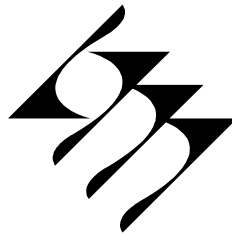


**REPORT OF AN INVESTIGATION INTO THE
APPOINTMENT OF THE QUEENSLAND
INFORMATION COMMISSIONER**

July 2005

CRIME AND
MISCONDUCT
COMMISSION



QUEENSLAND

APPOINTMENT OF INFORMATION COMMISSIONER

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The Crime and Misconduct Commission (CMC) has examined the issues raised in correspondence received from Mr Lawrence Springborg MP, the Leader of the Opposition, concerning the circumstances in which Ms Cathi Taylor was appointed Queensland Information Commissioner in February 2005.¹

The Commission is satisfied that, while some questions remain as to certain aspects of the process by which Ms Taylor was ultimately selected as the successful applicant, no reasonable suspicion of official misconduct exists on the part of any of the individuals associated with her appointment. In those circumstances, the Commission considers no further action on its part is warranted.

The following report:

- sets out Mr Springborg's concerns
- outlines the background to the creation of the role of Information Commissioner, and
- explains the CMC's conclusions on each point raised by Mr Springborg and others.

The report as a whole serves to explain the Commission's decision not to pursue this matter any further.

Mr Springborg's concerns

Mr Springborg's initial letter to the CMC (dated 9 March 2005) questioned the appropriateness of the role played by the Director-General of the Department of the Premier and Cabinet, Dr Leo Keliher in the selection process for the appointment of Ms Cathi Taylor as Information Commissioner.

In his subsequent letters Mr Springborg essentially refined his objections to the process of Ms Taylor's appointment. In his letter of 21 March 2005 he explained that the Opposition's 'primary concern in this matter is that executive government has staged a political takeover of the Office of the Information Commissioner ... '.

Specifically, Mr Springborg's various concerns may be distilled in the following terms:

- He was critical (and referred to criticism by others) of the selection criteria relied upon for the appointment of the Information Commissioner. He contended that the selection criteria failed to adequately reflect the skills required of the position. (In his letter of

¹ Correspondence dated 9 March, 21 March, 18 April, 31 May and 6 June 2005.

21 March 2005, he suggested that the 'most plausible explanation for this highly suspect appointment is that the process was rigged in favour of Ms Taylor' and that 'the most critical element in that pursuit was reframing the criteria which, to our knowledge, had no other discernable, let alone valid, basis'.)

- Similarly, he questioned whether Ms Taylor was the best applicant for the position. He claimed that Ms Taylor was unfit and ill equipped to fulfil the role of Information Commissioner and, in light of her previous political affiliations and links to the Beattie Government, he questioned her ability to discharge her duties with impartiality, fairness and fierce independence. Further, in light of his own inquiries, which demonstrated Ms Taylor's limited experience in dealing with freedom of information issues, he suspected she might have exaggerated her experience and abilities.
- He contended that a distinction existed between the process by which the Information Commissioner was appointed, and the arrangements applied to the selection of the Ombudsman. He pointed out that, in the case of the selection of the Ombudsman, a member of the Opposition was invited to participate on the selection committee; yet, despite a 'personal request to the Premier', the Opposition was denied a position on the selection committee for the appointment of the Information Commissioner.
- He was critical of the fact that Dr Leo Keliher, the Director-General of the Department of the Premier and Cabinet, was a member of the selection committee that ultimately recommended Ms Taylor's appointment, especially in light of the fact that Dr Keliher had been nominated by Ms Taylor as a personal referee. He contended that it constituted 'a clear conflict of interest for a member of the selection committee to appear as a personal referee on an application and not remove themselves from that particular selection process.'
- Additionally, he pointed out that, as Director-General of the Department of the Premier and Cabinet, Dr Keliher 'is also the State's most senior public servant and thus a close confidant of the Premier.' He suggested that 'there can be little doubt his acting as a personal referee, and remaining on the selection panel ... can easily be interpreted as a form of indication of favouritism at best, coercion or intimidation at worst, of the other members of the panel'.
- As with Dr Keliher, he questioned the appropriateness of the role played in the selection process by Ms Rachel Hunter, Director-General of the Department of Justice and Attorney-General who, he suggested, was said to share a personal friendship with Ms Taylor.

In light of the issues raised by Mr Springborg, and mindful of the issues canvassed publicly about Ms Taylor's appointment, the CMC has inquired into various aspects of the matter with a view to determining whether any issue warranted comprehensive investigation.

In addition to the matters Mr Springborg raised, the CMC has also examined the circumstances in which Ms Taylor relinquished the services of the former Deputy Commissioner (Freedom of Information), Mr Greg Sorensen.

Action by CMC

Upon receipt of Mr Springborg's first letter, the CMC secured access to all relevant files and other records, and, on 16 March 2005, wrote to Dr Keliher seeking access to records relating to:

- the creation of the office of Information Commissioner
- the determination of the classification level of the office
- the determination of the selection criteria and position description of the office
- the selection process — including selection criteria and the weighting for each of the selection criteria
- the selection report, and
- the previous position description and selection criteria for the office of Ombudsman/Information Commissioner.

