

From: Richard Koerner [rjkoerner@inet.net.au]
Sent: Wednesday, 20 July 2011 3:15 PM
To: Cath Barker
Subject: CMC response to QCA concerns
Attachments: CMCresponse3.pdf; CMCdd.pdf; CMCcc.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

This email contains an attachment that may be work related and must be filed into the DMS. If you need assistance with this please contact the Executive Officer at xo@qca.org.au.

Attn. Ms Cath Barker

Dear Ms. Barker,

Attached is correspondence just received from CMC, as well as the earlier letter to CBP&RA dated 7 June 2006.

Please note the final paragraph of 7 June correspondence page 1. It suggests the CMC had been misled as no such referral had taken place at that time or subsequently.

Correspondence dated 12 December 2007 was the result of a CBP&RA request for a customer service review earlier in 2007.
I can provide the background correspondence if needed.

Kind regards,

Richard Koerner

The attached PDF document may not be searchable by our Document Management System. Please contact Jason at jason.smith@qca.org.au with the Document Number so that he is able to check compatability.

CRIME AND MISCONDUCT COMMISSION



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Your Reference: NA
Our Reference: MI-11-1508 / DBJONES
Contact Officer: Dylan Jones

19 July 2011

PRIVATE & PERSONAL

Mr Richard Koerner
rjkoerner@iinet.net.au

Dear Mr Koerner

RE: YOUR CONCERNS

I refer to your emails of 14 July and 17 July 2011 to the Crime and Misconduct Commission (CMC) regarding your concerns about pricing in the South East Queensland water sector.

I also refer to our letter to you of 14 July 2011. I note, in this letter, we referred to a previous letter to you dated 7 June 2008. As you have rightly advised this date is incorrect and the correct date of the letter is, in fact, 7 June 2006.

I also wish to advise, with regard to the correspondence forwarded to the CMC by the Queensland Competition Authority, the correspondence did not include any report to the Queensland Government of December 2007.

In dealing with your concerns the CMC also considered previous correspondence received in 2006 with regards to a related matter (CMC File MI-06-1131 refers). At that time, we advised the Coolumb Beach Progress and Ratepayers Association the matters that were raised were not within the legislative jurisdiction of the CMC.

Similarly, the matters recently raised by you and the issues raised by Ms Amy-Rose West which you have included in your recent correspondence, are not matters within the legislative jurisdiction of the CMC.

The CMC notes both you and Ms West have raised your issues with the appropriate agencies for consideration and that you have received responses from those agencies, albeit not to your satisfaction.

As previously advised, the CMC is unable to take any further action with regard to the matters you and Ms Amy-Rose have raised concerning pricing and appointments in the South East Queensland water sector.

Please be advised, the CMC does not intend to respond to further correspondence about these same matters. Please direct any further correspondence to those agencies more appropriate to deal with the matters.

Yours sincerely

A black rectangular box redacting the signature of Jeffrey Farrah.

JEFFREY FARRAH
Acting Principal Legal Officer
Public Sector Program
Integrity Services

DD

CRIME AND MISCONDUCT COMMISSION

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Our Reference: MI-06-1131 / PAJ
Contact Officer: Mr P Jones 3360 6371
Peter Jones

7 June 2006

OFFICE OF THE
Assistant
Commissioner
Misconduct

Level 3, Terrica Place
140 Creek St
(Cnr Creek and Adelaide)
Brisbane, Queensland

PRIVATE & PERSONAL

Mr Peter Brown
C/- R J Koerner
Treasurer
Coolum Beach Progress & Ratepayers
Association Inc
31 Fauna Terrace
COOLUM BEACH Q 4573

Dear Mr Brown

RE: YOUR CONCERNS

I refer to your complaint to the Crime and Misconduct Commission (CMC) dated 13 April 2006 in which you raised concerns on behalf of the Coolum Beach Progress and Ratepayers Association Incorporated (CBP&RA) about the conduct of the Premier, the Minister for Local Government and the Treasurer.

