by members of the Queensland Police Service (QPS) and official misconduct by other persons holding appointments in units of public administration.

The Act ensures accountability by requiring the Director of the Official Misconduct Division to cause a response to be given to the complainant that states:

- if no action has been taken on the complaint, the reason for the inaction;
- if action has been taken on the complaint, what that action is, and the reason why that action is appropriate in the circumstances of the case; and the result of that action, if it be known at the time of making the response. This notification is provided in writing.

In addition, from the inception of the Complaints Section, the Commission has conducted a program in which complainants are debriefed by
Accountability

Complaints Officers. This program is working extremely well.

A more detailed discussion of the Official Misconduct Division’s complainant debriefing program is presented at page 24 of this report.

Accountability to the Public

The Commission’s accountability to the people of Queensland is fulfilled primarily through its responsibilities to the Parliament and the courts. However, the Commission believes that it has a responsibility, where and when appropriate, to keep the public informed of the Commission’s work and to facilitate the public’s participation in the Commission’s work. The following are some of the mechanisms by which this is achieved.

Public Hearings

The Commission is aware of the importance of public hearings in post-Fitzgerald Queensland. They are a potent reminder of the necessity for and utility of openness by public sector organisations. During the 1991/92 financial year, the Commission conducted public hearings as part of the Research and Co-ordination Division’s review of police powers. It has also made certain investigative hearings open to the public.

The Act imposes a prima facie obligation upon the Commission to hold open hearings. Section 2.17(4) of the Act states that a hearing shall as a general rule be open to the public. But if, having regard to the subject matter of the investigation or the nature of the evidence expected to be given, the Commission considers it preferable in the public interest to conduct a closed hearing, it may do so.

In its December 1991 review of operations, the PCJC endorsed a list of matters that the Commission takes into account in determining whether hearings should be public or private. These matters include whether to do so would be unfair to anyone (see, for example s 3.21(2)(b) of the Act).

In addition, the Commission considers all applications for the suppression of evidence of the name of any person and/or any other evidence which is likely to lead to his/her identification during a hearing.

Public Submissions

Accountability to the public is also ensured through release of issues papers, reports and research papers. Through their responses to the Commission’s issues papers, members of the public and interest groups have made valuable contributions to Commission reports and recommendations.

Availability of Commission Reports

In keeping with its philosophy of accountability to the people of Queensland, with limited resources the Commission has pursued an aggressive publications program. During the 1991/92 financial year, the Commission published 12 reports and/or issues papers (see Appendix B). These have been given wide distribution throughout Queensland, other Australian States and overseas. Many are available for purchase at a nominal price.

Direct Contact with the Public

The Commission is expected to play a leading role in many aspects of criminal justice in Queensland. For example, it has a key role in co-ordinating reform of the administration of criminal justice and in promoting accountability and fair play by public agencies.

The past two years have also pointed to the need for more pro-active work on the Commission’s part to educate the public on the role of the Commission itself. To complement its public hearings and publications programs, the Commission has encouraged staff to make themselves available for public addresses and seminars. As noted later in this report, the Chairperson and Commission officers have built a
substantial record of contact with government agencies, educational institutions, and community groups (see Chapter 14).

**Relations with the Media**

The Commission recognises that accountability to the people of Queensland is also expressed through the media.

During the 1991/92 financial year, the Commission’s work has been the centre of several major media reports. As the PCJC rightly pointed out, the Commission should not be immune from detailed and searching media criticism. But there has been some concern that the media, like other sectors of the public, have sometimes shown a limited knowledge of the Commission’s role, powers and jurisdiction.

The Commission has a responsibility to make sure that the media get its message to the public in as effective a manner as possible. It has taken a more assertive stance both in informing the media of its work and in responding to media inquiries (see Chapter 14).

**Internal Accountability**

The Commission’s profile within the spectrum of agencies that comprise the Queensland public sector requires a strong commitment to accountability by the organisation as a whole and the individuals who comprise or work for it. The Commission has taken great pains to implement procedures that meet or exceed existing guidelines. Some of the more significant of these measures are discussed below:

**Declarations of Personal Particulars and Private Interests and Associations**

The Chairperson, Commissioners, and all Commission staff are required to complete statutory declarations disclosing their personal backgrounds and business and financial interests.

These statutory declarations must be updated as individual circumstances change.