By letter of 31 March 2005, Dr Keliher replied, providing copies of relevant material and otherwise referring the CMC to the Director-General, Department of Justice and Attorney-General.

Accordingly, the CMC wrote to Ms Rachel Hunter on 4 April 2005, seeking access to the relevant outstanding documents. Those documents were delivered to the CMC on 12 April 2005.

The CMC also received useful and detailed background information from the Ombudsman, Mr David Bevan, who explained the role previously performed by Mr Greg Sorensen — formerly the Deputy Commissioner (Freedom of Information) — and identified the circumstances in which the position of Information Commissioner came to be ‘split’ from that of Ombudsman.

Since then the CMC has spent time carefully considering the documents received and conducting three pertinent interviews — one with Mr Barry Dunphy, who had performed the role of independent member on the selection committee, another with Ms Taylor herself, and the third with Professor Glyn Davis, from whom the selection committee sought a referee’s report in respect of Ms Taylor and another applicant (referred to herein as ‘Applicant L’).

Given Mr Dunphy’s public standing, professional background and experience in public sector administration, the Commission has placed considerable weight upon his views on the matter.

Before detailing the reasons for the Commission’s conclusions, it may be helpful to outline the background to the government’s decision to ‘split’ the roles of Ombudsman and Information Commissioner, because it was this decision that led to the position of Information Commissioner being publicly advertised and ultimately to the appointment of Ms Cathy Taylor.

Background — the decision to ‘split’ the roles

Until Ms Taylor’s appointment as Information Commissioner, that role had been performed by the Ombudsman.

This was permitted under section 61(2) of the *Freedom of Information Act 1992*, which provided that the Ombudsman was to be the Information Commissioner ‘unless another person [was] appointed.’ That provision was in the Act as first enacted in 1992.

The prospect of separating the roles of Ombudsman and Information Commissioner had previously been canvassed in December 2001 by the

Legal, Constitutional and Administrative Review Committee (LCARC).² The recommendation was not adopted by the government at that time.

In September 2004, the Premier, the Honourable Peter Beattie MP, announced the government's intention to 'split' the offices of the Ombudsman and Information Commissioner.

On 23 November 2004, Mr Beattie issued a ministerial statement detailing government plans to have a separate Information Commissioner appointed by early 2005. The statement read as follows:

On 2 September 2004, I informed the House that I intended to split the offices of the Ombudsman and Information Commission and will appoint a separate Information Commissioner.

I can now inform the House that early in 2005 I will propose a resolution to the Legislative Assembly for the appointment of a candidate to fill the role of Information Commissioner.

The issue of splitting the offices of Ombudsman and Information Commissioner has been on the agenda for some time.

In December 2001, the Legal, Constitutional and Administrative Review Committee tabled its report on freedom of information in Queensland.

The report included a recommendation that the roles of Ombudsman and Information Commissioner be separated.

While the government did not support that recommendation at the time, the government now accepts that a stand-alone Information Commissioner is needed.

I have considered a proposal to appoint an Information Commissioner which would see a separate role established from early 2005.

I have consulted the Attorney-General and Minister for Justice and requested the Director-General of the Department of Justice and Attorney-General to facilitate the appointment process.

The role will be advertised in *The Courier-Mail* and *The Weekend Australian* newspapers on 27 November and 4 December 2004 with a closing date of 13 December 2004.

It is intended that a suitable appointee will be identified in early 2005 and that shortly after a motion of appointment for a separate Information Commissioner will be moved in the House.

Following endorsement of the House, and in accordance with the *Freedom of Information Act 1992*, Governor in Council approval for the appointment will be sought.

Whatever the reason for 'splitting' the office at this time, clearly the government was entitled to do so. In the absence of any reasonable suspicion of official misconduct, it is not open to the Commission to move into the political arena by canvassing the merits or otherwise of particular government decisions.

² Finding 112; Report no. 32, December 2001.

CMC investigation

Absence of non-government member on selection committee

The five-person selection committee convened for the selection of the position of Information Commissioner comprised:

- Ms Rachel Hunter (convener and chair), Director-General of the Department of Justice and Attorney-General
- Dr Leo Keliher, Director-General of the Department of the Premier and Cabinet
- Dr Lesley Clark MP, chair of the legal, Constitutional and Administrative Review Committee (LCARC), which is the parliamentary committee that oversees the Office of Information Commissioner
- Mr David Douglas, who at the time was Acting Public Service Commissioner³
- Mr Barry Dunphy, a former Crown Solicitor and currently a partner in the law firm Clayton Utz. Mr Dunphy, who performed the role of independent member on the selection committee, routinely participates in selection committees for senior government appointments, and is familiar with public sector employment processes.

