



**CRIMINAL JUSTICE  
COMMISSION**

**Report on a Hearing into  
Complaints against the Children's Commissioner  
and Another**

**MARCH 1999**

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Criminal Justice Commission  
557 Coronation Drive  
Toowong Qld 4066, Australia

PO Box 137 Albert Street  
Brisbane Qld 4002, Australia

Tel.: (07) 3360 6060  
Fax: (07) 3360 6333

Email: [mailbox@cjcc.qld.gov.au](mailto:mailbox@cjcc.qld.gov.au)  
Web site: [www.cjcc.qld.gov.au](http://www.cjcc.qld.gov.au)

The Honourable Peter Beattie MLA  
Premier of Queensland  
Parliament House  
George Street  
BRISBANE QLD 4000

The Honourable Ray Hollis MLA  
Speaker of the Legislative Assembly  
Parliament House  
George Street  
BRISBANE Qld 4000

Mr Paul Lucas MLA  
Chairman  
Parliamentary Criminal Justice Committee  
Parliament House  
George Street  
BRISBANE Qld 4000

Dear Sirs

In accordance with section 26 of the Criminal Justice Act 1989, the Commission hereby furnishes to each of you the *Report on a Hearing into Complaints against the Children's Commissioner and Another*. The Commission has adopted the report.

Yours faithfully

**BRENDAN BUTLER SC**  
Chairperson

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## PART A<sup>1</sup>

### Introduction

On 29 January 1999, the Criminal Justice Commission (CJC) approved an application under section 25 of the *Criminal Justice Act 1989* (Act) by the Director of the Official Misconduct Division that it conduct an investigative hearing in respect of an investigation being conducted by the Official Misconduct Division. It was determined that the Chairperson, Mr B J Butler SC, should constitute the CJC for the purposes of the hearing, and that, pursuant to section 91(b) of the Act, Mr C E K Hampson QC be engaged to assist in the conduct of the hearing.

The subject matter of the investigative hearing concerned allegations relating to the Children's Commissioner of Queensland, Mr Norman Alford, and an Administration Officer (Classification AO3) employed within the Office of the Children's Commission of Queensland, Mr Michael Birnie.

This is a report by the CJC under section 26 of the Act in respect of that hearing.

### CJC's jurisdiction

Under section 29(1) of the Act, the Official Misconduct Division is the investigative unit of the CJC. Section 29(3)(d) of the Act provides that it is a function of the Official Misconduct Division to investigate cases of alleged or suspected official misconduct by persons holding appointments in units of public administration.

'Official misconduct' is defined by section 32(1) of the Act as:

- (a) conduct of a person, whether or not the person holds an appointment in a unit of public administration, that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or of any person holding an appointment in a unit of public administration; or
  - (b) conduct of a person while the person holds or held an appointment in a unit of public administration—
- ...
- (ii) that constitutes or involves a breach of the trust placed in the person by reason of his or her holding the appointment in a unit of public administration ... and ... constitutes or could constitute ... a criminal offence, or a disciplinary breach that provides reasonable grounds for termination of the person's services in the unit of public administration.

The Children's Commission is a unit of public administration. By section 3A(1)(g) of the Act, the expression 'unit of public administration' includes every non-corporate entity established or maintained pursuant to an Act, which is funded to any extent with moneys of the Crown, or is assisted in a financial respect by the Crown. (The Children's Commission was established and is maintained by virtue of the *Children's Commissioner and Children's Services Appeals Tribunals Act 1996*.)

At the outset of the investigation, both Mr Alford and Mr Birnie were holders of an appointment in a unit of public administration. Section 4 of the Act provides that a person holds an appointment in a unit of public administration if the person holds any office, place or position in the unit, whether the appointment is by way of election or selection.

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<sup>1</sup> Part B will remain confidential. It is to be provided in accordance with the Act to the Parliamentary Criminal Justice Committee and to the Premier, as the responsible Minister under the Act.