All the information provided has been considered and it is understood your concerns are that:

1. the Council has indulged in "pricing abuse" in relation to water rates within the Maroochy Shire. More particularly it is alleged that water and sewerage rates are set above the ceiling standard as permitted by the Local Government Act and Financial Standards Act; and
2. the CBP&RA petitioned the Department of Local Government for a prices oversight investigation by the Qld Competition Authority in May 2003. It is claimed this request made by the CBP&RA was not referred by the Premier or the other named Ministers to the independent statutory body which is specifically set up under the National Competition Policy to investigate such complaints.

Under the *Crime and Misconduct Act 2001* (the Act) one of the roles of the CMC is to ensure complaints of possible 'misconduct' are dealt with appropriately.

"Misconduct" includes police misconduct and official misconduct. Official misconduct is defined by sections 14 and 15 of the Act. A copy of the definition is attached for your information (**Attachment 1**).

It is not considered the behaviour described in your concerns could, if proved, amount to misconduct as defined in the Act. This is because your concerns are currently under consideration of the Queensland Competition Authority, albeit after a lengthy delay. The material supplied to the CMC provides no support for the contention that the Premier and the other subject Ministers "failed to ask" the QCA to become involved. In any event, any such "inaction" if proved, could not in the circumstances described, constitute official misconduct.

After the allegation against the Council has been determined by the QCA, it would seem that you still have the option of referring the concerns of the CBP&RA to the Ombudsman for such action, if any, as the Ombudsman may consider warranted

Accordingly the CMC is unable to deal with your concerns.

Yours sincerely



HELEN COUPER

Director

Complaints Services

Attach

CRIME AND MISCONDUCT COMMISSION

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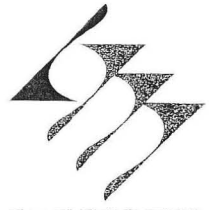
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Our Reference: MI-06-1131 / MGD
Contact Officer: Mark Docwra

"CC"



QUEENSLAND

12 December 2007

Mr Peter Brown
Secretary
Coolum Residents Association
PO Box 121
COOLUM BEACH QLD 4573

Dear Mr Brown

RE: YOUR CONCERNS

Thank you for your letter of 4 December 2007 regarding alleged official misconduct by the State Government and Maroochy Shire Council (Council) for not referring concerns about Maroochy Water Services (MWS) monopoly pricing to the Queensland Competition Authority (QCA).

The Crime and Misconduct Commission (CMC) decided not to take any action regarding the matter. You have requested that decision be reviewed under our Charter of Client Service. I have undertaken that review.

I have considered the file information.

The CMC received the original complaint on 18 April 2006.

The complaint essentially alleged that MWS imposed water and sewerage charges above ceiling levels permitted under the Local Government Act and Local Government Finance Standard.

It was further alleged that there had been an ongoing cover up by the Council and the then Premier, then Treasurer and then Minister for Local Government and Planning, for not referring the matter to the QCA.

The Director, Complaints Services advised you by letters dated 7 June and 8 August 2006 and 19 November 2007 that the CMC did not intend to take any action and noted you could refer the matter to the Ombudsman.

The file information indicates that the then Minister for the QCA, Mr Terry Mackenroth MP, wrote to you by letter dated 16 June 2005 advising that the QCA could not investigate MWS's pricing behaviour unless the Premier and Treasurer (the responsible ministers at the time) exercised their discretion and referred the matter to the QCA.


Mr Mackenroth further advised you of the reasons why the matter had not been referred to the QCA. Namely, that Treasury had been advised that the Council's external auditors considered the 30 June 2003 revaluation of MWS assets was fair and reasonable and consistent with accepted regulatory methodology. Further, Treasury's investigations indicated that MWS's rate of return was within the reasonable range — albeit at the high end.

While you have suggested that the Council and the MSW may have provided Treasury with misleading information, the information available to us does not reasonably raise a suspicion of misconduct in that regard.

Accordingly, I am satisfied that the decision to not take further action was appropriate in all the circumstances.

While we acknowledge that this matter remains of concern to you, we are simply unable to assist you further.

Yours sincerely

A large black rectangular redaction box covering the signature of Robert Needham.

ROBERT NEEDHAM

Chairperson