Whilst cognisant of the criticism by the Opposition of the failure/refusal to allow a non-government member to participate on the selection committee, the Commission considers that such a decision is not of itself capable of giving rise to official misconduct on the part of any person.

Beyond that, however, it should be acknowledged that the merits of approaching the appointment of the holder of an independent office, such as the Information Commissioner, in a bipartisan way are self-evident. The controversy attaching to Ms Taylor's appointment might well have been avoided, or lessened, had a non-government member been invited to participate as a member of the selection committee, as it is understood was the case during the selection process for the present Ombudsman.

The Commission notes that, subsequent to the appointment in question, the Freedom of Information Act was amended to require the minister to consult, prior to the appointment of an Information Commissioner, with the parliamentary committee about the process of selection for appointment and the appointment of a person as Information Commissioner.

Alleged manipulation of selection criteria

There has been criticism that the selection criteria applied to the role of Information Commissioner had been manipulated so as not to require the successful applicant to possess legal qualifications.

In Mr Springborg's letter of 21 March 2005, he contended:

In brief, we submit that senior public servants have an obligation to ensure that the selection process for any appointment, and particularly an appointment of this significance, is designed to attract the best possible applicant for the position. As a minimum first step, the selection criteria

³ Mr Douglas replaced Mr George O'Farrell, the Public Service Commissioner, who was absent on annual leave and therefore unable to participate in the selection process.

should adequately reflect the skills required to fulfil the functions of the position.

In our view, the criteria specified for the position of Information Commissioner in the past clearly met that test and, just as clearly, the criteria applied on this occasion did not. ... Consequently, it is our contention that senior public servants wilfully contrived to avoid true merit selection by formulating criteria which favoured their preferred candidate or, at the very least, enabled them to look beyond the obvious applicant in favour of someone perceived to be more sympathetically inclined to government interests and arguments.

Previously, the role of Information Commissioner was carried out by the Ombudsman, originally titled the Parliamentary Commissioner for Administrative Investigations.

On the face of the information provided to the CMC by the Director-General, Department of the Premier and Cabinet, the role description for the position of Information Commissioner was drafted by officers of that department 'having regard to the previous role description for the Parliamentary Commissioner for Administrative Investigations when last advertised in 2001, the responsibilities of the role as outlined in the *Freedom of Information Act 1992*, and the advice of the Public Service Commissioner'.

The relevant parts of the role description adopted for the position of Information Commissioner are set out as follows:

5. Other qualifications

Formal tertiary qualifications are not mandatory but relevant management tertiary qualifications and/or legal qualifications may be an advantage.

8. Selection criteria

1. Demonstrated ability to set and achieve organisational goals through strategic leadership, planning and management of financial resources;
2. Demonstrated extensive knowledge and expertise in public administration practices, issues and developments, administrative review, complex problem solving with highly developed decision-making skills as a senior level;
3. Highly developed interpersonal skills and the ability to negotiate and communicate at all levels of government, the public, community organisations and other key stakeholders and with relevant outside bodies;
4. Demonstrated understanding of the responsibilities and operations of Queensland Government departments, statutory and local authorities, the operation of the *Freedom of Information Act 1992*, and the role of the Information Commissioner, or the ability to rapidly acquire such knowledge;
5. Demonstrated ability to lead and manage a diverse work force in accordance with contemporary human resource management policies and practices.

In the case of the Parliamentary Commissioner for Administrative Investigations (Ombudsman), the relevant parts of the role description last applied to that position (in 2001), read:

6. Other qualifications

Formal tertiary qualifications are not mandatory but relevant management tertiary qualifications and/or legal qualifications may be an advantage.

8. Selection criteria

A demonstrated ability to set and achieve organisational goals through strategic leadership, planning and management of financial resources;

1. Demonstrated extensive knowledge and expertise in public administration practices, issues and developments, administrative review, problem solving or related disciplines at a senior level;
2. Highly developed interpersonal skills to advance collaborative leadership with the ability to negotiate and communicate at all levels of government, the public, community organisations and other key stakeholders and with relevant outside bodies;
3. Demonstrated understanding of the responsibilities and operations of Queensland Government departments, statutory and local authorities and the role of the Parliamentary Commissioner for Administrative Investigations, or the ability to rapidly acquire such knowledge;
4. Demonstrated ability to manage a diverse work force in accordance with contemporary human resource management policies and practices, including the ability to lead and improve workforce morale, ethics and develop further the effectiveness of a senior executive management team.

As is readily apparent from the comparison of the respective role descriptions, the qualifications and selection criteria for the position of Information Commissioner very closely mirror those applied when the Ombudsman's position was last filled, in 2001, when that office held the dual roles of Ombudsman and Information Commissioner.

In short, neither role description required that the appointee be legally qualified, and both sets of selection criteria primarily focused on management skills. Accordingly, it is impossible in such circumstances to suggest that the most recent selection criteria had been manipulated in the manner suggested.

This issue was also raised with Mr Dunphy, who expressed no concern over the form of selection criteria. It is relevant that Mr Dunphy proclaimed that he possesses 'a very good understanding of how the office of Information Commissioner had worked' as he 'had extensive dealings with them in the past'.