## Investigation process

On 27 November 1998, the Premier of Queensland, The Honourable Peter Beattie MLA, wrote to the Chairperson of the CJC conveying information received by him from a number of staff members of the Office of the Children's Commission of Queensland. That information raised allegations of official misconduct on the part of both Mr Alford and Mr Birnie.

Previously, a complaint in similar terms had been made by an individual both to the Children's Commission (on 27 August 1998) and the Queensland Police Service (QPS). When that complaint was brought to the attention of Mr Alford, rather than immediately refer the matter to the CJC he directed that an internal investigation be conducted.

Ultimately, by letter of 7 September 1998, Mr Alford reported the allegations and the results of his 'internal investigation' to the CJC (by attending upon and delivering the letter to the Chairperson). Mr Alford's report included detailed accounts by him and Birnie, both of whom denied any impropriety in respect of the various matters alleged.

Shortly after the receipt of Mr Alford's letter of 7 September 1998, the CJC was advised of information which had previously been provided to the QPS. That information — which was already the subject of a police investigation — was similar to that which had been provided to the Children's Commission.

The CJC determined that its assessment of the information provided via Mr Alford should await a briefing on the outcome or progress of the investigation then being conducted by the QPS. The CJC received such a briefing on 9 November 1998, and thereafter determined to provide assistance to the QPS through the provision of financial analysis and other investigative support.

From Saturday, 28 November 1998, a series of newspaper articles published references to the fact that the CJC was in possession of information passed to the Premier by whistleblowers.

In the weeks following the receipt of the Premier's letter, CJC officers conducted interviews with all staff members of the Office of the Children's Commission of Queensland (with the exception of Mr Alford and Mr Birnie), and with other people thought to have knowledge of relevant matters.

As a result of the information obtained during these interviews, a number of specific allegations were identified.

## Use of the CJC's investigative hearing power

In the present investigation, the CJC has made use of its power to convene an investigative hearing, which is designed to allow the CJC to discover the truth, and to overcome obstacles that would normally thwart a thorough investigation.

The CJC sought to interview Mr Alford and Mr Birnie. A short interview was conducted with Mr Birnie on 23 December 1998, but Mr Birnie proved uncooperative. From early January 1999, attempts were made to interview Mr Alford. Arrangements were ultimately made to interview Mr Alford on 29 January 1999. These arrangements were frustrated when Mr Alford's legal representatives advised that he declined to be interviewed, stating that Mr Alford had 'concluded that he can no longer have any confidence in the Criminal Justice Commission'.

As a result, on 29 January 1999, in accordance with the advice of Senior Counsel, the CJC approved the holding of an investigative hearing, in order that both Mr Alford and Mr Birnie could be examined on oath.

The delay caused by the CJC's inability to interview Mr Alford, and the unproductive interview with Mr Birnie, is regrettable.

However, there are certain advantages which flow from the CJC's power to convene an investigative hearing. Firstly, from an investigative viewpoint, a witness is compelled to answer truthfully all questions asked. Secondly, by virtue of section 96(1) of the Act, any disclosure made by a witness after the witness has objected to making the disclosure on the ground that it would tend to incriminate the witness is not admissible in evidence against the witness in civil, criminal or disciplinary proceedings (except in proceedings for a contempt of the CJC, or an offence of perjury).

In the result, between 8 and 12 February 1999 a number of witnesses (including Mr Alford and Mr Birnie) were examined on oath before the CJC.

## Subject matter of hearing

The subject matter of the investigative hearing included, in so far as Mr Alford is concerned, allegations that he had improperly influenced and/or interfered with the process by which Mr Birnie had obtained full-time employment in the Office of the Children's Commission, and that he had improperly favoured Mr Birnie throughout that employment.

In respect of Mr Birnie, the subject matter of the investigation included allegations touching upon his use of the government-owned motor vehicle for unlawful drug-related activity, and his improper use of office equipment such as telephones and computers.

## Reporting process

During the investigation, the Commission has conducted numerous interviews (including interviews with all staff of the Office of the Children's Commission) and has had the opportunity to examine Mr Alford and Mr Birnie on oath.