**Register of Pecuniary Interests and Record of Personal and Political Associations**

Commissioners are required to provide summaries of their pecuniary interests and personal and political associations. These summaries must be updated annually.

**Confidentiality Agreement**

When they begin their appointment, each member of staff, the Chairperson, and Commissioners are required to sign a document which confirms and strengthens their obligations and responsibilities with respect to confidentiality under s. 67 of the Act.

**Forms and Procedures for the Exercise of Statutory Powers**

Fitzgerald cautioned that the standard of control on the exercise of these powers must be unreservedly high; and that the circumstances of and the need for the exercise of those powers must be recorded, even when it touches on confidential or sensitive matters.

In keeping with this, the Commission has initiated internal forms and procedures for the exercise of its statutory powers. They are an important part of the Commission’s operational procedures manuals. No process is issued in the exercise of the Commission’s statutory powers unless supporting documentation is completed setting out the reasons for the exercise of the power and these reasons are accepted by the Chairperson or delegate. This increases the Commission’s accountability in the exercise of these powers by ensuring the existence of a permanent record of any such decisions. This record is available for auditing by the PCJC and, where necessary, by the courts.
Often the procedures go further than required by the Act. For example, when the Commission receives Supreme Court approval for use of a listening device (ss 314 and 5.5 of the Act), the Commission provides a report to the Court on how that listening device was used, even though there is no requirement to do so.

In its December 1991 report, the PCJC gave due credit to the system of documentation and procedures the Commission has set in place.

**Complaints Against the Commission and Commission Officers**

It is inevitable, though regrettable, that complaints will be made against the Commission and its officers. Perhaps more importantly, because the Commission aspires to be a model of accountability, those complaints should be rigorously and independently examined.

After discussions with the Attorney-General, the Director of Prosecutions, and the Commissioner of the Police Service, a mechanism has been established whereby complaints against Commission officers are investigated by a senior Crown prosecutor (nominated by the Director of Prosecutions) and a senior police officer or officers (nominated by the Commissioner of the Police Service). They report to the Commission Chairperson, the Attorney-General, and the Minister for Police and Emergency Services.

**Preparation for Freedom of Information**

The Commission welcomes the introduction of freedom of information (FOI) legislation to Queensland. That said, the Commission has examined the legislation in some detail and is aware of the potential for conflict between the principles of FOI and the Commission’s statutory mandate to maintain confidentiality. Although FOI legislation strengthens the accountability of the Commission, as with other agencies, it also brings with it the need to resolve the competing considerations of openness and need for confidentiality.

Against the background of an ever-increasing number of complaints being received, the finalisation of over 5,000 complaints already, and the custody of the whole of the Fitzgerald Commission of Inquiry material, the Commission is concerned that FOI is likely to have a disproportionate, and perhaps severe, impact on its operations. Preparing for the introduction of FOI legislation has involved much effort by the organisation. Its introduction is expected to have severe consequences for the workload of the existing staff because no additional resources will be allocated to the Commission to assist with the inevitable high demand for information.

**Judicial Review**

The Commission has supported the introduction of the Judicial Review Act which is designed to streamline and simplify the judicial review of administrative decisions. The Commission is subject to the legislation except in relation to providing reasons for decisions it makes in discharging its investigative, intelligence and witness protection functions. This is to prevent the legislation being used to prejudice Commission operations.

**Role of the Minister**

The Commission was established with the express intent that it be accountable to Parliament rather than the Executive. It was to be free of Executive control. In accordance with the Fitzgerald Report, the role of the Minister is limited to what is necessary to finance the Commission, provide administrative and resource needs, and that necessary for public financial and other accounting purposes. The Act does, however, provide a role for the Minister (currently the Premier) in relation to the development and maintenance of the infrastructure of the Commission and an obligation on the part of the Commission to provide certain
information on its work. For example, certain reports prepared by the Intelligence Division, are furnished to the Minister, as are annual reports.

**Summary**

The Commission is presently one of the most scrutinised agencies in Queensland. It consistently receives close attention from the media, interest groups, the Parliament and the public, and is subject to very strong oversight and accountability measures set by legislation.

Throughout the year the Commission has taken great care to fulfil, if not exceed, its responsibilities as an organisation accountable through the Parliament to the people of Queensland. This, after all, is in the spirit of the reform process that the Commission seeks to promote.