As to the proposed splitting of roles, Mr Dunphy said that, although he had been 'interested to hear a bit more about it', the selection criteria 'didn't surprise him terribly'.

Mr Dunphy said he had been 'aware that there was probably a feeling around government that the office could have had a higher profile and that, whilst they had done some terrific legal work in the quality of their decisions, there was, I think, a question mark over whether, in terms of profile, that had been achieved'. Mr Dunphy said his thoughts were confirmed during the initial meeting of the selection committee, when Ms Hunter (as chair of the panel) had given an overview of the position:

... My suspicion was proved correct ... what they were really looking for was someone to manage the office, manage the workload, the resources, keep delays to a minimum, probably take a bit of a different approach to raise the profile, try and develop ways to continue what had already happened in terms of trying to mediate disputes and get

FOI reviews done more simply and perhaps in a slightly less legalistic way ...

Mr Dunphy did not consider that the lack of a necessity for legal qualifications would unduly impinge upon the operation of the office of Information Commissioner. He noted that the office of the Information Commissioner traditionally employed lawyers, and he likened the current position of the Information Commissioner to that of directors-general of government departments, who often do not have skills in the particular portfolio area but will be supported by appropriately skilled advisers.

It is arguable that, as drawn, the selection criteria tended to favour applicants who presented a high level of public administration experience and expertise. (This would have favoured applicants such as Ms Taylor over applicants such as Mr Sorensen — who possessed a wealth of experience in terms of the specific decision-making required by the *Freedom of Information Act 1992*.)

However, although individuals might take issue with the manner in which the role descriptions for the positions of Ombudsman and Information Commissioner have been drawn, it is difficult to argue that either role description has been designed so as not to attract suitable applicants. It is, for instance, equally arguable that widely drawn selection criteria are likely to encourage applications from a greater range of potential appointees.

In any event, it is also properly within the province of the government of the day to define (within the parameters of the legislation) the role to be carried out by statutory office holders.

Short-listing process

The relevant documentary records establish that there were fourteen applicants for the advertised position of Information Commissioner.

A meeting of the selection committee was convened for the purpose of short-listing candidates for interview. Handwritten notes were prepared at that meeting, at which it was ultimately agreed that four applicants should be afforded an interview.

Prior to the meeting, Mr Dunphy indicated by email that he knew seven of the applicants in varying capacities. He also indicated that his association with those persons was not such as would prevent him from participating in the selection process.

Other than the details contained in Mr Dunphy's email, there is no written record to confirm whether individual candidates were known to other members of the selection committee. This, of itself, is not particularly telling. Certainly, there is clear evidence that Ms Taylor had nominated Dr Keliher as a referee — and that this fact was well known to members of the selection committee. Equally, she was known to Ms Hunter.

It should be noted that, in the course of the short-listing process, Dr Keliher announced that he would not act as a referee for Ms Taylor, although the Commission notes that during the selection process he did make comments about Ms Taylor that a referee could be expected to make.

What is apparent from the handwritten record (and has been confirmed by Mr Dunphy) is that Dr Keliher and Ms Hunter considered that Ms Taylor should be interviewed when she had not otherwise scored highly enough to make the short-list.

The notes of the meeting reveal that Ms Hunter spoke in favour of interviewing Ms Taylor on the basis that she considered her to be a 'good alternative candidate'. Dr Keliher noted that Ms Taylor was not a lawyer, but expressed admiration for her work within the Department of the Premier and Cabinet. Mr Douglas too, 'endorsed the view that Cathi was a person of ability'. For her part, Ms Clark expressed reservations about Ms Taylor's apparent closeness to the government. Ultimately, Mr Douglas and Mr Dunphy agreed with Dr Keliher and Ms Hunter that Ms Taylor should be included in the short-list and should be interviewed.

When interviewed by the CMC, Mr Dunphy made the point that it was 'entirely appropriate' for Dr Keliher and Ms Hunter to suggest that Ms Taylor be interviewed. He explained that in his experience it is not unusual for members of a selection committee to suggest that a particular applicant who is 'on the edge of being short-listed or not short-listed' might be 'worth a look'.

Mr Dunphy made the point that agreeing to interview Ms Taylor had been 'a good call ... because Cathi Taylor performed far better in the interview viz-a-viz her application, in my view. And my scores reflected that'.

According to Mr Dunphy, on his initial scoring of the various written applications, Cathi Taylor 'was just outside my top group.' He recalled that her application:

... didn't seem to me to deliver high scores across each of the criteria, though, I think that I acknowledged that on some of them she had scored quite well.

He explained that, at that point there had been some discussion about Cathi Taylor's application, and:

Dr Keliher explained that in his view ... she'd been one of the best people that had ever done that sensitive State Affairs role, where there's a lot of liaison with Governor in Council and the Governor, and she had terrific skills, that she had a good network, and a strong background in public sector service and even education ...