The investigation is essentially complete (with the exception of the preparation of witness statements and the gathering of further evidence to supplement that already collected in respect of the issues below).

The investigation has identified the following issues:

### *In the case of Mr Birnie*

- i whether, during a telephone call to the grandmother of his fiancée's child, he identified himself as an officer of the Children's Commission, and falsely claimed to be in possession of a court order in respect of the custody of the child
- ii whether, when questioned about the above telephone call, he falsely denied making the call
- iii whether he used and/or permitted others to use a Children's Commission laptop computer to download pornographic images from the Internet
- iv whether he used the laptop computer to display pornographic images to another
- v whether he used a computer at his workstation to access pornographic Internet sites
- vi whether he used a government-owned motor vehicle in connection with unlawful drug-related activity.

The CJC has been advised that Mr Birnie recently tendered his resignation, effective as of 12 March 1999. The effect of the resignation is that Mr Birnie will no longer hold an office in a unit of public administration, and is no longer subject to disciplinary proceedings, including proceedings for official misconduct.

*In the case of Mr Alford*

- vii whether he improperly interfered with the short-listing of preferred candidates for the position of Administration Officer (AO3) by directing that the selection criteria be re-weighted so as to ensure that Mr Birnie was placed upon the short list
- viii whether he failed to take appropriate action in response to a complaint that Mr Birnie had committed an act of official misconduct (the conduct alleged in (i) above)
- ix whether he improperly used his official credit card to pay for hotel expenses incurred interstate on an occasion during the first half of 1998.

The investigation having identified these issues as against Mr Alford, the next step is for the Acting Director of the Official Misconduct Division to provide a report on the investigation to the CJC pursuant to section 33(1)(a) of the Act, so that the CJC may consider:

- whether to make a submission to the responsible Minister that the appointment of Mr Alford be declared by regulation made under section 39(3) of the Act to be subject to the jurisdiction of a misconduct tribunal; and
- whether, if such declaration is made, particular matters should be referred to the appropriate principal officer under section 33(2A)(g) of the Act with a view to disciplinary action being taken for official misconduct.

The Acting Director cannot report to the CJC until a reasonable period has elapsed so that he may receive and consider any submissions Mr Alford may wish to make upon the matters to be considered by the CJC.

## Procedural requirements

Should disciplinary action for official misconduct be instituted, the charge would be heard before the Misconduct Tribunal.

The Misconduct Tribunal is an administrative tribunal with jurisdiction to determine whether a person has committed an offence of official misconduct. The Tribunal conducts its hearings in public and is constituted by an independent Member who is appointed pursuant to the *Misconduct Tribunals Act 1997*. Penalties which may be imposed by the Misconduct Tribunal include dismissal.

It is important to recognise that the determinative process has not yet commenced. A number of steps remain before a Misconduct Tribunal hearing might occur. Mr Alford has been invited to make submissions on the matters to be considered by the CJC and he has been granted a period to allow him to do this. The Acting Director will take Mr Alford's submissions into account before he reports. Further, Mr Alford's submissions will also be taken into account when the CJC considers the Acting Director's report. Should the CJC consider action before a misconduct tribunal to be justified, no proceedings will be possible unless Mr Alford's appointment as Children's Commissioner is declared by Regulation to be subject to the jurisdiction of the Misconduct Tribunal. Only then would it be possible to proceed with a charge before the Misconduct Tribunal.

## Confidential report

It is inappropriate at this point to publish a detailed account of the evidence gathered to date. If proceedings for official misconduct eventuate, then the Misconduct Tribunal will be the appropriate forum for the evidence to be canvassed and tested by Mr Alford. It would be unfair to Mr Alford if details of the evidence were made public at this time.

For these reasons, pursuant to section 27(3) of the Act, the CJC is of the opinion that such matters should, for the time being, remain confidential. Accordingly, the CJC has prepared a second part to

this report which contains details of the evidence. That second part — labelled Part B — will remain confidential. Part B is to be provided in accordance with the Act to the Parliamentary Criminal Justice Committee and to the Premier, as the responsible Minister under the Act.