The CMC has examined the applicable public service directives and guidelines on the selection of public sector employees. There is nothing to prevent the course adopted by the selection committee regarding Ms Taylor's application.

The formal interview process

Interviews for the four short-listed applicants were conducted on 6 January 2005.

There is nothing in the records of the selection committee (or in Mr Dunphy's account to the CMC) to suggest that the interviews were conducted other than in an appropriate manner. The interview process appears to have proceeded in a normal way and in accordance with relevant public service directives and guidelines.

At interview, each candidate was confronted with a number of standard questions relevant to the key selection criteria, and assessments were made on the basis of their responses. Each interview lasted for about 30 minutes.

The selection committee chose to use numerical scores to compare applicants. At the conclusion of the four interviews, each member of the selection committee provided details of his/her scoring of the respective

candidates. According to Mr Dunphy, this occurred in a rapid-fire way, such that it was impossible for members of the committee to adjust scores.

Handwritten notes from each of the selection committee members were retained and have been produced to the CMC. The notes suggest that the interview process was thorough, and reflect the fact that each member of the committee gave proper consideration to the respective merits and skills demonstrated by the various applicants.

There was a general consistency in the pattern of assessing, as reflected in the scores, such as to provide little basis to suspect that any member of the selection panel had attempted to unfairly influence the result.

The two highest-scoring applicants were duly identified. Overall, Ms Taylor scored second highest, behind Applicant L. (Mr Sorensen was scored lowest of the four applicants by each member of the selection committee.)

Of the selection committee, only Dr Keliher had assessed Ms Taylor highest — albeit only a few points ahead of Applicant L, whom he had assessed second.

Mr Dunphy, Ms Clark and Ms Hunter each assessed Applicant L highest, with Mr Dunphy and Ms Clark placing Ms Taylor second highest.

It is considered significant that Ms Hunter assessed Ms Taylor only third highest. (This point is canvassed below.)

For his part, Mr Douglas gave another applicant (not Mr Sorensen or Applicant L) the highest score, with Ms Taylor in second position.

When the scores were tallied, Applicant L was the highest-scoring applicant, with Ms Taylor a very close second.

Professor Davis's reference

The final report prepared by the selection committee confirms that at the end of the interview process, Ms Taylor had been ranked second, behind Applicant L.

As is usual in circumstances where the two highest-ranked applicants are considered close, the selection committee checked both applicants' referees. These checks confirmed that either applicant would be suitable for appointment as Information Commissioner.

A referee report was obtained for Applicant L from her current manager and for Ms Taylor from a previous deputy director-general.

Additionally, in this case both Applicant L and Ms Taylor had, coincidentally, nominated Professor Glyn Davis as a personal referee. Accordingly, Ms Hunter sought a 'comparative' reference from Dr Davis. In essence, what was sought was Dr Davis's opinion as to who would be the better applicant.

Dr Davis's report, which is itself annexed to the selection committee's report, is written in the third person, as follows:

Dr Davis qualified his comparative reference by statement that he last worked with [Applicant L] in 1996. He worked with Ms Taylor in various roles until January 2002, so inevitably his knowledge of Ms Taylor is more up to date and comprehensive. Noting that qualification, Dr Davis said both Ms Taylor and [Applicant L] are excellent candidates and highly appointable.

Comparatively, [Applicant L] has stronger credentials in administrative law and procedure while Ms Taylor is more highly experienced in terms of team leadership and public administration. [Applicant L] had excellent legal policy capability but less experience in people and organisational management.

Ms Taylor has broad experience in policy work and in the range of material handled by government bodies. [Applicant L] has at least equal intellectual skills but may not have similar exposure to different agency procedures and forms of documentation. She does have significant experience in high level legislative matters and [has] been responsible for central agency legal policy assessment.

Dr Davis indicated it was not an easy choice. Ms Taylor has broad experience, demonstrated judgement and a superior understanding of government processes and policies. [Applicant L] has equally impressive skills, but her legal specialisation has dictated a more focused, and therefore narrow, exposure to the operations of government. Asked to provide a comparative assessment therefore, Dr Davis confirmed that either candidate would be an excellent choice, but suggested Ms Taylor's policy capability and superb capacity to lead people makes her the preferred candidate in a close and difficult decision.

Given that Dr Davis's report had been prepared in the third person, it was considered prudent to confirm with him the authenticity and accuracy of the document. Accordingly, Dr Davis was interviewed by telephone, and a copy of the referee report was transmitted to him by email so that he could confirm the authenticity of it.

Professor Davis duly confirmed that he had provided the written reference, and reiterated that his views as to the respective merits of the two applicants were accurately contained in the document.

Professor Davis also reiterated the caveat he had placed upon his recommendation — namely, that he had not worked with Applicant L for a considerable period.

Final selection

The final report of the selection committee which was signed by all members, reveals that the committee was split 3:2 as to the most meritorious applicant, with the majority favouring Ms Taylor over Applicant L.

The majority comprised Dr Keliher, Ms Hunter and Mr Douglas. The minority, Mr Dunphy and Ms Clark, favoured Applicant L.

The report contains a notation that all committee members were of the view that either applicant would have been suitable for appointment.

When interviewed about the matter, Mr Dunphy confirmed that the selection committee had split 3:2 in its ultimate recommendation. He explained that the majority had placed considerable weight upon Dr Davis's recommendation that Ms Taylor was the better applicant.

Mr Dunphy explained that, while he valued Dr Davis's opinion, he had been concerned that Dr Davis had not had recent experience of Applicant L, and that it appeared the selection committee had initially rated Applicant L so highly because of the experience she had gained during that intervening period. Mr Dunphy explained:

... I was obviously happy to give great weight to Dr Davis's assessment of his impression and the skills of the applicants. But I told the panel during the teleconference that as far as referee reports went I couldn't give much weight to the comparative analysis because I felt that it was a bit unfair really that you'd make a call when he had seen the work of Cathi Taylor for another six years and more recently. And really my experience with people in government is that you can have an officer develop dramatically in their skill base over two years and we were talking about at that stage a nine-year gap from when he'd last seen Applicant L, and I suppose he hadn't seen the very things which had got her to the final light.

According to the final report and Mr Dunphy's recollection, Ms Clark had also expressed reservations about the possible appointment of Ms Taylor, pointing out that she might be viewed as too close to the government. Mr Dunphy said that, when it became obvious no consensus could be achieved, with the majority favouring Ms Taylor, he had indicated he would be happy to support the majority view, but only on the basis that there was an acknowledgment that the committee had split. He made the following observation when interviewed:

... to be honest I think it's the first selection panel that I've ever been on in memory, in 20 years, where the panel split and in the end I think having talked through the referees' reports and having gone over the strengths and weaknesses throughout the whole process, we still were in a position where we had a 3 to 2 split, with Lesley Clark and myself favouring [Applicant L] and the other three favouring Cathi Taylor. And I think that it might have even been I who said, 'well it looks as though we're not going to be able to come to a consensus' ... We seemed to have a position where a majority of the panel favoured candidate A and the minority favoured candidate B and I said that from my point of view, I was happy to support the majority view but on the basis that there was an acknowledgment that the panel had split.

Current selection procedures do not require a unanimous panel decision. But, for good reason, unanimity appears to be the norm in a selection process intended to identify the most meritorious candidate. Mr Dunphy says that this split decision was a unique outcome in his 20 years' experience of public sector selection processes. The task of the selection committee was to select a candidate for an independent office answerable to a parliamentary committee. Given the fact that both the independent member of the selection committee and the representative of the parliamentary committee were concerned that Ms Taylor was not the most meritorious candidate, the Commission is of the view that it is unfortunate that the selection committee could not reach a unanimous decision.

The relationship between Ms Taylor and Ms Hunter

It has been suggested that Ms Taylor's appointment may have been improperly influenced by reason of her personal friendship with Ms Hunter.

Ms Taylor has informed the CMC that her past relationship with Ms Hunter was one based upon their professional contact only, and did not extend to a personal friendship. This assertion, it is noted, is consistent with the statement made to the parliament by the Premier, on 8 March 2005, which incorporated a letter from Ms Hunter containing a similar assertion. So far as the CMC is aware, there is no factual challenge to the position as publicly described by Ms Taylor and Ms Hunter.

A further telling consideration is that, after the interview process, Ms Hunter scored Ms Taylor as only the third-highest candidate. (It was only on the scoring of the selection committee as a whole that Ms Taylor was moved into one of the top two positions — for which referee checks were to be undertaken and from which an applicant was to be ultimately recommended.)

Mr Dunphy explained to the CMC that the interview process was conducted in such a way that the panel members ‘had no idea how people were going to score until the end ... and essentially we went around the table calling out the scores, so it was just one after the other, rapid fire, which was the summaries of the day’s play really’.

While there is clear evidence that Ms Hunter spoke in favour of Ms Taylor at times during the selection process, the suspicion that Ms Taylor was always Ms Hunter’s favoured applicant is somewhat illogical, especially given that Ms Taylor would not have emerged as the preferred applicant on the basis of Ms Hunter’s scoring.

See also the point made (next page) by the Public Service Commissioner, Mr George O’Farrell.

Dr Keliher’s role

In a letter of 9 March 2005, the Leader of the Opposition stated:

While I am unsure whether Mr Keliher’s actions themselves necessarily amount to official misconduct, they do appear improper and present a scenario whereby a legitimate question can be raised that the selection process for the position of Information Commissioner has been clearly open to possible manipulation and was not conducted on a fair and impartial basis in the public interest.

Furthermore, Mr Springborg contended that if the involvement of Dr Keliher did not amount to official misconduct, it did ‘at least amount to unethical and inappropriate behaviour thus provoking the need for stronger guidelines to be recommended by the CMC to ensure the processes of appointment to senior positions in the Queensland Public Sector are as foolproof as possible against corruption, manipulation, intimidation and favouritism.’

In the face of criticism of his actions, by letter of 7 March 2005, Dr Keliher sought the advice of the Public Service Commissioner, Mr George O’Farrell. Specifically, Dr Keliher sought Mr O’Farrell’s advice as to whether ‘there are any relevant human resource policies or guidelines within the Queensland public sector which prevent a previous supervisor from being both a referee and a selection committee member during a selection process?’ He also sought guidance as to whether ‘there is a standard procedure to be followed for panel members who have been nominated as a referee.’

In his response of the same date — which was addressed to the Premier — Mr O’Farrell made the following points:

1. The suggestion that there was something untoward about a process in which a person was both a member of the selection committee and a referee misrepresents the role of a referee. It assumes that a referee actively campaigns for the candidate, which they do not. Indeed, it is quite likely that a person (who is also a panel member) may be asked to provide references for more than one applicant. Such circumstances occur frequently and are reasonable, provided that other members of the selection committee are aware of them. Any impropriety would occur only if the

panel member and the applicant failed to disclose any relationship, and it is very hard to see how that can occur when an applicant openly lists a person as a referee. Further, references are always sought from more than one referee, so there is no likelihood of a panel member who is also a referee being the sole point of external input.

2. Similarly, the notion that, somehow, public servants should abstain from being friendly with their colleagues cannot withstand sensible scrutiny. The allegation that an applicant had once dined at a panel member's house is no ground for concern unless it can somehow be shown that any relationship between them was concealed from other members of the panel and that the panel member unreasonably used their position on the panel to advance the applicant's claim for the position at the expense of others. Any such claim would be to cast doubt on the integrity of other members of the panel and their ability to make an independent judgement about the merits of the applicants.

Additionally, the issue of Dr Keliher's role as a referee was canvassed with Mr Dunphy. Asked whether it was unusual for members of selection committees to also be nominated as referees by job applicants, Mr Dunphy said:

No, not at all. And I think there are two factors that are relevant in this case. The first thing is that Cathi Taylor had moved to the EPA and an SES3 level, and the normal expectation when you see people at this level applying is that they will usually nominate as referees their most recent senior supervisors or bosses, and in fact it often can be a point that you want to pursue if they haven't. Now in this case, I suppose, the truth of it would have been that all the applicants when they applied would have had no idea who was going to be on the panel, and so they would have naturally chosen their referees based on who they'd worked with most recently. That seems to be why Cathi nominated Leo Keliher. She wouldn't have known at the time that Leo was on the panel. And essentially, on that point, which I've seen being raised in the media and in discussion, I can say categorically that point was never an issue. At that first meeting Leo identified, quite properly, that he was named as a referee, but because there were two other referees it wasn't a problem and he never acted as a referee, he acted only as a panel member, and he never purported to give a referee's report informally, formally, or otherwise.

Equally, Mr Dunphy had no concern at Dr Keliher's recommendation that Ms Taylor be interviewed notwithstanding her failure to make the initial short-listing.

A review of public service directives by the CMC has found no prohibition on a selection panel member being a referee for an applicant

In the circumstances, the Commission is satisfied there was nothing about the conduct of Dr Keliher that amounted to official misconduct.

Prior political allegiances

There is no basis to suspect Ms Taylor's personal political leanings or sympathies will adversely affect her impartiality in holding an independent statutory office. Her position is no different from many other individuals who are appointed to public office after having either served in a political capacity, or publicly made known their political views.

The mere fact that Ms Taylor may or may not have particular political leanings or sympathies should not influence the merit selection processes employed within the public sector. The issue is not an applicant's political allegiance but the extent to which the applicant can undertake the role required of them in an impartial and professional manner.

Beyond the speculation that attaches to the current matter, there is no evidence upon which one might conclude (to the requisite standard) that the selection process was influenced by Ms Taylor's past political affiliations.

Ms Taylor's actions regarding Mr Sorensen

Prior to Ms Taylor's appointment as Information Commissioner, the role had been held by the Ombudsman. Primary responsibility for the freedom of information functions of the Ombudsman's office fell to Mr Greg Sorensen, whose title was Deputy Commissioner (Freedom of Information).

The CMC is conscious that there has been some issue taken with the proper title of Mr Sorensen's position. The public record reveals that Mr Sorensen has been referred to both as Deputy Ombudsman and Deputy Commissioner (Freedom of Information).

In fact, Mr Sorensen was appointed to the position of Deputy Commissioner (Freedom of Information) in November 1992.⁴ His position has been variously described by that title, and also by the title Deputy Ombudsman.

In the CMC's view, little turns on the issue. The reality is that, howsoever described, Mr Sorensen was generally recognised as the officer within the Ombudsman's office who had primary carriage of freedom of information functions.

On 25 February 2005, upon Ms Taylor's appointment as Information Commissioner, the Ombudsman, Mr Bevan, wrote to her proposing that Mr Sorensen be retained as her deputy.

Mr Bevan's letter referred to the fact that Mr Sorensen had occupied the position of Deputy Commissioner since November 1992, that he had 'carriage of the most difficult and sensitive files', and that another experienced officer was then currently on maternity leave. It was suggested that allowing Mr Sorensen to continue in the Deputy Commissioner's role would 'facilitate a smooth transition'. Mr Bevan suggested that 'no other officer has Mr Sorensen's depth of knowledge of what is a complex body of law'.

Mr Bevan's letter concluded:

Finally, I believe there is an element of unfairness to Mr Sorensen in ceasing his deployment as Deputy Commissioner without a reasonable period of notice, after 12 years service in that role.

By letter of 28 February 2005, Ms Taylor responded to Mr Bevan, confirming that she did not require Mr Sorensen to perform duties in the Office of the Information Commissioner, and advising that she proposed to occupy the Information Commissioner's office (i.e. Mr Sorensen's office) from 5.00 pm that day.

With a view to clarifying her actions regarding the 'removal' of Mr Sorensen, the CMC conducted an interview with Ms Taylor on 16 June 2005.

⁴ The vacancy for this position — titled 'Deputy Commissioner (Freedom of Information)' — had been advertised in September 1992.

Ms Taylor explained how, with a view to being introduced to the staff of the Office of Information Commissioner, she visited the Ombudsman immediately after taking her oath of office. She had expected Mr Bevan to introduce her to the staff members, whom she had asked be brought together for that purpose.

Upon her arrival, Mr Bevan put a proposal to her that Mr Sorensen should continue in his role as Deputy Information Commissioner — at least until the end of the financial year. Ms Taylor said that she was taken aback by the proposal, which was ‘just put on (her)’ without any detailed briefing as to the workings of the Office. She said that she explained to Mr Bevan (and later to Mr Sorensen himself) that it had been her belief that her appointment as a stand-alone Information Commissioner was intended to take the place of the Deputy Commissioner.

In this regard, Ms Taylor said that she had assumed (and indeed, had immediately expressed the view to Mr Bevan) that, given the relatively small number of staff within the office, the employment of two senior executive service officers could not be justified.

Ms Taylor explained that she nonetheless decided to take time to consider Mr Bevan’s proposal, which she did over the course of the ensuing weekend.

According to Ms Taylor, upon considering the issue, she decided it would be better for staff morale if she declined the offer to have Mr Sorensen stay on. She explained that this decision was hers alone, and that she did not discuss the issue with any other person.

In light of Ms Taylor’s explanation, it is difficult to suggest that she was improperly motivated or influenced in her decision to reject the offer of Mr Sorensen’s continued service.

Ms Taylor’s association with members of the committee

During the course of the interview, Ms Taylor was also questioned in general terms regarding her application and her association with members of the selection committee. She denied having any personal association with any member of the selection committee.

Ms Hunter confirmed that she had shared a professional relationship with Ms Hunter over a number of years, but denied their relationship extended to a personal friendship. (Contrary to suggestion contained in a newspaper article, Ms Taylor claimed she had dined with Ms Hunter on only one occasion at an official, work-related function.)

Likewise, Ms Taylor said she had a similar professional relationship with Dr Keliher, and she had a professional association with both Mr George O’Farrell, the Public Service Commissioner, and Mr David Douglas (Mr O’Farrell’s deputy). Ms Taylor had no prior association with Mr Dunphy.

Ms Taylor’s involvement with the decision to split the roles of Information Commissioner and Ombudsman

Ms Taylor said she had played no part in the government’s decision to split the role of Information Commissioner from the Ombudsman’s office. She explained that she had decided to apply for the position upon seeing the vacancy advertised. She did not discuss her application with any member of the selection committee prior to being interviewed.

So far as Ms Taylor is concerned, there was nothing untoward or unusual about the manner in which the selection panel went about its business.

At no time prior to Ms Taylor's appointment was she briefed or instructed about how the government expected her to perform the role of Information Commissioner. Neither was she given any instructions as to how the Office of Information Commissioner should be run. Ms Taylor said she regards the position of Information Commissioner as an independent statutory office and that is the way in which she proposes the office should be run.

I've said that I intend to, and now have done, exercise my role with complete independence. And I think my performance in the role demonstrates that, in terms of decisions I've made.

Ms Taylor's freedom-of-information experience

Finally, in light of the concerns expressed as to the extent of Ms Taylor's prior experience in the area of freedom of information, the CMC considered her application for the position of Information Commissioner including the submitted curriculum vitae. The CMC is satisfied there is nothing contained in those documents that might be regarded as exaggerating her past experience. This is not surprising of course, because the position of Information Commissioner — as advertised — did not require the successful applicant to demonstrate a high level of experience in that area.

Commission's conclusion

Having considered the accounts provided during the three interviews and on the basis of other available information, the Commission is satisfied that, while some questions remain as to certain aspects of the process by which Ms Taylor was ultimately selected as the successful applicant, no reasonable suspicion of official misconduct exists on the part of any of the individuals associated with her appointment.

In those circumstances, the Commission considers no further action on its part is warranted.